Written evidence submitted by Gary Walker – Former CEO, United Lincolnshire Hospitals NHS Trust (October 2006 to February 2010) (FRA 03)

Purpose of this submission

1. I have been asked by the Health Select Committee to give evidence in relation to my compromise agreement with United Lincolnshire Hospitals NHS Trust. The document is attached in Annex A. I have also been provided with a transcript of the previous committee hearing held on 13 March 2013, to which I will refer.

2. In order to provide context, I will also describe events pre and post signing of that compromise agreement and detail events that have taken place in recent weeks including new attempts by the NHS to discredit me.

Comments made by Sir David Nicholson to the committee on 13 March 2013

3. Evidence of a “problem” in Mid Staffordshire

4. In answer to Q203 Sir David states: “…the data that was available…did not indicate at that time that there was a problem in that organisation”. Evidence from Professor Sir Brian Jarman has proven that not only was the information available nationally but that West Midlands SHA staff, which included Sir David, and all West Midlands NHS Trusts accessed mortality data many thousands of times during and prior to the terrible events that occurred there.

5. Treasury Approval of Severance and Compensation payments

6. The normal process for a severance or compensation payment is for the employing NHS Trust to request approval for a payment from their Strategic Health Authority Remuneration Committee (or Monitor if a Foundation NHS Trust). They, in turn, request approval from the Department of Health who request approval from the Treasury.

7. In answer to Q214, which refers to the “sign-off” or approval of the payment that I received, Sir David states: “The case in Lincolnshire was different. They went for a different arrangement, which—if I can get the title right—was a judicial mediation. In those cases, they do not have to get signed off by the Department and the Treasury.” Sir David goes on to say: “In terms of judicial mediation, it is the first time in my experience that I have seen that done.”

8. Sir David’s description of the approval process according to HM Treasury and NHS Employers guidance is incorrect. NHS Employers states the following: “Approval for severance payments must be obtained from the relevant bodies (i.e. the SHA, Monitor, HM Treasury) in accordance with the Guidance for employers within the NHS on the process for making severance payments to senior managers and local practices. Please note that Treasury approval is necessary in all cases involving severance payments, not just very senior managers. Judicial mediation may still be used in such cases but Treasury approval is recommended to be sought at the earliest possible stage so that the mediation can be completed and finalised on the day.” (emphasis added).

9. The Guidance from NHS Employers (Annex B) and Sir David’s own letter to the NHS on 1 November 2007 (Annex C) refers to HM Treasury guidance: “Managing Public Money”. This guidance states the following: “4.13.11 Departments should not treat special severance as a soft option, eg to avoid management action, disciplinary processes, unwelcome publicity or reputational damage. Box A4.13B sets out the factors the Treasury needs to evaluate in dealing with special severance cases. It is important to ensure that Treasury approval is sought before any offers, whether oral or in writing, are made.” (emphasis added).

10. Judicial mediation is a process whereby a series of verbal offers are made during the course of ‘shuttle diplomacy’ in order to prevent further litigation. Only when an agreement is reached does the judge then set out an order, which merely refers to the signed compromise agreement. It is not binding arbitration and parties are free to leave at any time.

# Source: http://www.nhsemployers.org/EmploymentPolicyAndPractice/UKEmploymentPractice/Pages/Resolving-disputes.aspx
Therefore under Treasury rules approval prior to making an offer is required. However, in 2010/11 the Department of Health changed the rules for payments under judicial mediation. In the Manual for Account 2010/11, Annex 2 states the following: “Compensation payments made under legal obligation (sc 200): Payments fall into this category only if a clear liability exists as a result of a Court Order or a legally binding arbitration award. This category can include compensation for injuries to persons, damage to property and unfair dismissal, judicial mediation and remedies hearings. Payments into court, and out of court settlements, are not payments made under legal obligation.”

The Department of Health guidance goes on to say: “Please note that for compensation payments made under legal obligation a checklist does not require completing. The reasoning for this is if a case has a legally binding order, i.e. Court Order or Judges Settlement, no further details are necessary.”

In contrast to Sir David’s previous statement that he was unaware of the term “Judicial Mediation”, the Department of Health has specifically sought to exclude a need for approval by HM Treasury in cases of judicial mediation. This is not reflected in HM Treasury guidance, which clearly states approval is required.

In summary the payment made by ULHT required HM Treasury approval and should have been authorised by the SHA remuneration committee, passed to the Department of Health for authorisation prior to the request being sent to HM Treasury for final approval.

The second attempt to gag me on 12 February 2013

On 12 February 2013, I received letter from DAC Beachcroft at 9:20pm (Annex D). The letter states: “Having seen an outline of the issues, we have advised our client that if you have provided an interview or should this interview proceed you will be in clear breach of the agreement and as a result the Trust would be entitled to recover from you the payments made under the agreement and any costs including its legal costs.”

The “outline of the issues” was given to the Trust by the BBC Today programme. A transcript of the news item clearly covers only patient safety issues and matters in the public interest (Annex E).

The letter from DAC Beachcroft also states: “You agree that the dispute between you and the Respondent, the East Midlands SHA, the Department of Health and the Appointments Commission is hereby at an end and shall not repeat the allegations contained in your witness statements which were served on the Respondent during the proceedings. You agree to take reasonable steps by asking the other witnesses to abide by the same duties of confidentiality as are agreed by you under this Agreement.”

My allegations included 16 protected disclosures (Annex F) concerning patient safety and other matters in the public interest. Several of these were reviewed by an employment judge during preliminary stages of the Employment Tribunal process (Annex G). The judge described all those examined as “prima facie protected disclosures”, falling under the protection of the Employment Rights Act 1996, which incorporates the Public Interest Disclosure Act (PIDA). Those documents included correspondence with Dame Barbara, and with Sir David. DAC Beachcroft’s statement, on behalf of ULHT, is therefore a clear attempt to prevent me speaking out, which is contrary to PIDA and is unlawful.

DAC Beachcroft’s letter was an attempt to intimidate and threaten in order to prevent me speaking out and is I believe typical of the manner in which NHS organisations threaten whistleblowers.

Under the gag I was prevented from co-operating with the General Medical Council investigation of Dame Barbara. I understand the GMC had requested from the Department of Health that my gag be removed in order to be interviewed. In any case I have recently met the GMC lawyers. They described the complaint made by Dr Phil Hammond of Private Eye and summarised it as follows:

“The allegations are that, whilst Chief Executive of the East Midlands SHA, Dr Hakin rode roughshod over the Payment by Results Code of Conduct designed to protect patient safety, misled others about her involvement and actions and as well as bullying
Trust senior management by making threats about their positions (to focus attention on meeting targets regardless of the effect on patient safety) was also subsequently complicit in vindictive acts against those who raised concerns. Further, it is alleged that her actions led to harm to patients, and that her insistence on hitting targets may have contributed to the Trust [ULHT] being in the bottom 25 of the Department of Health’s mortality league tables. Private Eye says that Dr Hakin failed as a doctor to have any insight into her actions and the damage to patients. The complaint expresses concern that, whilst in her new national role, Dr Hakin has talked about the need for Commissioners to “have an attitude and aptitude for commissioning”, when she did not show such an aptitude in her previous role and as a result put patients at risk”.

Statements made by ULHT in February/March 2013

21. On 15 and 21 February 2013, ULHT wrote to me to state among other things: “The Trust has never intended to prevent you from speaking about patient safety”. This is clearly untrue for the reasons previously stated. ULHT accepts it knew that I would be speaking about patient safety and matters in the public interest and threatened me anyway. Had I heeded the warning of being sued and not, as I did, publish the threatening letter, I would not be at this committee giving evidence today.

22. On 19 February 2013, ULHT’s Chief Executive Jane Lewington sent an email to 8,000 employees and volunteers, which contained the following two paragraphs:

“Much of the coverage is focused on allegations that the Trust has tried to stop Mr Walker raising concerns about patient safety. This is not the case.”

“It is very important that we help our patients and public to understand that ULHT has never stifled discussion of safety issues, and never will. So if you hear such rumours or false impressions, please take the opportunity to set the record straight.”

23. My understanding is the Secretary of State for Health the Rt Hon Jeremy Hunt MP was briefed in similar terms.

24. For the reasons I have set out, ULHT knew that I was a whistleblower, and it had intended to gag me on 12 February 2013 and has gagged me in the original contract on 24 October 2011. For ULHT to state that it had not tried to “stop [me] raising concerns about patient safety” is knowingly misleading the public because it is untrue. Additionally, the Chief Executive of ULHT has also misled Rt Hon Jeremy Hunt MP and attempted to mislead over 8,000 employees and volunteers.

25. Sir David repeated to the committee on at least six occasions that these events were “bitterly contested”. The facts speak for themselves. In answer to Q224, Sir David accepts that “the response of the hospital was wrong…they were wrong to do it. The spirit was wrong”.

Gagging of whistleblowers

26. In response to Q231, Sir David confirms that gagging orders have been banned. As the Committee now knows, Stephen Barclay MP has in the past few weeks obtained information that over 400 compromise agreements exist. Many of these may contain gagging clauses and many may well be genuine whistleblowers.

Background and context to the signing of the compromise agreement

27. Attached to this submission is a copy of my witness statement that was given to the Employment Tribunal, along with a selection of documents referred to. It has been redacted for matters relating to employment with the ULHT. It provides a useful background and analysis of events and conduct. Below I will highlight just a few key issues relevant to the manner in which I was gagged and also the evidence that was suppressed by that gag.

28. For the most part these events are in chronological order.

29. On 12 January 2008, whilst on ‘Red Alert’ due to a peak in emergency demand, I received a called from Dale Bywater, Director of Performance of the SHA, who said had spoken to Barbara Hakin, of the SHA that she considered there would be ‘serious implications’ for me as this had ‘compromised’ the SHA in the eyes of Ben Bradshaw, then Minister of State, Department of
30. The Committee should be aware that the provision of services by ULHT is governed by a contract for services ("the Contract") and the Payment by Results Code of Conduct ("the PbR Code"). The Contract relates to a range of services including: Emergency Care (referred to as "non-elective care") and Elective Care. The latter included planned care such as operations and other procedures that patients have waited to receive.

31. In May 2008, ULHT informed the PCT that the Contract was a problem as ULHT was over performing and requested a ‘Capacity Review’, provision for which is contained within the Contract. This would have prevented ULHT from being fined in the event that targets were breached and would have enabled an open and transparent discussion in respect of the potential ‘target breaches’ and how to handle the excess demand in order to ensure patients receive timely and safe care. Despite this request, the PCT and later EMSHA blocked all attempts made by ULHT to conduct such a review (I understand Mr Bowles’ statement to the Committee will explain this in more detail).

32. The significance of this excessive demand is that the PCT had carried out a public consultation called “Shaping Health” and planned to divert demand away from the acute sector. These plans were failing significantly which would have been a major embarrassment for the PCT and the SHA who are supposed to performance manage them.

33. In July 2008, my two-year contract was renewed for a further two years with the support of Barbara Hakin and ULHT Remuneration Committee (220AP).

34. In October 2008, more problems began to arise as a result of a significant increase in the need for emergency care that had a direct impact on accident and emergency targets, which also indicated the potential for new breaches of the waiting list targets in the forthcoming months. During multiple contract meetings and correspondence, the PCT was reminded that it needed to manage external demand, something that is within its remit rather than ULHT’s remit. PCTs may manage demand by, for example, creating alternative services in the community, or screening referrals from GPs in order to divert the referral to other services, or challenging the clinical practice of their GPs or by purchasing sufficient capacity from a range of providers. The latter was then and is today an important national strategy.

35. On 16 December 2008, Richard Bailey, Deputy Director of Business Development for ULHT, wrote to the PCT, copying in a wide range of people including the SHA, stating that ULHT was likely to fail its national targets due to an increase in demand for emergency care (page:223).

36. Demand continued to rise, on average by 8-10%, for outpatients, planned inpatients and emergency inpatients compared to the previous year and compared to the 2009/2010 contract. ULHT provided many hundreds of services and demand was increasing at a much greater rate than the average for many. Some services had 60% more demand than the contract provided for. The consequences of this were many, and included, for example: that more than 100 additional people per week required admission to ULHT services, equating to approximately 100 additional beds being required. In 2008/2009, ULHT had planned for a 5% contingency to deal with a shift in demand, which was expected of all Acute NHS Trusts. ULHT simply could not cope with the unexpected additional increase in demand, particularly at Lincoln Hospital, which was the largest of the four hospitals operated by ULHT. During this period ULHT cancelled over 700 operations due to lack of bed capacity. The alternative would have been to take risks with patient safety and force patients through a dangerous system to hit targets but miss the point about the safety of patients in a similar manner to Mid Staffordshire.

37. The additional demand, which was then consuming every bed in every patient area, was causing ‘bed occupancy’ to be 95-100%. Bed occupancy above 85% leads to significant risk of patients picking up dangerous infections, which is a view supported by the National Audit Office, Royal College of Surgeons and the Department of Health (page:1150 and 1168). Excessive unplanned demand leads to high occupancy rates, which leads to dangerous conditions for patients. Earlier in 2008, I had already personally intervened, with the support of Sylvia Knight, ULHT’s Chief Nurse, when patients had been put on trolleys in the Medical Admissions Unit in such a way that nursing staff had told both of us that they feared for the safety of patients. This is just one
example of what can go wrong in a hospital when people work with demand greater than capacity.

38. During January and February various threats were made against ULHT staff by two officers of the SHA, Kevin Orford Deputy CEO of EMSHA, and Dame Barbara. This is set out in my witness statement.

39. On 3rd February 2009, I attended a teleconference with the Department of Health, PCT and SHA. I was asked by the SHA to present the health economy’s plans to address the demand and supply issues to meet targets (page:232). Amongst other matters the presentation describes how ULHT had opened all its beds. I was specifically told by Kevin Orford of the SHA to remove all reference to a ‘Capacity Review’ from the presentation to the Department of Health. I reluctantly agreed and there was much tension in the room from ULHT representatives about seeking to mislead the Department of Health. As it transpired, Nick Chapman, representing the Department of Health, suggested that he would like a review once the current issues had been resolved. That review was never completed by the DH.

40. I informed David Bowles, Chairman of ULHT, that the SHA instructed me to remove reference to ULHT requiring a formal ‘capacity review’ from the presentation to the Department of Health and that that pressure had been in breach of the NHS code of conduct for managers, the PbR Code, and the NHS Contract, provisions of which are there to protect patients (PD 1c).

41. On 18 February 2009, ULHT’s Director of Operations, emailed me highlighting concerns that she felt she was being threatened by Barbara Hakin and the SHA. The Director alleged several serious issues from comments made by Barbara Hakin relating to the achievement of A&E targets and how this was linked to personal futures. The Director of Operations described Barbara Hakin saying to her: “If you can’t manage an A&E (referring to hitting the 98% target) you can’t run a hospital”. The Director had found this threatening. This phrase was also said at several East Midlands Chief Executive meetings and often attributed, by Dame Barbara, as the view of Sir David Nicholson. In my opinion, this is a simplistic and arbitrary view that fails to take into account the complexities of running acute health services and the responsibility of PCTs to commission effectively (page:261).

42. At Paragraph 61, of Dame Barbara’s statement she states: “I have seen [the Director of Operation’s] email of 18 February 2009 … which [is] accurate description of the conversation”.

43. One of the key findings in the Mid Staffordshire Inquiry in 2010 by Robert Francis QC (page 165 of that report) states: “This evidence satisfies me that there was an atmosphere in which front-line staff and managers were led to believe that if the targets were not met they would be in danger of losing their jobs. There was an atmosphere that led to decisions being made under pressure about patients, decisions that had nothing to do with patient welfare. As will be seen, the pressure to meet the waiting target was sometimes detrimental to good care in A&E.”

44. A reasonable interpretation of Dame Barbara’s comments was that she threatened the Director of Operations that if the targets weren’t met she would lose her job. I will detail below how Dame Barbara threatened others and me.

45. In February 2009, I proposed construction of additional wards to hold an additional 100 beds at Lincoln County Hospital. At this stage, all existing facilities had been opened. The cost of the additional wards was estimated at £7m and this required a business case to be developed. As the value was out with the authorisation limits of ULHT it would require SHA approval. Five months later, and by my last day at work, on 27 July 2009, the scheme, comprising two wards of 28 beds and the refurbishment of two other wards (i.e. four wards in total), had not been approved by the SHA. Funding was finally approved in August 2009, which is an admission by the SHA that there was a significant requirement for more capacity to meet increased demand.

46. On 23 February 2009, I met with Barbara Hakin to discuss matters. I recall during that meeting she stated that if I did not deliver the 18 weeks target, she would be ‘unable to protect me’. This was somewhat surprising to me as I was not aware I needed protection and I was unclear as to what she meant by that comment. I explained the action being taken and the risks involved including that the safety of patients was the top priority. I was aware from other trust chief executives from within the SHA of the management style of the SHA. However, this was a more personal threat than I had previously experienced. Barbara Hakin also raised concerns she
had with others on the board of ULHT. I asked for specifics but received none. I informed David Bowles that I had been subjected to bullying and harassment by Barbara Hakin on 23 February 2009, and that I had been instructed to deliver targets ahead of all other concerns or face repercussions (PD 1d).

47. Dame Barbara suggested I ask Eric Morton, Chief Executive of Chesterfield Hospitals and later interim CEO of Mid Staffordshire, to give his opinion on the situation in Lincolnshire. He attended ULHT for a couple of hours and expressed the view that as ULHT was over-performing and missing targets, he would need to speak to the SHA about its role in performance managing the PCT in relation to demand management. As a result, he saw Dale Bywater and asked for the performance management record between the PCT by the SHA. However, one was not available, as it had never been completed. Eric Morton told me he had suggested to the SHA that it would not be in the SHA’s interests to report his work formally so only provided a verbal report to Dale Bywater. He determined that it was the SHA’s role to performance manage the PCT and the lack of records at that time was indicative of a failure in that responsibility. I received no feedback from the SHA.

48. Barbara Hakin cancelled my end of year review meeting on 4 March 2009. I assumed that there were no issues with my performance that Barbara Hakin wanted to discuss. It was never rescheduled. This is relevant because on 21 February 2013, EMSHA attempted to brief the media that Dame Barbara was concerned about my performance. This issue was not raised in any way at any time, and I see it as a retrospective fabrication in an attempt to discredit me and my evidence about patient safety and her conduct. In addition my employers were ULHT and through their Remuneration Committee I had received consistently good feedback.

49. On 10 March 2009, I received, as did every NHS CEO and Chairman in the East Midlands area, an e-mail from Barbara Hakin and John Brigstocke, Chair of the SHA. The e-mail explained how Barbara Hakin had just had “a VERY difficult conversation with David Flory, Deputy NHS Chief Executive, re our A&E [targets]”. Barbara Hakin asked that because the SHA missed the 98% target last week there was a need to achieve “99% for the next three weeks” and that she needed to “make it very clear that [she] expected [the NHS CEOs] personally to ensure that [our] organisation deliver[s] 100%”. John Brigstocke added that: “the consequences of not meeting this national target in the East Midlands overall could be considerable”.

50. During March a number of clinicians from A&E, Trauma and clinical directors raised general concerns about the increased pressure ULHT was under from high levels of demand. They were concerned with general issues of safety including for example the very high levels of cancelled operations due to the hospital being full combined with the highest ever level of emergency admissions. The Director of Performance at the time, Richard Lendon, himself a GP, commented to me that: ‘something big will go wrong if we carry on like this’ or words to that effect. A&E departments are one of only two NHS services that must accept all demand placed on them. They cannot and would not turn away emergency patients. As the situation showed no sign of improving with elective demand, what was required was a substantial shift in behaviour of the PCT to address demand and for the SHA to reduce pressure on ULHT to achieve the 18 week target and performance manage the PCT. ULHT was at that time significantly over-performing on its contract in terms of volume of activity.

51. On 8 April 2009, I emailed Barbara Hakin explaining a range of concerns and actions that were needed including external support. I explained that the health system was in distress. I felt I had no alternative but to raise these serious concerns with the SHA as ULHT was increasingly powerless to address them. I described some of the action that ULHT had taken and my hope that the PCT had taken action also. I explained my genuine concern for patient safety and asked for help and support. I included a presentation on the activity data from ULHT, which included a rise of 30% in A&E attendances between 1 February and March 2009, and a rise of 9.9% in emergency admissions compared to the previous year (2008/09 compared to 2007/08). I asked for support to prevent what I believed was a significant risk to patient safety (page:277) including help in carrying out a mortality review. At no time did ULHT or I receive support. ULHT received only criticism, blame and two ad hoc reviews (PD 1e).

52. On 9 April 2009, I met with Dame Barbara and she stated that if things continued as they were, my career would be ‘in tatters’ and she would not be able to “save me”. Barbara Hakin said that the other option was that I could agree to leave. Dame Barbara then instructed me to make up
a story, which would be told to David Bowles, to explain ‘my decision’ to leave ULHT. As it was not my intention to do so, I did not do this. Instead, I informed David Bowles of what I had been told to do by Barbara Hakin. It was clear to me that if ULHT did not deliver the targets, I would be sacked and that any reference I made to patient safety was dismissed.

53. In paragraph 74 of Dame Barbara’s witness statement she says: “The reference to “constructing a story” was to protect Gary”. It is clear therefore Dame Barbara believes it is acceptable to lie and mislead another NHS organisation about her actions and to force others to lie on her behalf. This is entirely unacceptable conduct for anyone, but is serious misconduct for any senior public servant.

54. It was Dame Barbara’s view, expressed to me on many occasions, that targets must be delivered regardless of demand. A view she describes in a hand written note (page:282). At this time ULHT has reported hospitals operating at 95-100% full, the SHA’s own staff had raised concerns about cross-infection risks to Dame Barbara (page:276F). The reality is that instructions to hit targets, regardless of demand, or lose your job are dangerous and unsafe. They should have no place in the NHS and certainly should not be the view of someone who is now Deputy CEO of the NHS Commissioning Board.

55. Dame Barbara repeated to me during this period that the rest of the country was coping and so there was no excuse for ULHT to have problems. Dame Barbara refused to look at the roles of the PCT in planning. I had expected her to ensure that an analytical approach was adopted to understand what had happened to demand in order to improve in the future. None of that happened as evidenced by the fact that the PCT again under commissioned for services in 2009/10. There was no analysis, no concerns for patient safety in crowded hospitals, just an approach that was centred on ‘blame the Trust’.

56. Just before the meeting ended Barbara Hakin stated: “About patient safety...I do not know what to do about that”. She said she would give it some thought and get back to me. Finally, Barbara Hakin asked if extra money would help. I again explained that, apart from the need to agree the business case for the additional wards, money wasn’t the issue; it was excessive demand. I realised this was causing great irritation so I did not mention it again. As we walked out of the meeting, Dame Barbara asked what else the PCT could have done, suggesting that they had done everything they could (PD1f). Evidently that was not the case and the SHA never acted on the one thing I had repeatedly asked for them to look at: demand and the PCT’s role in managing that.

57. A ULHT Remuneration Committee meeting on 28 April 2009 was held that exceptionally all the Non Executive Directors: David Bowles, Phil Scarlet and Stan Keyte, (vice-Chairman), Tim Staniland, Karl Cook, and Keith Brown; attended. I explained that Dame Barbara had subjected me to bullying and harassment on 9 April 2009 and on previous occasions. David Bowles expressed concern that I was now being pressured to leave by Dame Barbara. He confirmed that I had previously raised concerns with regard to the SHA’s attitude and discussions with Dame Barbara (PD 1g). David Bowles went on to confirm that ULHT had made significant progress under my leadership and my employment contract had been extended to September 2010 with the full support of Barbara Hakin in 2008. Concerns were raised with regard to the way the SHA had behaved and David Bowles confirmed that a number of clinicians including clinical directors had expressed their support for me. The view was that my immediate departure would be damaging to ULHT. The other Non Executive Directors confirmed their commitment to supporting me.

58. On 30 April 2009, further to the meeting on 9 April 2009, I emailed Barbara Hakin to set out a range of actions ULHT would be taking, and actions that the SHA and PCT could take to support ULHT and the local NHS. These examples were taken from activities already in place elsewhere in East Midlands and as such, in my view, it was not unreasonable to believe they could be achieved in Lincolnshire. This paper included five further actions ULHT would take, 27 actions the PCT could take and three the SHA could take. I included specific suggestions with regard to managing demand by the PCT and suggestions of what the SHA could do moving forward. I understand that perhaps one or two of the suggested actions were taken forward by Dame Barbara (page:289).
On 5 May 2009, John Brigstocke wrote to Richard Childs and David Bowles confirming that while ULHT had performed well in the past, there were concerns with regard to relationships between ULHT and the PCT. His view was that the PCT and ULHT were in essence asking the SHA to do their jobs for them and that this was a fundamental misunderstanding of the SHA’s role and authority. Within that letter, he went on to state that Barbara Hakin’s formal authority was limited to removing a Chief Executive’s Accountable Officer status. I was disturbed by this since, given the context, it was clearly a threat to my continued employment. Removal of an Accountable Officer status would have the effect of terminating my employment, as set out in section 24.2 of the employment contract (page:152), rather than going through any due process. This is because all NHS bodies are required to have a Chief Executive Officer who is also the Accountable Officer for the organisation. So if the Accountable Officer status was removed ULHT would be forced to terminate my contract (page:296).

John Brigstocke proposed three possible ways forward: 1) the SHA send in a team to investigate, 2) the PCT and ULHT work together to create a recovery plan or, finally, 3) that both Richard Childs and David Bowles stand down. John Brigstocke stated that the SHA would be pleased to offer appropriate support for option two. Subsequently, the SHA instigated three reviews: one by Peter Garland (external contractor), one by Dame Catherine Elcoat (SHA Director), and one by Deloittes on the finances of ULHT. None of them conducted the sort of review that was needed, which was a detailed analysis of demand and capacity and how pathways could be developed to reduce unnecessary admissions, which were now running at about 17%.

On 19 May 2009, I emailed Barbara Hakin regarding 1 of 3 reviews the SHA was planning to undertake. Her reply stated it was ‘pointless’ to review relationships and that another review would be carried out that had not yet been defined. I was concerned that yet another review was being contemplated at a time when more productive courses of action had been ignored (page:309).

On 21 May 2009, Barbara Hakin wrote to criticise me and ULHT. She claimed the SHA was doing a great deal to support the Lincolnshire Health Economy. I was not aware of any support from the SHA (page:312).

On 28 May 2009, I wrote to Barbara Hakin referring to previous correspondence from our meeting on 6 May. I commented that I was pleased to have agreed that the best course of action was for me to remain in post. I confirmed that progress was being made with the PCT and performance was improving as a result. It was my view that continued dialogue between us would be useful and I suggested that Barbara Hakin met with John McIvor and me every three to four weeks. These meetings did not materialise (page:316). On 8 June 2009, Barbara Hakin responded to my letter dated 28 May 2009, stating further issues at ULHT had developed with regard to ULHT’s accounts, A&E deterioration and problems with Healthcare Acquired Infections (HCAIs). This was simply not the case. She requested an urgent meeting upon her return from annual leave (page:321).

On 18 June 2009, I responded to Barbara Hakin’s letter on 8 June 2009. While I was happy to meet with her, as I had previously suggested meeting every 3-4 weeks, I was surprised that she felt performance had deteriorated and provided statistics indicating an improvement and delivery of the targets, some ahead of schedule.

That week I received a draft of the Catherine Elcoat report. This was a review that had explored safety issues by for example talking to employees in corridors and unstructured meetings rather than investigating governance systems or data.

The report contained the following facts:

a. Emergency demand had increased 13.5% on the previous year
b. GP referrals had increased by 14.2%
c. HSMR was 105 a reduction from 2007/08
d. “the Review Team…did not identify any immediate issues of concern in terms of patient safety or experience. The individual care the team observed, delivered by individual staff members, was good and in some instances exemplary. The team had no specific criticism of the care they observed; appropriate assessment, care planning and record keeping was seen to be in place.”
e. “The patients appeared well cared for, the wards were clean and calm and the patients and visitors to whom the team spoke were complimentary of the care they were receiving.”

f. The Care Quality Commission Annual In-patient Survey has shown improvement year on year. The Healthcare Commission Staff Survey also demonstrated improvement on the previous year.

g. “All those we spoke to acknowledge that safety had a high priority within the Trust and at the Board and staff acknowledged that where funding was required to solve a safety issue, the funding was made available.

67. The report also described how the staff were “tired” which is because all were working as hard as they could to cope with the hospital being full with emergency patients and those requiring urgent operations, such as for cancer surgery.

68. On 29 June 2009, I wrote to Barbara Hakin in advance of our meeting planned for the same day. I highlighted areas that I wished to discuss with her. During the meeting, while we did discuss some of the points I raised in my letter, Barbara Hakin was dismissive of any concerns I had about patient safety or those areas outlined in the letter. She ignored the fact that the problems of excessive demand for ULHT services, significantly above contract, were again predicted and presented a genuine risk to patients and staff. She repeated her position and did not appear as if she wanted to listen to my explanations/reasoning.

69. On 30 June 2009, there was a ULHT Board meeting at which the Board formally supported the Chairman’s position in respect of not providing an unequivocal assurance (a guarantee) to the SHA in respect of achieving 18-week targets. Bernard Chalk, ULHT’s Director of Finance had attended the meeting where Mr Bowles had been asked by the SHA to give unequivocal assurance and remarked to me and the Board that: “it was the worst meeting [he had] been to in [his] career”. My understanding was that Mr Bowles has stated that targets could not be achieved until for example the additional 100 beds had been funded by the SHA and brought into operation.

70. David Bowles resigned on 21 July 2009. It was not known to me at the time but confirmed in 2010 by the Chief Executive of the Appointments Commission, that Paul Richardson had been promised the role of Chairman at ULHT in June 2009. The Commission confirmed that: “Paul Richardson was identified by the Strategic Health Authority” (page:1053b). This is unusual since it is the role of the Appointments Commission to identify suitable candidates. The appointment panel comprised three people: a representative of the Appointments Commission, John Brigstocke and Barbara Hakin. While the Appointments Commission claims this appointment was carried out in line with their normal practice I find that difficult to reconcile with my experience. Firstly, it is highly unusual to appoint a Chair while another is in post. Secondly, there was no independent member on the appointment panel. This is normal for all senior appointments. Thirdly, it is highly unusual to have an executive officer on the panel of a non-executive appointment. It fails the basic test of governance since non-executives are independent appointments from the executive. Indeed non-executives exist to hold executive functions to account. I was particularly concerned as David Bowles had told me he had been sounded out about making me leave and while I had confidence in David Bowles’ integrity I was nervous that Dame Barbara may be looking for a malleable figure.

71. I was later to discover that Paul Richardson had been unsuccessful in even being shortlisted by the Appointments Commission and their external assessor for a normal Non Executive role at ULHT in the spring of 2009 but was now suitable as a Chairman of the same organisation.

72. On 21 July 2009, I responded to Barbara Hakin’s letter dated 10 July 2009, expressing my concern that she had openly described a discussion in respect of my future career in an inaccurate fashion and had copied that information to SHA staff. This is a classic example of bullying and harassment as described by ACAS (page:367).

73. On 22 July 2009, I wrote to David Nicholson, NHS Chief Executive and Accounting Officer, disclosing the issues between myself and the SHA including:

The threat to patient health and safety due to ULHT being forced to comply with certain targets.
The threat to patient health and safety due to the SHA bullying members of ULHT for failing to meet targets

The SHA had asked me to leave my post, and that I had been bullied, harassed and intimidated by the SHA

That SHA reviews were biased and flawed.

74. I considered that I had no choice but to raise my concerns with David Nicholson. I believed the situation was escalating in terms of risks to patients due to the failure of the SHA and PCT to carry out their responsibilities and that I had a duty to inform the Accounting Officer of the NHS. I had already raised these issues with my employer and the SHA. I considered this was my last resort and I was concerned that as demand continued to grow events earlier in the year looked set to repeat themselves.

75. I was concerned about raising the issues with Sir David but felt I had a duty to do so. I refer the Committee to that letter at (page:369). I requested that my letter be considered within the context of whistleblowing and as such, should not be freely copied to the SHA or the PCT (PD 1j).

76. Phil Scarlett informed me that all ULHT’s Non-Executive Directors wrote to David Nicholson, on 22 July 2009. While I did not know the entire contents of the correspondence until after my dismissal and while preparing for this hearing, I was aware that they asked for a review of the SHA’s conduct in respect of the removal of David Bowles (page:363).

77. Barbara Hakin had requested a meeting with me privately on 23 July 2009, prior to the joint meeting with Paul Richardson. During the private meeting she informed me that I needed to confirm whether I was ‘at war’ with her. I did not respond to this for the simple reason that I did not know how to. I did not think that I was at war and was concerned by that suggestion. She stated that I was ‘naive’.

78. When Paul Richardson joined the meeting, Barbara Hakin asked me what I wanted and I responded that, as I did not initiate the meeting, it was for her to tell us what was required. She then immediately threatened me with removal of my Accountable Officer status, which I considered would have had the effect of forcing ULHT to terminate my employment. Barbara Hakin stated that she had no confidence that I could run ULHT in the long term and even with a new Chairman there was a ‘slim chance’ I could do so. Barbara Hakin said I was a great ‘turnaround merchant’ but that she had concerns for the long term. Paul Richardson questioned Barbara Hakin on this point and confirmed that the briefing he had received on 13 July 2009 from the SHA did not contain these points. I have asked for a copy of this briefing and been told it does not exist. I consider it odd that an incoming chair, in this context particularly, would not have had a briefing.

79. My view was that I could run ULHT - a view supported by the Board of ULHT and evidenced by historical improvement in quality and service performance – but that it would be difficult to do so if I did not have support. When this was expressed to Barbara Hakin, she failed to respond. At that point because of the immense pressure I was under I stated that I believed my position was untenable as I felt the SHA had lost confidence in me. Barbara Hakin did not respond to that either (PD 1k).

80. The SHA had commissioned a review by Peter Garland. His review had determined that that issues in Lincolnshire were system-wide and additional capacity was needed (appendix 7 of that review). This was of course what ULHT had been trying to achieve with the PCT and SHA. The call for a ‘capacity review’ would have suspended targets. Which this would have been politically embarrassing for the SHA it would have allowed a system-wide plan to be developed to meet demand.

81. ULHT was of course hampered in delivering targets, as it was 100 beds short of the capacity needed meet demand. While I had requested funding in February 2009 from Dame Barbara, funding was not in fact approved until August 2009 after I had been forced out.

82. On 24 July 2009, I wrote to Paul Richardson as I wished to put on record the comments made at the meeting the previous day. A copy of this letter was sent to Sir David Nicholson. I also requested the convening of the Remuneration Committee to discuss the action ULHT would take to protect me. Stan Keyte a member of the Remuneration Committee confirmed in an e-
mail to me and the other Board members that he supported me and the proposal to hold a remuneration committee meeting (page:381). A meeting of the remuneration committee never occurred between this date and at least 23 December 2009, the period of the disciplinary action towards me, which is a breach of ULHT’s standing orders (PD 1m).

83. Not known to me at the time but Phil Scarlett called for a remuneration committee meeting to be held (page:398A/398B). There were now two experienced members of the Board calling for a meeting of the Remuneration Committee.

84. On 27 July 2009, Paul Richardson responded to my letter dated 24 July. He acknowledged the serious nature of my concerns but stated that he was of the opinion that in view of events that had transpired “over the weekend” (David Bowles appearing in the media), the best interests of ULHT were not served by instigating an investigation into my allegations about the conduct of the SHA in the immediate term. I was appalled at this as my employer has a duty of care but it raised concerns in my mind as to whether Paul Richardson was indeed an instrument of the SHA. Having subsequently discovered that Mr Richardson was hand picked by the SHA, I believe my suspicions were even more reasonable.

85. Also on 27 July 2009, a number of further media reports were made including:

a. A BBC Lincolnshire radio interview with Sir John Brigstocke, which made reference to the resignation of David Bowles and actions the SHA were taking: John Brigstocke said Barbara Hakin had been getting increasingly concerned and alleged that 'standards had been maintained by poor governance' which to anyone's mind is nonsense statement to make. In addition, he said that “the leadership of that Trust (which must include me) is not managing to achieve what other people are doing” and further “we are providing all the help we can with help teams and turnaround teams and so on to get this Trust to perform to the same very high standards the others in the East Midlands do”. I note that Sir John stated that the SHA was providing all the help they could, despite my previous requests for assistance going unanswered, and was taking immediate action, which had so far only included three reviews for the SHA’s benefit. There were no ‘help teams’ or ‘turnaround teams' working at ULHT then or at any point.

b. I further note that Sir John Brigstocke asked if the interviewer was aware of the Mid Staffs and Maidstone issues. He stated that it was his duty to “…avoid a Mid Staffs…”. This was an alarmist comment given Catherine Elcoat’s review had stated that there were no safety concerns.

c. In a BBC Look North interview with Barbara Hakin she claimed that the SHA had considerable concerns in respect of ULHT’s governance and indicated there were concerns with management (which therefore included myself) (page:1206).

d. A Health Service Journal (“HSJ”) online article made reference to David Bowles’ resignation on the basis that he was asked to give unequivocal guarantees as to performance and allegations of bullying by NHS staff outside ULHT.

e. The Lincolnshire Echo ran a front-page story with regard to David Bowles' resignation and quoted me as saying “safety and quality have always come first in this trust”. This was the same statement as given in the SHA media briefing. The article described David Bowles' claim that he had been asked to guarantee that targets would be achieved despite 'out of control' demand and that he had asked David Nicholson for an inquiry.

f. Further coverage was reported in Nursing Times and Pulse (Magazine for General Practitioners) and many other sources.

86. On 28 July 2009, an article in the Echo (carrying a large picture of myself) with the headline “Management at Lincolnshire’s hospitals has been criticised and the chief executive’s job is on the line. So says Dame Barbara Hakin, chief executive of NHS East Midlands in response to an outburst by David Bowles, former chairman of United Lincolnshire Hospitals Trust”. Dame Barbara asked for the quotes that my job was "on the line" to be removed. The original story without the quotes continues to be on the website (as at 17 March 2013). Without any justification Dame Barbara was now using the media to discredit me.

87. Also on 28 July, I sent an email to David Nicholson and Laurence Tallon of the Department of Health and copied this to Andy Burnham, Health Secretary (page:411). I once again expressed
my concerns that I was the victim of bullying and harassment with particular reference to the recent media coverage. I noted that on 27 July 2009 Barbara Hakin had confirmed for the first time, and in public, that the SHA had concerns with regard to ULHT’s governance and the way the organisation was being managed would not guarantee patient safety. ULHT was then attacked publicly at the expense of the reputation of the NHS. I had no control over the damaging remarks made by the SHA and needed the DH to intervene. In my view there had been a material breach of the NHS Code of Conduct for Managers (page:051), which states that a Manager must “ensure that judgements about colleagues are consistent, fair and unbiased and are properly founded”. The media reporting was hugely damaging to me as it undermined my reputation and credibility as Chief Executive and brings matters into the public domain which neither the Board or I had been able to make appropriate comment on. Even if I had not left the NHS, this would have had a serious impact on my previously unblemished 20-year career. I believe the comments made by Barbara Hakin and John Brigstocke were designed to force ULHT to consider my future as Chief Executive. I never received a reply to this email. (PD 1n).

88. On 28 July 2009, David Nicholson responded to my letters dated 22 and 24 July but not my most recent email (page:413). He confirmed that Neil Goodwin had been asked to lead a review and enclosed a copy of the review’s terms of reference and biographies of the proposed authors. The review was to be conducted in the following terms:

i. to investigate the allegations of bullying and harassment;

ii. to determine whether the SHA’s response to the performance issues ULHT and health system faced are consistent with the SHA’s own procedures, and to determine whether their response was fair and equitable; and

iii. to advise whether, in light of (i) and (ii), and subject to any relevant legal requirements, any further action should be taken in respect of any of the individuals involved.

David Nicholson added:

“What is clear is that there have been/are serious performance problems at United Lincolnshire Hospitals NHS Trusts. The terms of reference focus on how the SHA has responded to these issues, and in particular the allegations of bullying and harassment.” (emphasis added) (page:413)

89. These terms of reference do not reflect the concerns I raised to Sir David. Firstly there is no examination of the safety issues I raised concerns about. Secondly, the TORs refer to one organisation bullying another, which is unheard of. My complaint to Sir David was only about Dame Barbara’s conduct.

90. On 29 July 2009, Barbara Hakin was again reported on the front page of the Lincolnshire Echo newspaper discussing my future employment. The report (which is still available online as at 17 March 2013), states: “Dame Barbara Hakin, who heads up NHS East Midlands, said that it would work together with the new chairman of United Lincolnshire Hospitals Trust Paul Richardson to decide whether chief executive Gary Walker’s position is tenable” (page:1239).

91. On 7 August 2009, Neil Goodwin sent an email to all CEOs in East Midlands titled "Review of ULHT" (page:576C). David Nicholson had clearly stated that the review was about the SHA and how they responded to performance issues and "in particular the allegations of bullying and harassment [by ULHT]."

92. At the time I was concerned that Neil Goodwin had been asked to conduct the review given that he has the SHA as one of his clients and is also a former SHA Chief Executive. I was concerned that he could not be impartial or able to act without bias or a conflict of interest. I raised these concerns during the review in my statement to the Goodwin Inquiry.

93. The findings of the Goodwin Review were announced in a press statement from David Nicholson attaching a summary of the findings. The full report was given to those directly involved but not published. This report has just been made public this week, 18 March 2013. In his statement David Nicholson states that the review found ‘no evidence whatsoever of bullying and harassment’ (page:685L). This phrase is not contained in the Goodwin report and is inconsistent with the findings of the review. For example, at para 15 of the Goodwin report it
states that the reviewers frequently encountered ‘differing accounts’ of the nature of meetings between ULHT and the SHA. These meetings presumably referred to the occasions where I, and others, had described bullying and harassment (page:653).

94. Further, on receipt of the review, I made a list of the issues I had with the review. I considered the most serious to be:

a. The report did not mention ULHT restricted my access to information.

b. At the commencement of the interview process with Neil Goodwin and Susan Piper I was informed that I would receive a copy of the bullet points recorded by them. Subsequently I was informed that no notes would be provided and that it had been a mistake on their part to offer notes. I undertook the meeting under false pretences.

c. The report dismissed media speculation and suggested it was not the role of the NHS to correct inaccurate media coverage.

d. The report did not report on the persistent requests over a six-month period by the SHA CEO for me to leave my post.

e. The report did not mention the document supplied by ULHT’s former Director of Operations alleging bullying by Barbara Hakin.

f. Para 20 of the report talks of a payment of £11m to reward ULHT for good performance. No mention is made that ULHT provided services for much of that £11m and in the previous years provided services that it was not paid for or that this amount was threatened with withdrawal for reporting ‘Red Alert’. Para 20 demonstrates a superficial level of understanding and analysis of the situation.

g. There is no reference to ULHT requesting a capacity review or the issues surrounding that, which demonstrates ULHT was active in managing performance and the SHA was not active in managing the PCT.

h. There is no mention that the Department of Health requested a review into the health system at a teleconference on 3 February 2009 and that this had still not been carried this out.

i. Para 55 misleads the reader by not reporting the defamatory remarks made on radio and TV by John Brigstocke and Barbara Hakin. These comments are contained within the transcripts and include an unfounded comparison of ULHT to Mid Staffordshire.

j. Para 58 is at odds with the SHA’s own Board assessment earlier in the year. This is not reconciled in the report.

k. Para 73 no mention is made of ULHT’s turnaround and what had been achieved at the trust since I started as CEO. For example waiting times for routine operations between 2006-8 had been cut by half, hospital acquired infections such as MRSA and C.diff had been cut by 41% to some of the lowest levels in England; the Trust had met its five-year break-even duty with over £15million of debt repaid; and external assessments had shown year on year improvement. These improvements were made by ULHT Board since 2006.

l. Para 77 ignored that my departure was discussed openly in a letter from Barbara Hakin, which was copied to her staff in an attempt to undermine and humiliate me (ACAS April 2009 definition of harassment) - (page:205A).

m. In response to a request from David Bowles to have sight of a draft of the report, David Bowles received an email from Sir David stating that the review would not be checked for ‘factual accuracy’ as the report relied on written evidence of bullying and harassment. In my view there was documentary evidence of bullying that was given to the review but not mentioned in the report. In addition, most of the bullying and harassment that occurred during this period was verbal.

n. Neil Goodwin refused to examine crucial evidence. For example he refused to interview the Director of Operations who had been the victim of bullying by Dame Barbara and whom Dame Barbara agreed she had threatened. Documents such as Dame Barbara’s hand written note, stating that “Targets must be met whatever demand” was not released by
95. Neil Goodwin was a former SHA Chief Executive and listed as his client East Midlands SHA. The Department of Health insisted there was no conflict in Mr Goodwin investigating his former paymaster.

96. Neil Goodwin was of course involved in writing a similar critical report in another whistleblowing case; that of John Watkinson in which Mr Watkinson was later awarded over £800,000 in damages at an Employment Tribunal.

97. Given the failures identified above and previous form Mr Goodwin appears to be a “gun for hire” and willing to write quite misleading reports that would not stand even the basic level of scrutiny. Mr Goodwin was appointed by Sir David.

98. Of most concern was the recommendations adopted by Sir David. One of those was as follows: “It is for the SHA to determine if there should be any further changes to the leadership of the Lincolnshire acute health system in light of progress made. We recommend that this decision take no more than three months.” This recommendation could reasonably be interpreted as Sir David giving the green light to dismiss those that whistleblew and raised concerns with him.

99. On 1 February 2010, I attended the second part of the disciplinary hearing. I mention it here because it is directly relevant to whistleblowing over patient safety.

100. I had been promised a transcript of the previous hearing on 23 December 2009, verbally and in writing, but subsequently Paul Richardson refused to provide any record of that hearing. Indeed the minutes of the meeting were only provided in 2011 following an order for disclosure from the Tribunal. I recorded the hearing on 1 February 2009 to make notes later.

101. As it transpired the version of the minutes ULHT produced (page:1017) are significantly different from the actual events (page:1016A). ULHT’s version contains many inaccuracies. By manually comparing the two documents I noted that ALL reference I made to the SHA or protected disclosures had been removed from ULHT’s version of the hearing. (PD 1p).

102. I was dismissed following this hearing on the basis that I had sworn at meetings although only one meeting in July 2009 was referred to. At that meeting an external representative of Unison was present. They contacted me after I was dismissed. Their evidence to the Employment Tribunal states that not only do they not recall my swearing at the meeting but that other evidence provided by ULHT was “fabricated”. They had been approached by ULHT in 2009 but when they explained they would not be party to attempts to remove me, they were never contacted again.

**Events post dismissal**

103. While campaigning to become the MP for Lincoln, I was informed of a number of very serious concerns about patient safety at ULHT. I was mortified at the content of the information given to me so on 29 April 2010, I passed on those concerns to the CQC (page:1105). I refer the Committee to that letter which identifies many significant issues of patient safety and other matters in the public interest:

   a. During December 2009 a patient was in theatre following a road traffic accident. The consultant operating on the patient was subsequently called to operate on an ‘18 week’ patient. The consultant left a staff grade surgeon to repair the patient’s tibia. The staff grade ran into difficulty and shattered the tibia, leaving the young woman disfigured for life. It is believed that this patient’s leg has since been amputated at Sheffield. The staff grade surgeon was later dismissed for ‘other irregularities’. The consultant formally complained to the Trust about this being an example of ‘targets put before patient safety’.
   b. ‘An otherwise healthy patient’ died following a radical prostatectomy in circumstances that the consultant describes as unusual along with pressure to meet targets that culminated in three radical prostatectomies being operated on in a single list, which is not the norm for this surgeon (Annex K).
   c. Another consultant surgeon complained to the Trust regarding changes made to his operating practices without his agreement in order to meet an 18-week target for a patient that the consultant does not feel should be operated on given his concerns about
the safety of that patient. He states ‘targets should not come into this and should not over-rule patient safety’ (Annex K).

d. A senior officer from the SHA, drafted in by the Trust, did, in March, ask senior managers at the Trust to treat patients in an order that would ensure achievement of the target rather than the clinical priority set by their doctor. Essentially, I understand this to mean not only a distortion of clinical priority but a genuine risk to patients.

e. In March a clinical director resigned from employment of the Trust. He wrote to the Chairman of the Trust about a number of patient safety concerns but these have not been dealt with by the Trust in a manner that the former clinical director feels addresses any of his concerns (page:1057). The Committee is invited to read this letter as a third party view of the situation at ULHT during this period.

f. In the past few weeks a general manager has resigned citing issues with patient safety and the Trust’s relentless pursuit of targets before safety.

104. Not only did significant harm come to patients but I understand that a member of the ULHT Board who raised concerns about the attempts by the SHA officer to manipulate the waiting list, has been gagged and paid off. I believe this gag to be similar to mine in that the individual cannot confirm the gag exists without breaching the contract. This is a third gagged whistleblower from the same NHS Trust whose raised concerns about patient safety and found themselves forced out.

105. On 28 August 2010, the CQC published its report (page:1923). The CQC had failed to contact any of the people I identified in that letter.

106. My MP, Stephen Phillips QC, wrote to the CQC asking why the CQC had not approached me or any of those who had raised the original concerns. Mr Phillips was unable to get a satisfactory response from the CQC or DH. Following another visit by the CQC a few months later a further announcement was made by them in which they gave ULHT a formal warning in March 2011 (page:1511). However, my understanding is that none of those mentioned above have ever been approached by the CQC.

107. On 14 September 2011, the Health Select Committee published a report that criticised CQC inspections generally and also called for a ‘cultural change’ in the NHS to encourage whistleblowers to speak out and that “it is their employer’s responsibility to take [whistle-blowers] seriously and support them as improvers of service”. This is not my experience and indeed the next month I was gagged by ULHT.

108. On 18 October 2011, Andrew Lansley announced that: “Changes to the constitution, to be made in early 2012, would include: an expectation that staff should raise concerns at the earliest opportunity; a pledge that NHS organisations should support staff when raising concerns by ensuring their concerns are fully investigated and that there is someone independent, outside of their team, to speak to; and clarity around the existing legal right for staff to raise concerns about safety, malpractice or other wrong doing without suffering any detriment.” The changes, which are part of a series of measures intended to promote whistleblowing, follow a public consultation earlier this year in which there was an overwhelmingly positive response to amend the NHS Constitution in this way.

109. Six days later I was gagged by ULHT.

110. The Compromise Agreement given at Annex A includes not only a gag regarding my allegations about patient safety and other matters in the public interest but it also includes a glowing employment reference. Members of the Committee are asked to examine that reference in the context that I was, according to ULHT, dismissed for gross misconduct.

111. If it was the case that I was sacked for gross misconduct that reference is false. If it was the case, as the East Midlands SHA suggested on 21 February 2013, that my dismissal was in some way as result of my performance, then that reference is still false.

112. At no time was I the subject of an employer capability procedure.

113. On 27 July 2012, the then Secretary of State for Health, Rt Hon Andrew Lansley MP “cautioned” Mr Stephen Phillips QC MP in making any comparisons of ULHT to Mid Staffordshire. Mr Lansley also refused to release any of the documents before the committee today or instruct ULHT to release them. Following announcement of Robert Francis QC’s report
into Mid Staffordshire on 6 February 2013, the Prime Minister ordered that ULHT along with 13 other NHS Trusts, be investigated for high mortality rates. I do not believe that Mr Lansley intended to cover anything up and believe strongly that civil servants at the Department of Health have poorly advised Mr Lansley, either deliberately or in error.

**East Midlands Strategic Health Authority attempts to discredit me on 21 February 2013**

114. Even now the NHS continues to make attempts to attack me. The comment attributed to the “SHA spokesman” was taken from an email sent to the Times and the Daily Mail.

On 21 Feb 2013, at 11:19, "Smyth, Chris" <chris.smyth@the-times.co.uk> wrote:

Dear Gary,

…the East Midlands SHA are suggesting that you only starting raising patient safety concerns after they said you weren’t performing. Here’s what they say:

An SHA spokesman said: "Concerns about the ability of Mr Walker to lead the Trust in the long term were first raised by Dame Barbara Hakin at a review with Mr Walker in November 2008. Further discussions about SHA concerns with his leadership were held with Mr Walker and his Chair Mr Bowles in February and March of 2009. We can find no documented evidence of Mr Walker raising patient safety concerns with the SHA until a letter was received from Mr Walker on April 8th."

Is this correct? Any comments?

Thanks,

Chris Smyth

Health Correspondent

The Times

115. The Times did not run this story not least because the SHA could not substantiate their allegations.

116. Members of the Committee will now be aware that my Contract of Employment at ULHT was extended for a further 2 years in 2008 up to 2010 with the expressed support of Barbara Hakin. This attempt to attack me is and example of what many whistleblowers face in raising concerns. It is simply and example of propaganda driven by NHS organisations who remain entirely unaccountable and free to spend public money on PR campaigns to attack whistleblowers. The NHS’s continued actions towards me is an example of the continued detriment that Mr Lansley sought to eradicate.

**Sir David’s knowledge about my whistleblowing disclosures**

117. Sir David suggests that he knew nothing about my case or my claims of being a whistleblower. Further Sir David claims that whenever he hears of gagging contracts he intervenes. Sir David knew:

a. That I was a whistleblower because I wrote to him asking specifically for whistleblowing protection in July 2009
b. He commissioned a review into my concerns albeit ignoring patient safety concerns in August 2009
c. He was cited in an Employment Tribunal Order in April 2011
d. His current Deputy, and Sir David’s direct report at the time, Dame Barbara had provided a 32pp witness statement for the Tribunal and was due to attend at some stage between 24 October to 14 November 2011
e. The Compromise Agreement has its beneficiaries listed as the Department of Health that were included as a hand written amendment.

f. My status as a whistleblower has been reported widely from 2009-2013 in most broadsheet newspapers and national media including for example the BBC and a special feature on Whistleblowing by Private Eye in July 2010 (Annex H).

g. The subject of my gagging and an approximate amount of money involved was widely reported in the media including the BBC Today programme on 29 June 2012, several editions of Private Eye, the Daily Mail, and a large number of broadsheet newspapers.

h. I confirmed much of the media speculation when I broke my gag on the BBC Today programme on 14 February 2013.

i. I have not been approached by Sir David or anyone at the Department of Health since October 2009. In fact the Department of Health has been dismissive of every attempt to contact them directly and my MP has received a similar response.

Approval of the payment relating to my compromise agreement and gagging order

118. It is my understanding that Dame Barbara pressured ULHT to reach a settlement regarding my case in order to prevent the matters I have described becoming public by way of an Employment Tribunal. The information that leads me to believe this is contained at Annex I. If this is accurate Dame Barbara may be guilty of criminal charges of fraud or misconduct in public office given that public money was used for her personal gain.

Blacklisting

119. As a result of whistleblowing I have been blacklisted by the NHS. Indeed a recruitment advisor informed me that Ian Caruthers vetoed my shortlisting to a role in his SHA area. Mr Caruthers denies this. However, after more than 50 applications to NHS roles I have not been shortlisted for a single position. Indeed, Dame Barbara says in her statement to the Employment Tribunal, para 135: “Gary is a talented individual whose skills within the NHS could have been used for the benefit of many patients” This clearly indicates that from Dame Barbara’s perspective my skills are no longer required in the NHS.

Conclusion

120. The evidence before this Committee at the very least demonstrates a comprehensive and relentless disregard for patient safety. Further, Sir David and Dame Barbara appear to have breached most codes of conduct including those designed to protect patients and for upholding the highest possible standards in public life. I understand Patients First, an organisation representing NHS Whistleblowers, has made a complaint setting out these failures to the civil service and I remain appalled that no action has been taken to even investigate those allegations.

121. In any senior role that I have held if allegations were made against me of the severity evidenced here, I would expect to be suspended pending investigation. It is inconceivable that the same rules do not apply to Sir David or Dame Barbara.

122. The threats made against me and others at ULHT, the priority given to targets regardless of hospitals being dangerously overfull, the relentless push by the SHA to achieve foundation status, is an almost carbon copy of the events that caused Mid Staffordshire. These events post date Mid Staffordshire and demonstrate that the NHS still has much to learn about avoiding top down pressure to hit targets at the expense of patients’ lives.

19 March 2013
List of annexes to memorandum submitted to the Health Committee (HSC) by Gary Walker [FRA 03]

Annex A  Redacted copy of compromise agreement, dated 24 October 2011, between United Lincolnshire Hospitals NHS Trust and Gary Walker, [redacted by witness]

Annex B  NHS Employers - Guidance for making severance payments to senior managers [already in public domain and not published by HSC]

Annex C  Copy of letter, dated 1 November 2007, from David Nicholson to Chairs and Chief Executives of Primary Care Trusts, Acute NHS Trusts, Ambulance Service NHS Trusts and Mental Health NHS Trusts in England concerning Process for making severance payments to senior managers (Department of Health Gateway reference 9028) [already in public domain and not published by HSC]

Annex D  Copy of letter, dated 12 February 2013, from DAC Beachcroft to Gary Walker [already in public domain and not published by HSC]

Annex E  Transcript of interview with Gary Walker broadcast on BBC Radio 4 Today programme, 14 February 2013

Annex F  Schedule of protected disclosures of information submitted by Gary Walker to employment tribunal Walker vs ULHT

Annex G  Copy of order, dated 28 April 2011, made by Britton EJ in consequence of an attended case management discussion held between representatives of Mr Gary Walker and United Lincolnshire Hospitals NHS Trust at Nottingham on 14 April 2011

Annex H  'Shoot the Messenger': supplement to Private Eye issue 1292 (8 July -22 July 2011) [already in public domain and not published by HSC]

Annex I  E-mail exchange, dated 16 March 2013, between Kelly Evans and Matt Youdale, Arch Communications


Annex K  (a) Copy of letter dated 8 February 2010 from C Lee, Consultant Orthopaedic Surgeon, to Chris Johnson, Clinical Services Manager (Planned Care), Lincoln County Hospital

(b) Copy of letter dated 12 February 2010 from Andrew Simpson, Lead Clinician (Urology) to Yaves Laloo, Clinical Services Manager (Urology), Lincoln County Hospital

Annex L  Redacted copy, dated 3 October 2011, of witness statement submitted by Gary Walker to employment tribunal Walker vs ULHT [redacted by witness]

Annex M  Documents submitted to employment tribunal Walker vs ULHT: reference nos 166 to 193, 212 to 237, 238 to 269, 270 to 295d, 316 to 346z and 346AA to 1170
Dated 24 October 2011

(1) UNITED LINCOLNSHIRE HOSPITALS NHS TRUST

- and -

(2) GARY WALKER

COMPROMISE AGREEMENT

STRICTLY CONFIDENTIAL
WITHOUT PREJUDICE AND SUBJECT TO CONTRACT

© Beachcroft LLP 2011
This Agreement is made on 2011 between:

(1) United Lincolnshire Hospitals NHS Trust of Greetwell Road, Lincoln, Lincolnshire, LN2 4AX ("the Trust"); and

(2) Gary Walker ("you").

BACKGROUND

We employed you as Chief Executive under a contract of employment dated 23 July 2008. Your employment with the Trust was terminated on 3 February 2010. On 30 April 2010 you commenced proceedings in the Employment Tribunal against the Trust with case reference number 3501140/2010 ("Tribunal Claim") and your claims are as follows:

a) unfair dismissal, procedurally and substantively;
b) automatically unfair dismissal under section 103A of the Employment Rights Act 1996 in that the principal reason for the dismissal was that you made protected disclosures;
c) detriment other than dismissal under section 47B of the Employment Rights Act 1996 in that you made protected disclosures;
d) wrongful dismissal.

This Agreement sets out the arrangements we have agreed relating to the termination of your employment and the basis on which you have agreed to settle the Tribunal Claim and any other claims you may have against the Trust or any Associated Persons relating to your employment or its termination.

IT IS AGREED as follows:

1. DEFINITIONS

"Additional Benefits" means those benefits described in clause 5.

"Adviser" means Ivor Adair of Russell Jones & Walker Solicitors of Chancery Lane, 50-52 Chancery Lane, London, WC2A 1HL

"Associated Persons" means any directors, officers, agents or employees of the Trust or NHS Body.

"Compensation Sum" means the sum of [number of pounds].

"Confidential Information" means any information of a confidential or secret nature relating to any and all aspects of the business of the Trust and/or any Associated Persons, clients, patients, customers and suppliers including but not limited to personal data, financial information, budgets, reports, business plans, strategies, know-how, formulae, designs, data, specifications, research, processes, procedures and programs, pricing, sales and marketing plans and details of past or proposed transactions whether or not written or computer...
generated or expressed in material form.

"Contract of Employment" means your contract of employment with the Trust dated 23 July 2008 together with any other contractually agreed terms and conditions of employment.

"Employment" means your employment with the Trust governed by the terms of your Contract of Employment.

"NHS Body" means a special Health Authority, Strategic Health Authority, NHS Trust, Foundation Trust or Primary Care Trust, or Department of Health.

"Pension Scheme" means the NHS Pension Scheme.

"Payment Date" means the date which is 28 days after the date on which we receive a copy of this Agreement signed and dated by you, together with a letter, signed by the Adviser, in the form of Appendix 1 and a copy of a letter to the Employment Tribunal in the form of Appendix 4.

"Person" includes references to an individual, NHS Body, company, firm or association.


"Termination Date" means 3 February 2010.

2. COMPENSATION

2.1 We will pay you the Compensation Sum as compensation, subject to the warranties given by you and subject to your acceptance of and compliance with the other terms of this Agreement.

2.2 The first £30,000 of the Compensation Sum will be paid without deduction of tax at
source. We will deduct income tax as required by law from the balance of the Compensation Sum before paying it to you.

2.3 In addition, we will pay you the sum of £40,000 in recognition of your claim for injury to feelings, aggravated damages and injury to health which shall be paid free of tax.

2.4 We will settle your legal fees in the sum of £97,800 including VAT upon receipt of an invoice from your Solicitors, Russell Jones and Walker Solicitors.

2.5 The Compensation Sum and the sum referred to in paragraph 2.3 above will be paid to you via your Solicitors on or before the Payment Date.

3. REFERENCE

We will, if asked to do so in writing, by a prospective employer, provide a factual reference for you in accordance with Department of Health guidance as amended from time to time in the form of Appendix 2 and will deal with all oral enquiries for a reference in a manner consistent with it and no less favourable than it.

4. LEGAL EXPENSES

1.1 We agree to pay your reasonable legal costs, as set out in this Agreement.

1.2 Payment will be made direct to your Adviser within 30 days of Beachcroft LLP, our solicitors, receiving an itemised invoice from your Adviser, addressed to you and expressed to be payable by us.

5. CONFIDENTIALITY OF AGREEMENT

1.1 You warrant that you have not disclosed to anyone (other than your immediate family and the witnesses giving evidence on your behalf in your Tribunal Claim) in confidence or to your professional advisers in connection with the conclusion of this Agreement the terms of this Agreement. You undertake to take all reasonable steps to ensure that your partner and immediate family and/or the witnesses who were to give evidence on your behalf in your Tribunal Claim do not disclose to anyone the terms of this Agreement.

1.2 You undertake that you will not disclose in the future to anyone the terms of this Agreement (except to your partner and immediate family in confidence and your professional advisers or where required by any competent authority or by a Court of law or Her Majesty’s Revenue and Customs).

1.3 Nothing in this Agreement shall prevent any disclosures by the Trust where that is required for any internal reporting purposes within the Trust, nor shall it prevent disclosures where that is required by the Department of Health, HM Treasury and the National Audit Office if such organisations request that such information be provided.
and, if so requested, it may then be provided to them and/or to the appointed auditors of the Trust, the Public Accounts Committee or Parliament.

1.4 The Trust confirms that it will not authorise its directors, officers and employees to disclose the terms of this Agreement (except where required by any competent authority or by a Court of law or Her Majesty's Revenue and Customs or as required for any of the Trust's internal reporting purposes or for the purposes of ensuring compliance with or enforcing the terms of this Agreement).

1.5 Should you breach the term relating to confidentiality you will immediately repay to the Trust, on demand, all sums paid under this Agreement in full and you agree that we may recover the Compensation Sum from you as a debt, together with our reasonable costs, including reasonable legal fees, in doing so and you hereby indemnify the Trust for any losses suffered as a result thereof, including all reasonable legal and professional fees incurred.

6. STATEMENTS

1.1 You will not make any detrimental or derogatory statements about your Employment, its termination, the Trust or any of its Associated Persons and shall take reasonable steps to ensure that the witnesses who were to give evidence in the above proceedings do not make such statements.

1.2 Similarly, the Trust agrees that its directors, officers and employees shall not make any detrimental or derogatory statements about you, and the Trust shall take reasonable steps to ensure that the SHA, PCT and Department of Health do not make such statements.

1.3 You agree that the dispute between you and the Respondent, the East Midlands SHA, the Department of Health and the Appointments Commission is hereby at an end and shall not repeat the allegations contained in your witness statements which were served on the Respondent during the proceedings. You agree to take reasonable steps by asking the other witnesses to abide by the same duties of confidentiality as are imposed by you under this Agreement.

1.4 Should either Party (or NHS Body) be approached by the media for a comment on these Proceedings they should say as follows: 'the Parties have reached an amicable resolution of the differences between them.' No further statement shall be made by either Party or NHS Body.

7. CONFIDENTIAL INFORMATION

1.1 You undertake that you will not disclose to any person any Confidential Information concerning any matter relating to the business or affairs of the Trust or any of its Associated Persons, suppliers and clients/customers/patients which Confidential Information has been acquired by you in the course of your employment.
8. **TAX**

1.1 The first £30,000 of the Compensation Sum will be paid without deduction of income tax pursuant to Section 403 of the Income Tax (Earnings and Pensions) Act 2003 in accordance with our understanding of tax withholding requirements. We will deduct tax as required by law from the balance of the Compensation Sum over £30,000.

1.2 You will be responsible for paying any income tax or employee’s National Insurance contributions (including any related interest, penalties or fines) imposed by any competent authority in respect of any payment or provision of any benefit to you ("the Liabilities"), other than any Liabilities that we deduct at source.

1.3 You agree to indemnify the Trust on a continuing basis against any of the Liabilities which we may incur in relation to any of the payments made or benefits provided to you under this Agreement provided that, before meeting any Liability, we will first take reasonable steps to notify you and give you a reasonable opportunity to challenge the relevant assessment or demand.

9. **WARRANTIES**

1.1 You warrant that:

1.1.1 you have made full and frank disclosure to the Trust of all aspects of your conduct which may amount to a material breach of contract or to a material breach of any of the duties of your Employment, including any breach of trust;

1.1.2 you are not aware of any circumstances which might allow you to pursue a claim against the Trust or any Associated Persons in relation to accrued pension rights;

1.1.3 you have not, at the date of this Agreement, received any offer of alternative employment or engagement within the NHS or any associated body whether paid or unpaid and you have no reasonable expectation of receiving such an offer arising out of any current or recent discussions.

1.1.4 The Trust warrants that it has taken all reasonable steps to ensure that it has acted within its statutory powers in reaching this Agreement and has taken the relevant factors into account and will document its decision making process.

1.1.5 The Trust warrants that it is not aware of any fact or circumstance not referred to in these Proceedings that would have permitted it to dismiss you without payment of notice. You rely on these warranties in entering into this Agreement.

10. **LEGAL ADVICE**

1.1 You agree that:
1.1.1 you have explained to the Adviser the background to, and circumstances surrounding, the termination of your Employment and you have discussed with the Adviser all the Relevant Legislation, insofar as it applies to your Employment, and the rights and obligations arising from your Employment.

1.1.2 The Adviser has given you independent advice on the terms and effect of this Agreement and, in particular, its effect on your ability to pursue a claim before an Employment Tribunal against the Trust or its Associated Persons;

1.1.3 the Adviser is a solicitor of the Senior Courts of England and Wales holding a current practising certificate and that, at the time he advised you in relation to this Agreement, there was in force a contract of insurance or an indemnity provided for members of a profession or professional body covering the risk of a claim by you in respect of loss arising in consequence of the Adviser’s advice. The Adviser will produce a letter to the Trust in the form of Appendix 1 within 3 days and will sign the Adviser’s Certificate within this Agreement immediately following you signing this Agreement.

11. CLAIMS

1.1 Having taken advice from the Adviser, you confirm that you have or may have the following claims under statute against the Trust or any Associated Persons:

- unfair dismissal;
- an unauthorised deduction from wages;
- a claim for unfair dismissal and / or that you suffered a detriment on the grounds of having made a public interest disclosure;

arising from the circumstances leading to the termination of your employment.

1.2 You further confirm that the claims referred to in clause 11.1, together with a breach of contract claim, are the only claims that you have against the Trust or any Associated Persons, arising directly or indirectly out of your Employment or its termination. You hereby waive all such claims and agree that you will not bring proceedings in the Employment Tribunal against the Trust or any Associated Persons in relation to any such claims.

1.3 You agree to withdraw the Tribunal Claim upon compliance by the Respondent with paragraph 2.5 of this Agreement and will write to the Employment Tribunal within 7 days thereof in the form of Appendix 3, with a copy to Beachcroft LLP, our solicitors, and upon such withdrawal you (the Claimant) agree that Tribunal Claim falls to be dismissed.

1.4 Further, within 14 days of compliance with paragraph 2.5 above, you will write to the Information Commissioner confirming that having resolved matters with the
Respondent, you no longer wish to progress your complaint relating to failures to comply with the provisions of the Data Protection Act 1998.

12. FULL AND FINAL SETTLEMENT

1.1 You agree to accept the payment of the Compensation Sum in full and final settlement of all or any claims identified by you in clause 11.1 above and any other claims that you have or may have against the Trust or any Associated Persons arising under statute (including without limitation the Relevant Legislation), common law, tort, contract or otherwise relating to or arising out of your Employment or its termination excluding claims against the trustees of the Pension Scheme in respect of accrued pension rights.

1.2 In entering into this Agreement and paying the Compensation Sum to you we are relying on the warranties and undertakings you have given in this Agreement.

13. COMPROMISE AGREEMENT

The parties agree that the conditions regulating compromise agreements contained in section 203(3) of the Employment Rights Act 1996 have been satisfied by the terms of this Agreement.

14. MISCELLANEOUS

1.1 We are entering into this Agreement and agreeing to pay the Compensation Sum to you without any admission of liability whatsoever.

1.2 This Agreement constitutes the entire agreement and understanding between the parties and supersedes all or any previous contracts, agreements or arrangements, whether written or verbal between the parties (other than any provision in your Contract of Employment which is expressed to survive termination of the Contract of Employment and which has not been varied by any provision in this Agreement).

1.3 The terms of this Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any claims or any matter arising under or in connection with it.

1.4 The Contracts (Rights of Third Parties) Act 1999 shall only apply to this Agreement in relation to any Associated Persons and no person other than the Employee, the Trust, or any Associated Persons shall have any rights under it. The terms of this Agreement may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this Agreement may be rescinded (in each case), without the consent of any third party.

1.5 Notwithstanding that this Agreement is marked “without prejudice and subject to contract”, it will, become open and binding, when signed by both parties.
1.6 If any part of this Agreement is, or becomes, void or unenforceable for any reason, this will not affect any of the remaining provisions of this Agreement. If part of any provision is held to be void or unenforceable but would be valid and enforceable if some part of it were deleted, that provision will apply with any changes necessary to make it valid and enforceable.

1.7 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which amends or re-enacts it and any subordinate legislation in force made under it, provided that, as between the parties, no such amendment or re-enactment made after the date of this Agreement will apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

15. EXECUTION

This Agreement may be executed in any number of counterparts, each of which, when executed will be an original, and all the counterparts together will constitute one and the same instrument.
Signed by

Gary Walker

Dated

24/10/11

Signed by

For and on behalf of the Trust
and its Associated Persons

Dated

24/10/11

The word 'draft' which appears throughout this Agreement and the pagination are ignored.
APPENDIX 1

Adviser's Letter

This is to be typed on to the headed notepaper of the Adviser

STRICTLY PRIVATE AND CONFIDENTIAL
TO BE OPENED BY ADDRESSEE ONLY

Paul Richardson

c/o Beachcroft LLP

7 Park Square East

Leeds

LS1 2LW

Dear Sirs,

I, Ivor Adair of Russell Jones & Walker Solicitors, confirm that I have given independent advice to Gary Walker ("the Employee") as to the terms and effect of the agreement entered into between you and the Employee, dated 24 October 2011, and in particular its effect on the ability of the Employee to pursue his rights before an Employment Tribunal in relation to the Employee's employment or the termination of it.

I confirm that I am a Solicitor of the Senior Court holding a current Practising Certificate and that there is, and was at the time I gave the advice referred to above, in force a contract of insurance or an indemnity provided for members of a profession or a professional body covering the risk of a claim by the Employee in respect of any loss arising out of that advice.

Yours faithfully,

[Signature]

[Stamp: DRAFT]
APPENDIX 2
Agreed reference to be issued upon request to Trust from prospective employers

We are pleased to offer this reference for Gary Walker who was Chief Executive of United Lincolnshire Hospitals NHS Trust from October 2008 to February 2010. During his tenure as a Chief Executive financial performance improved significantly within the Trust and he worked diligently to further the overall performance and interests of the Trust.

Notwithstanding what has been reported in the media regarding the termination of Mr Walker's employment, we have no hesitation in providing this positive reference.

Name
Address

Dear [insert name]

Gary Walker

Yours faithfully
APPENDIX 3

Letter to Employment Tribunal

To the Nottingham Employment Tribunal
3rd Floor
Byron House
2A Maid Marian Way
Nottingham
NG1 6HS

Dear Sirs

Gary Walker v United Lincolnshire NHS Trust (case number 3501140/2010)

This letter confirms my consent to withdrawal of the above Proceedings and consent to the dismissal of the Proceedings upon application by the Respondent.

Yours faithfully
IN THE NOTTINGHAM EMPLOYMENT TRIBUNAL

CASE NO: 3501140/2010

BETWEEN:-

GARY WALKER

Claimant

- and -

UNITED LINCOLNSHIRE HOSPITALS NHS TRUST

Respondent

('the Parties')

ORDER

1. Following judicial mediation by Employment Judge Ahmed on 24 October 2011, at which both Parties were represented by Counsel and Solicitors, it is ordered as follows:

(1) the Parties having settled the above proceedings by Compromise Agreement on terms which shall remain confidential, the proceedings are hereby stayed pending payment of the sums referred to in paragraph 2.5 of the Compromise Agreement.

(2) Upon confirmation by the Claimant's Solicitors that the Respondent has complied with paragraph 2.5 the proceedings shall be withdrawn by the Claimant in compliance with the Agreement.
TRANSCRIPT OF BBC TODAY PROGRAMME 14 FEBRUARY 2013

CLIP WALKER A:

Well I think Robert Francis [QC] last week made it very clear that there was a culture of fear in the NHS and that people are prevented on speaking out when they raise concerns about patient safety. I was one of those people and I think it’s important now that people hear about what happened.

HOSKEN AAT1:

IN 2006, GARY WALKER BECAME THE CHIEF EXECUTIVE OF THE UNITED LINCOLNSHIRE HOSPITALS TRUST EIGHTEEN YEARS INTO AN NHS CAREER. HE SAYS HE WAS SORTING OUT THE MANY PROBLEMS OF THE TRUST INCLUDING A BIG DEBT AND A FAILURE TO HIT TARGETS WHEN THINGS STARTED TO GO WRONG. HE CLAIMS EXCESSIVE EMERGENCY DEMAND FOR HOSPITAL BEDS FORCED HIM TO ABANDON OFFICIAL GOVERNMENT TARGETS FOR NON EMERGENCY CASES, BRINGING HIM TO CONFLICT WITH HIS IMMEDIATE SUPERIORS.

CLIP WALKER 2:

03’03: AH: But when did things start going wrong between you and your senior managers within the National Health Service itself?

GW: Well, it was towards the end of 2008. Demand for emergency care had started to rise much, much higher than anyone had planned and by 2009 that demand was so great that I informed the [strategic] health authority that we would not be meeting the targets for 18 week patients these are non-urgent patients-

03’30: AH: But why couldn’t you meet the target - why had you decided to make that choice between either meeting that 18 week target or not?

GW: It’s a simple decision. You have emergency care or you have care that could wait. It’s not nice to wait but it could wait and therefore we chose as a board - it was not just me - that we should take priority - that emergency care should take priority.

03’55: AH: What do you fear could have happened if you had taken a different decision at that point? If you had decided to try and reach those targets?

04’04: GW: Well if you read the Francis report. What happened in Mid Staffordshire they didn’t take the view. Their view was that they were going to pass the pressure down from the department of health, from the strategic health authority to the people at the coalface so they would be under a lot of pressure and they would make mistakes. And we as a board, and I wasn’t prepared to let that happen.

04’25: AH: So you were worried about another Mid Staffs in Lincolnshire - if you’d done what you were told to do by the strategic health authority?

GW: Well, the pressure that I came under from Barbara Hakin specifically was that and I quote to meet the targets ‘whatever demand’.

AH: Barbara Hakin being the chief executive of the strategic health authority at the time?
GW: Being the chief executive of the strategic health authority who's now in the department of health. But that pressure is wrong; I mean that is a dangerous thing to be saying. In a situation where the hospitals are so full that you just don't have any beds for most of the day because you know, the beds are warm between patients because it is that serious. You have to take the decision not to treat the non emergency patients and I was being told that I had to meet the targets whatever the demand and that's just dangerous.

05'55': AH: But presumably the strategic health authority under Barbara Hakin at that time thought you were not able to cope with the demands at the hospital and meeting these very important targets or what the government perceived to be very important targets?

GW: Well I'll give you an example of the approach of the health authority. I put the hospitals on something called red alert, which is a widely used system in the NHS. It enables you to tell other trusts, other hospitals, the ambulance service, GPs that your hospital is full and I got a phone call from the health authority saying - this is Barbara Hakin - saying to me that I needed to come off red alert. And I said well the hospital is not safe to come off red alert because it's full and the response was well that we have a capital budget that we're going to approve today and if you're still on red alert it's going to be difficult for me to support your case to the board. My view was what's the approval of capital money got to do with running a safe hospital? So these are the sort of threats that are made to you in order for you to keep making you to keep trying to deliver targets and that's just not the right way.

07'03': AH: And you consider that to have been a threat at the time?

HOSKEN AAT2: DAME BARBARA HAKIN, AS SHE IS NOW, THE NATIONAL DIRECTOR FOR COMMISSIONING DEVELOPMENT FOR THE NHS, DECLINED TO BE INTERVIEWED. REST OF STATEMENT EXPECTED

IN 2010, MONTHS AFTER HIS DIUSPOTE WITH THE STRATEGIC HEALTH AUTHORITY, AND UNDER A NEW TRUST CHAIRMAN APPOINTED BY THE AUTHORITY, MR WALKER WAS SACKED FOR ALLEGEDLY SWEARING IN MEETINGS WHICH HE AND HIS SUPPORTERS DESCRIBED AS A TRUMPED UP CHARGE. HE SUED FOR WRONGFUL DISMISSAL AND ON THE EVE OF AN EMPLOYMENT TRIBUNAL RELUCTANTLY AGREED TO SIGN HIS SECRET COMPROMISE AGREEMENT.

16'45'": GW: Yeh, I was about to lose everything. No career. What else would anyone do in that situation. I didn't want to sign but I didn't have a choice.

17'56" Well we on the Today programme have reported a figure for your total settlement of around half a million of pounds of public money including costs and tied to a so called confidentiality agreement. Can you tell us that's the case?

GW: I can't tell you the full cost of it and there are many other things I'm afraid that are in that agreement that I really can't expose at this stage without incurring a much bigger risk of being sued by the NHS.

AH: So you're still gagged in a sense?

GW: I am still gagged and there's nearly 3,000 pages of evidence of which I've only been able to speak to you about a few of those and those are the things that I would like the health select committee to expose so that we can all protect patients more.

27'24"": GW: This is wider than just unlawful compromise agreements. This is a culture that's driven by the top. This is a culture of fear, a culture of oppression - of information that's either going to embarrass a civil servant or embarrass a minister. These are big problems. And if you consider that the people that have been running the NHS have created that culture of fear, they need either to be held into account or new people need to be brought in to change that culture.
HOSKEN AAT 3: ON DEPARTMENT OF HEALTH THE DEPARTMENT PREVIOUS HISTORY ON WHISTLKE BLOWING PLUS LINK INTO MORTALITY RATES ETC

WALKER CLIP:

31'05: Following the Mid Staffs report there were indications that other hospitals were going to be under investigation for allegedly high mortality rates. Now United Lincolnshire Hospitals Trust is one of those, in fact I think it's number two why kind of concerns does that raise with you?

GW: I think it raises two concerns with me. The first concern is why don't we know the answer to whether these five hospitals are safe or not and why does there to be a special review of them? I think it's very worrying for everybody that Bruce Keogh who's the medical director of the NHS has been asked to parachute into those organisations. I think the second question is what does that mean for United Lincolnshire? Well, three years ago I raised concerns that the pressures were too great and that they shouldn't be passed down the line and it looks me as thought that's exactly what's happened.

HOSKEN ENDS AAT4: MORE DOH STATEMENT PLUS DETAILS OF LEGAL THREAT AGAINST WALKER
Schedule 1
Protected disclosures
a. On 12 January 2008 the Claimant told David Bowles of the Respondent that the Trust's Hospitals were on the 'red alert' in accordance with health system's escalation procedures, used when hospitals were at risk or when adverse incidents were considered imminent and this was reported to the SHA. In doing so the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that the Health and Safety of any individual has been, is being or is likely to be endangered (s.43B (1) (d) ERA).
b. On 12 January 2008 the Claimant told David Bowles that as a result of the "Red Alert" status the SHA made personal threats to the Claimant. In doing so the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that a person had failed or is failing or is likely to fail to comply with any legal obligation (s.43B (1) (b) ERA).
c. On 3 February 2009 the Claimant told David Bowles that the SHA had instructed him to remove reference to the Trust requiring a formal 'capacity review' from a presentation to the Department of Health. In doing so the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that a person had failed or is failing or is likely to fail to comply with any legal obligation (s.43B (1) (b) ERA).
d. On 23 February 2009 the Claimant told David Bowles that he had been subjected to detriment, intimidation, bullying and harassment by Barbara Hakin on 23 February 2009 and that he had been instructed to deliver targets ahead of all other concerns or face repercussions. In doing so, the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that a person had failed or is failing or is likely to fail to comply with any legal obligation (s.43B (1) (b) ERA).
e. On 8 April 2009 the Claimant sent an email (with an attachment) to Barbara Hakin of the SHA, which disclosed information regarding the threat to patient health and safety due to the Trust being forced to comply with certain targets. In doing so, the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that the Health and Safety of any individual has been, is being or is likely to be endangered (s.43B (1) (d) ERA) and or that a person had failed or is failing or is likely to fail to comply with any legal obligation (s.43B (1) (b) ERA).
f. On 9 April 2009 the Claimant made a protected disclosure in that he told Barbara Hakin of the SHA about the threat to patient health and safety due to the Trust being forced to comply with certain targets. In doing so, the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that the Health and Safety of any individual has been, is being or is likely to be endangered (s.43B (1) (d) ERA) and or that a person had failed or is failing or is likely to fail to comply with any legal obligation (s.43B (1) (b) ERA).
g. On 28 April 2009 the Claimant told David Bowles, Phil Scarlet and Stan Keyte of the Respondent (the Remuneration Committee), that he had been subjected to a detriment of intimidation, bullying and harassment by Barbara Hakin on 9 April 2009 and on previous occasions. He also explained that threats had been made 17 by Barbara Hakin about his employment and raised the issues of patient safety and the SHA pressure to deliver targets or be dismissed. In doing so, the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that the Health and Safety of any individual has been, is being or is likely to be endangered (s.43B (1) (d) ERA) and or that a person had failed or is failing or is likely to fail to comply with any legal obligation (s.43B (1) (b) ERA).
h. On 29 June 2009 the Claimant sent a letter to Barbara Hakin, following which he had a meeting with Barbara Hakin that same day. The Claimant disclosed his
concerns about the continued risks to patient safety both immediate and those likely in the medium term (in the general and specific areas listed in the letter of that date). In doing so, the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that the Health and Safety of any individual has been, is being or is likely to be endangered (s.43B (1) (d) ERA) and or that a person had failed or is failing or is likely to fail to comply with any legal obligation (s.43B (1) (b) ERA).

i. On 15 July 2009 the Claimant wrote to David Bowles disclosing that he had been subjected to a detriment of intimidation, bullying and harassment by Barbara Hakin on 9 April 2010 and at other times since the beginning of 2009. In doing so, the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that that a person had failed or is failing or is likely to fail to comply with any other obligation (s.43B (1) (b) ERA).

j. On 22 July 2009 the Claimant wrote a letter to David Nicholson of the Department of Health which disclosed inter alia:

a. The threat to patient health and safety due to the Trust being forced to comply with certain targets.

b. The threat to patient health and safety due to the SHA bullying members of the Trust for failing to meet targets

c. The SHA had asked the Claimant to leave my post, and that I had been bullied, harassed and intimidated by the SHA

d. That SHA reviews are biased and flawed.

In doing so, the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that the Health and Safety of any individual has been, is being or is likely to be endangered (s.43B (1) (d) ERA) and or that a person had failed or is failing or is likely to fail to comply with any legal obligations (s.43B (1) (b) ERA).

k. On 23 July 2009 the Claimant had a meeting with Paul Richardson of the Respondent in which he told Mr Richardson about the threat to patient health and safety due to the Trust being forced to comply with certain targets and that the Claimant had asked the previous Chairman for protection – to comply with the Respondent’s duty of care to the Claimant. In doing so, the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that the Health and Safety of any individual has been, is being or is likely to be endangered (s.43B (1) (d) ERA and or that a person had failed or is failing or is likely to fail to comply with any legal obligations (s.43B (1) (b) ERA).

l. On 24 July 2009 the Claimant had a meeting with Barbara Hakin of the SHA and Paul Richardson of the Respondent, during which he made a disclosure about the threat to patient health and safety due to the Trust being forced to comply with certain targets and that the Claimant required the support of the SHA to do his job and not be bullied and intimidated. In doing so, the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that the Health and Safety of any individual has been, is being or is likely to be endangered (s.43B (1) (d) ERA) and or that a person had failed or is failing or is likely to fail to comply with any legal obligations (s.43B (1) (b) ERA).

m. On 24 July 2009 the Claimant wrote to Paul Richardson of the Respondent in which he disclosed that the SHA had asked him to leave his post, that he had been bullied, harassed and intimidated by the SHA and that the Respondent had failed to protect him as its employer and that he required action to be taken in order to protect him from further detrimental treatment. In doing so the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that that a person had failed or is failing or is likely to fail to comply with any legal obligation (s.43B (1) (b) ERA).

n. On 28 July 2009 the Claimant sent an email to David Nicholson and the
Secretary of State regarding his concerns over the media coverage on the BBC and that the SHA had brought the NHS into disrepute and complaining of a breach of the NHS Code of Conduct for Managers. In doing so the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that a person had failed or is failing or is likely to fail to comply with any legal obligation (s.43B (1) (b) ERA).

o. On 23 December 2009 the Claimant disclosed information orally and in writing to Paul Richardson of the Respondent and the panel at the disciplinary hearing regarding issues of bullying and harassment by the Trust and the SHA being raised by the Claimant. Further, that this was victimisation directly related to the previous allegations. In doing so the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that a person had failed or is failing or is likely to fail to comply with any legal obligation (i.e. s.43B (1) (b) ERA).

p. On 1 February 2010 the Claimant disclosed information orally and in writing to Paul Richardson of the Respondent and the panel at the disciplinary hearing regarding issues of bullying and harassment by the Trust and the SHA being raised by the Claimant. Further, that this was victimisation directly related to the previous allegations. In doing so the Claimant disclosed information which in the reasonable belief of the Claimant tended to show that a person had failed or is failing or is likely to fail to comply with any legal obligation (i.e. s.43B (1) (b) ERA).
EMPLOYMENT TRIBUNALS
Between:
Mr G Walkor
Claimant

and

United Lincolnshire Hospitals
NHS Trust
Respondents

Attended Case Management Discussion
Held at: Nottingham
On: 14 April 2011

REPRESENTATION:
For the Claimant: Mr I O’Dair, Solicitor
For the Respondents: Mr S Sweeney, Counsel

Employment Judge Britton having identified the issues in the proceedings to be those set out below went on to make Orders as set down hereunder.

ORDER

1 The Issues

1.1 This case has now been running for some considerable time. The Originating Claim ("ET1") was presented to the Tribunal on behalf of the Claimant by Ford & Warren Solicitors as long ago as 20 April 2010. Following upon a Response ("ET3") there was a Telephone Case Management Discussion on 14 September 2010 at which Employment Judge (EJ) Ahmed defined the issues as he understood them to be and then went on to make various directions.

1.2 Some time thereafter Messrs Ford & Warren dropped out and so until only yesterday the Claimant represented himself. By 12 November 2010 the directions timetable, as ordered by EJ Ahmed, and which anticipated a 15 day Hearing at the beginning of 2011, had come unstuck. I am not making criticisms of either party. From the Respondent’s point of view, it thought that the Claimant was making unnecessary disclosure applications. It was also querying as to whether or not he was covered by what is known as ‘whistleblowing’ and in accordance with the provisions of the Employment Rights Act 1996 ("ERA 1996") starting at Section 43. It had already asked for a Pre-Hearing Review on these two topics. Conversely the Claimant thought that the Respondent was unnecessarily obstructing the directions.
CASE NO: 3501140/10

1.3 Against that background another Employment Judge, this time EJ Judge Calladine, ordered a Case Management Discussion at which an Employment Judge would scrutinise the disputed documents in accordance with the test of relevant and necessary – see Science Research Council – v – Nassé [1979] ICR 921 HR, and then rule as to what should or should not be additionally disclosed by the Respondent. That adjudication would be followed by the EJ deciding as to whether there should be a Pre-Hearing Review essentially on the whistle blowing (PID) issues. Subsequent to EJ Calladine’s orders, the Claimant provided the Additional Information he had been asked previously in accordance with the directions of EJ Ahmed as to what was the detriment he had suffered short of dismissal consequent upon the PIDs relied upon. He said: “The detriment I suffered was a failure to consider my well being which resulted in my absence through ill health. This continued over the period between making the disclosures to my absence through ill health.” He then went on to set out extensively and chronologically all the acts and detriments which he alleged had flowed from the whistleblowing. Then he submitted on 27 January 2011 additional further particulars in readiness for today’s Case Management Discussion and a list of documents which he said the Respondents were refusing to disclose. Attached to these particulars at Appendix 1, and in a format analogous to a Scott Schedule, he listed all his issues for determination relating to both the run up to the whistleblowing and thereafter, and then up to and including the dismissal of his appeal against his summary dismissal by the Respondent.

1.4 Against that background this CMD has been held by me today to deal with the two issues that I have now referred to. It was originally intended to take place back in February and to that end 4 volumes of a bundle of documents had already been submitted to the Tribunal circa 5 February 2011. Those have been before me today. When it comes to the Nassé exercise I have a fifth bundle before me.

1.5 As to the whistle blowing issue, and having read the pleadings, I observed that prima facie 43G of the ERA 1996 covered certainly the whistle blowing by the Claimant to the Strategic Health Authority and the Department of Health. If so, then as good faith or the lack of really would require findings of fact before a fully constituted tribunal, I inquired as to whether if I was correct a PHR was needed on that point. The parties asked for time to discuss that judicial observation, which I gave them. As a consequence they were able to agree directions, which essentially leaves only the discovery issue for me to adjudicate upon applying Nassé. Whilst they were out for some time I was able to read core documentation in the four bundles to assist me in determining the relevance and necessity of the disputed documentation. Before dealing with that discovery issue, I am therefore going to set out a summary of the factual scenario as I see it from my reading. This I hope will assist the parties and indeed the Tribunal at any subsequent Hearing an in terms of a summarisation of the key aspects of the scenario. Thus:
CASE NO: 3501140/10

Factual scenario

1.6 The Claimant was Chief Executive of the Respondent between 9 October 2006 and 3 February 2010. For the first two years this was under a contract for interim management services (Bp 66). Then it was as an employee. One of his claims is that he was unfairly dismissed.

1.7 By early 2009 the Strategic Health Authority ("SHA") and the principal provider PCT, NHS Lincolnshire (the PCT), were concerned that the Respondent had failed 2 KPI's over the preceding Christmas period. The first was that patients were spending too long waiting to be seen in Accident and Emergency. The second was that with a number of electives referred through by the PCT, the maximum 12 week wait was being exceeded. From all the documents that I have read today it appears that in the ensuing debate as to ownership on these issues, there was a serious deterioration in the working relationships between on the one hand the PCT in the shape of its chief executive and also its Chairman Sir John Brigstock (Sir John), and on the other hand David Bowles (DB), Chairman of the Respondent, and his chief executive the Claimant. In the middle was Dame Barbara Hakins (DBH), the Chief Executive of the SHA. The SHA has an umbrella role over both of the Trusts in terms of inter alia the delivery of health performance targets. In that context the Claimant will allege that he published, in the form of a letter to DBH, what would be a qualifying protected disclosure (PID) on 8 April 2009. I have read it. Prima facie it is a PID and by reference to s43G of the ERA, and because it raises concerns inter alia about patient safety. I am not of course making other than a judicial observation for today's purposes and of course there are then issues concerning good faith and the timing of the PID in the context of the worsening relationships.

1.8 As to the performance issues, the SHA commissioned what I will refer to as 'The Garland Report.' (Bp403) What it reveals is serious concerns about the deteriorating relationship between the two Trusts and its consequent knock on effect in terms of performance on the healthcare of the people of Lincolnshire.

1.9 Before there was any subsequent whistleblowing what then happens, and I take it very short, is that Sir John got in first, so to speak, ahead of DB and persuaded the Appointments Commissioner to suspend DB with a view to his then being replaced. The correspondence shows an acrimonious response, perhaps understandably by DB, and he resigned very much under protest making it clear he would never take an appointment again in the NHS if it meant he had to work with Sir John. DB was a previous Chief Executive of Lincolnshire County Council.

1.10 Against that background DB and the Claimant both wrote inter alia to the NHS Chief Executive at the Department of Health who is Mr David Nicholson. The Claimant's letter is dated 24 July 2009 (Bp378). At the same time he wrote to the temporary replacement Chairman of the Respondent, Paul Richardson, and also to DBH. These letters are critical of what by now had happened and also refer back some 6 months to when DBH had been allegedly about wanting the Claimant removed. So as per my previous observation they are prima facie PIDs. What then happens of material significance is that circa 26 July the Claimant went off on sick leave with stress.
1.11 Subsequent to the Claimant going off sick, and by now in an atmosphere where some of the players, so to speak, were speaking to the press (i.e. Sir John, DB and the SHA) the Claimant and DB complained that they were the subject of bullying and harassment by the Respondent, the SHA and Sir John. All of these issues were the subject of what at first blush appears to have been a very detailed investigation by external investigators which I will now refer to as the Goodwin Report. It is dated 26 October 2009 (Bp 653 on). It has a large number of appendixes. For the avoidance of doubt if they are not already all in the bundle, then they need to be, and because I have noted that they exhaustively cover emails, correspondence and minutes relating to the issues which I have now rehearsed.

1.12 After the Claimant had gone off sick, the following month the Respondent learnt via the exit interview of one of its employees, that the Claimant might be guilty of bullying and harassment; and also of the use of inappropriate and offensive language as a matter of routine. The Respondent appointed an external investigator Marilyn Smith, hereinafter referred to as The Smith Report. It was completed by and thus dated 16 November 2009 (Bp710 onwards). Consequent upon her findings, disciplinary charges were brought against the Claimant. There was then a disciplinary hearing on 1-2 February 2010. He was summarily dismissed for the use of inappropriate language. The bullying and harassing charges were not upheld. At the subsequent appeal on 23 March 2010, the decision to dismiss was upheld.

Summarisation of the key issues

1.13 So the key issue for the main Hearing will be is there a causative ink between the events relating to the PCT, the SHA, and thence the dismissal. Is the Claimant correct in his contention that the disciplinary charges would never have been sustainable and certainly in terms of terms of warranting a summary dismissal but for the preceding events: furthermore that a reason for the dismissal, is the whistleblowing? And if so, what part of it? If there is no link between the whistleblowing and the dismissal, then it remains an ordinary unfair dismissal if that is what it was, and subject to the statutory cap. If a reason for the dismissal was the whistle blowing, then it becomes an automatically unfair dismissal and with no statutory cap on any award.

1.14 Finally, in the run up to the dismissal, was there in any event detrimental treatment of the Claimant? What would it be? Essentially it would have to be the bringing of, and the continuing with, the disciplinary charges. I say that because as I understand it, the Claimant was never formally suspended in relation to the disciplinary matters as he was already off sick on health grounds.

Exercising Nasse: the order for discovery: the fifth bundle

2. The first section of the documents in the bundle is Headed: Section 1 – Documents not relevant to the proceedings. It contains documents 1 to 64.
CASE NO: 3501140/10

The Respondent no longer objects to its discovery. Accordingly I order its disclosure to the Claimant.

2.1 Section 2 is headed Confidential documents. They are numbers 65 to 93. The pragmatic approach of Counsel for the Respondent is: ‘You make your own mind up.’ So I have looked at these documents in terms of the relevant and necessary test. As to 65-66 they have nothing to do with the issues, and are therefore not relevant and necessary.

2.3 Items 67 and 68 are clearly disclosable relating as they do to George Briggs, who is a witness in the Smith investigation. Documents 69-76 go to show that the Claimant operates objectively and constructively when he is assessing those who work for him. They are relevant if the Claimant wishes to show that therefore the Smith enquiry and the subsequent disciplinary proceedings were too narrow, and failed to take into account his positive management. As to Item 70 it would additionally show that the Claimant was trying to address the issues that were emerging, such as delays in dealing with electives. It potentially goes inter alia to the integrity of his whistle blowing.

2.4 As to documents 77 through to 93, they relate to the DB versus Sir John issues and the interface through to the disclosures to the Appointments Commissioner and the NHS Chief Executive. Given my observations of where the Claimant fits into all of that, it seems to me that they are highly relevant.

3 REVISION OF DIRECTIONS FOR A MAIN HEARING

I now come back to the agreed revised directions for a Main Hearing proposed by the parties following their lengthy discussions this morning. I endorse them and according order as follows:

Further and Better Particulars; amendments.

3.1 On or before 27 May 2011 the Claimant will inform the Respondent as to whether he is to seek/make an application to Amend his claim limited to the inclusion of matters within Section 43G of the ERA 1996; and in any event the Claimant will serve on the Respondent an amended Claim Form ("ET1") which will encapsulate the Further and Better Particulars provided by the Claimant in his letter of 5 October to the Tribunal i.e. the health detriment point; the Further and Better Particulars provided to the Tribunal on 20 October 2010; and finally the Further and Better Particulars in Appendix 1 to his letter of 27 January 2011. For the avoidance of doubt the Respondents will not object to the inclusion of those Further and Better Particulars in that Amended pleading. They reserve their position as to Section 43G: But they no longer ask otherwise for a Pre-Hearing Review in relation to the Section 43B PIDs as per Employment Judge Ahmed’s directions back on 14 September 2010. The Respondent wishes to make it clear that in no longer seeking a Pre-Hearing Review it reserves to the Main Hearing as to whether these are protected qualifying disclosures which, of course, would factor in reasonableness and good faith.
CASE NO: 3501140/10

3.2 The Respondent will reply thereto, if so advised, by 24 June 2011.

3.3 As to the Additional Discovery demands of the Claimant in Appendix 2 to his letter to the Tribunal of 27 January 2011, insofar as there are any outstanding discovery issues left after today, the Respondent will reply by 13 May 2011 making disclosure, if there is anything and it has no objection to so doing. Following that if there are any outstanding disclosure issues requiring a deliberation by the Tribunal, then the parties will make a joint application immediately thereafter and for, if necessary, what would be a live Case Management Discussion; and setting out what are the issues for the Tribunal to determine.

Documents

3.4 The finalisation of the trial bundles will be by 29 July 2011. This allows for any discovery application by circa the 13 May 2011 deadline. It would follow that any such application would be needing to be dealt with as soon as possible and should be directed immediately to me for my attention.

3.5 The Respondents are reminded of their duty of disclosure to their instructing solicitors, if that is necessary, and because of the duty of discovery to both the Court and the Claimant, and the determination of anything as being not relevant or unnecessary ultimately being for the Tribunal Judge if the parties cannot reach agreement.

3.6 It is agreed that the time estimate for this matter is 15 days. A Hearing slot has been identified commencing 3 October 2011. The parties will therefore provide their availability for a Hearing of 15 days between 3 October 2011 and the end of 2011 by 7 days from today’s date.

Witness Statements

3.7 The parties now agree with me that in a case of this magnitude and where the damages sought are currently approximately £3m, that the approach that should be adopted is that analogous to a High Court proceeding, that is to say evidence would normally be first heard as to liability and a judgment given on it before going on to consider remedy. I endorse that approach and it is the one I am going to take. It follows that the Hearing will first confine itself to liability only. It is envisaged that post the giving of judgment thereupon the Tribunal will go on to remedy, although the parties must take into account that the Tribunal could, of course, adjourn its decision.

That brings me on to:

3.8 The exchange of witness statements, and by that I mean statements as to the liability issues, will take place by not later than 6 weeks before the Hearing. Any supplemental statements thereto in reply should be served by not later than 2 weeks before the Hearing. I give liberty to apply in case either party feels the need to obtain additional statements from fresh sources.
Remedy

3.9 There has already been a provisional Schedule of Loss served by the Claimant upon the Respondent. I gather that Additional Amendments may be made thereto. It strikes me as self-evident that if the Claimant is going to argue that his stress/depression was caused by his treatment at the hands of the Respondent during the employment, then he will need to serve his medical evidence to that effect upon the Respondent sooner rather than later and with it a statement setting out fully the losses that he claims and why. Clearly the Respondent will then need to obtain its own medical evidence, if matters remain in dispute, and of course reply on the remedy issues. I finally gather that it is likely that the Claimant will employ the services of an Employment Consultant, presumably because the manner of his dismissal by the Respondent from the National Health Service, which has been his career, blights his opportunity for work elsewhere. Again that will need to be served and then replied to. I think the most sensible thing for me to do is, having outlined all of that, is to leave the parties to sort their own timetable out. It is for that reason that I have concentrated on endorsing the timetable for the Hearing on the merits.

Finally

3.10 Mr O’Dair observes that there are some corrections needed to Employment Judge Ahmed’s paragraph 1.4. Suffice it to say that EJ Ahmed is clearly at all times obviously intending to be referring to Section 43B ERA 1996.

3.11 As to Para 1.10, I accept that the Respondent is not obliged to send its list of witnesses to the Claimant until it has definitively decided who it intends to call.

3.12 Finally, having spent a day presiding at this Case Management Discussion, I reserve this case henceforth to myself for Single Case Management.

Date: 28/4/11

IMPORTANT INFORMATION ABOUT ORDERS

Any person who, without reasonable excuse, fails to comply with a requirement imposed under Rule 10(2)(c) [witness orders] or (d) [requirement to disclose documents or information] of the Employment Tribunals Rules of Procedure 2004 is liable on summary conviction to a fine of up to £1,000.00 under section 7(4) of the Employment Tribunals Act 1996.

Failure to comply with an Order may result in the whole or part of a claim or response being struck out at or before the hearing or a costs or preparation time order.

A party may apply to the Tribunal to vary or set aside an Order but must do so before the period for compliance with the Order has expired.

An Order granting the right to inspect documents may be complied with by supplying photocopies of the documents in question, provided the party in whose favour the Order was made agrees.
From: "Matt Youdale" <matt@
Date: 16 February 2013 17:05:43 GMT
To: "Kelly Evans" <Kellyevans@
Subject: RE: Daily Mail

Hi Kelly,

Thanks for the warning – but it’s OK, my role was really peripheral. I was only there to prepare for the comms around the tribunal (how to manage the media on the day, preparing key messages etc) – but because of the agreement, it never happened. Fortunately, I wasn’t involved in the legal stuff at all!

It’s really nice of you to get in touch. Gary has been very clever in gaining some headlines under cover of the mid-Staffs fall-out. I heard his Radio 4 interview this morning when he referred to his personal situation. This one could run and run – I’d keep your head down, if I were you....

Thanks again,

Matt Youdale

www.arch-comms.co.uk

From: Kelly Evans [mailto:Kellyevans@
Sent: 16 February 2013 15:49
To: Matt Youdale
Subject: Daily Mail
Hi Matt,

I hope you are well. I'm not sure if you are following the Daily Mail story about Gary Walker? I have been contacted by journalists. As I understand it they are looking at the day in question when the compromise agreement and financial deal was made and I recall our coffee in Newark in December when you told me about being employed strategically to manage their communications and how you were present at the time the deal was struck and our discussion about how much Barbara Hakin was involved in it all and how you were unaware that I was formally the partner of Gary Walker. I just wanted to warn you that if you were there when it happened you might get dragged into this fiasco. If you are not so already... I believe Gary is going in front of the Health select committee and Jeremy Hunt has personally intervened in this situation. Our relationship has been discussed in the DM today which was a shock and I was shocked at how big this story has got and how it continues to rumble on.... thought I would drop a quick email to warn you about the detail they are going into.

Kind regards

Kelly
I write with regards to the situation regarding this gentleman. This gentleman as you know is due for a correction of a degenerate lumbar scoliosis plus a revision decompression to his spine plus a front and back fusion from T11 down to the sacrum, with interbody cages at L4/5 and L5/S1 to space out the exit canals of those levels and load share with the metalwork posteriorly and the sacral pedicle screws as per regular standard treatment for a gentleman with Mr... condition. This issues regarding Mr... are complex. Firstly this is a major operation with major risks attached. There are risks of bleeding, paralysis and nerve root damage in a case like this are all self evident and this has all been gone over with Mr... extensively. Although Mr... was due to have his operation performed last Tuesday, 2nd February 2010, this was cancelled because there was no Intensive Care Unit bed available. The reason why I wished to make sure that the operation was performed last week was to make sure that his operation was carried out in good time before I was due to go away on annual leave, because I feel it is my absolute duty that I should be available for this gentleman's post operative care so that should there be a complication I am available to deal with it if necessary. One would expect Mr... to be in hospital between 10 days and 2 weeks, so if he had had his operation performed last week as was planned it would have meant that I would have been around for his post operative care and to see him through the danger period of his immediate post op period and a week or two beyond that.

Mr... operation was also planned for that list because I have my regular anaesthetist Dr Francis with me who is used to doing such major cases and with whom I work very closely with on cases like this. Mr... also has quite a lot of underlying co-morbidities. Firstly 18 months ago he suffered a CVA. This was treated by Dr Leach and he was put on a high dose of Aspirin afterwards. Upon discussion with my colleagues in Nottingham and in the Trent region it was elected that Mr... should have an opinion from a Neurologist prior to surgery and he duly saw Dr Sharrack. The advice was with surgery like this contemplated that the dose of Aspirin should be dropped to 75mg a day, which I gather he is currently taking.

Cont’d
Aspirin as you know causes increased bleeding during any operation, particularly from the bone and in a long posterior decompression and fusion like this bleeding is an issue, primarily from the bony skeleton as well as the epidural vasculature, and it would mean that prior to surgery being carried out Mr needs to stop his Aspirin 10 days before. This was advice that was discussed with my medical colleagues and also with Dr Francis the anaesthetist.

The issue now becomes that Mr breach date is due on the 18th February which is during my week's annual leave. Therefore pressure is being exerted on me to perform this gentleman's operation this week. This is something that I believe would be unsafe for the following reasons:

Firstly, I would not be happy performing an operation of this magnitude (it is a 10 hour operation) and to not be available for this gentleman's post op care. I do not think it is ethically right or would be acceptable to my colleagues, or to the GMC if I were to perform such an operation and go on holiday 3 days later. This is a high risk case for complications, such as a further CVA, cardiovascular events and bleeding. Therefore all parameters have to be attended to, to minimise such risks and I do not believe that would be possible this week.

Secondly, my usual anaesthetist, Dr Francis, is not available this week because he is away and I do not think it would be right or fair to put the burden for the anaesthetic for such an operation on an anaesthetist who is not familiar with this type of surgery or this gentleman's case. He has had quite an extensive work-up from a number of physicians but also from my colleague Dr Francis and I think that this would put unfair burdens on somebody else and again could lead to compromise of this gentleman's safety.

Thirdly, it has been suggested that this gentleman's surgery is performed by a colleague or that his post operative care is performed by a colleague in my absence. I think this would place an intolerable burden on my colleagues. It is never comfortable for any of us when we are called upon to look after the patient of a colleague particularly one who has had surgery if there are complications that necessitate re-exploration. Re-exploration is best performed by the surgeon who initially did the operation.

Fourthly, the issue of an Intensive Care Unit bed is a pertinent one. This gentleman needs ITU care for his post op care. This is the sole reason why this gentleman was cancelled last week and was because there was no ITU bed available. Looking at the state of the ITU beds this week, I can see no prospect of getting this patient's operation done because of ITU bed availability this week in any case.

I realise that as an employee of this Trust I have to do everything within my power to try and work for the benefit of the Trust so that the various targets that are put before us are met, and I have endeavoured very hard to do that wherever possible. However the absolute paramount importance here is patient safety. I have to practice in accordance with GMC guidelines.

Cont'd
I have to put the patient’s safety first. That is my primary duty as a doctor. If I were to fail to do that, it would put my registration at risk. Therefore to perform this gentleman’s surgery this week would not be safe because of the reasons mentioned above.

It would not be right to put somebody through for what is elective surgery, with the above risks when the option to perform his surgery for him a few weeks later is available (targets should not come into this and should not over-rule patient safety). When all of the right parameters are present and can be done safely and ensure a safe outcome. I do not think there would be any defence either in court or in front of the GMC if I put the Trust’s target in this instance above the patient’s welfare and I do not think this is right to do so. The advice given to me by colleagues here and the Royal College of Surgeons of Edinburgh, from whom I have taken advice, is that if there is any doubt I should not operate on this gentleman, if I deem it to be unsafe to do so. I think it would be unsafe for me to do so this week with me going away a few days later and the unavailability of my usual anaesthetist this week. I did try everything to get this gentleman done within his target date and if he had been done last week as was planned this problem would not have arisen. I am afraid this reason for this was the unavailability of a suitable ITU bed last week. I realise there are pressures on ITU beds which do crop up because of emergencies and that would have been the case last week. This is something which is out of my control. As a consequence I do not think that I should be coerced into performing surgery on a patient in an environment which I do not deem to be safe to do so.

I trust this puts my position on this. If there is any way around this so I can operate on Mr [blank] I would gladly comply, because the week when I came back from leave, which is the week beginning 22nd February 2010, not only will I be available for this gentleman’s post operative care, but also my regular anaesthetist, Dr Francis, will also be available to anaesthetise for this case. I trust an ITU bed would also be forthcoming.

I do hope that we can work towards a solution.

Kind regards

Yours sincerely

C Lee
Consultant Orthopaedic Surgeon

Copy to Mr D W Gale
Lead Clinic on Trauma and Orthopaedics
LCH
Yaves Laloo  
Clinical Services Manager, Urology  
United Lincolnshire Hospitals NHS Trust  

12th February 2010  

Dear Yaves  

I am writing in the immediate aftermath of today’s tragic death of an otherwise well patient who had undergone a radical prostatectomy under the care of [REMOVED] two days previously. The patient’s operation occurred on a day upon which, unusually, three radical procedures were undertaken by the same surgeon on a single extended list. Habitually, one or two procedures would be performed within this session and the additional case was required due to cancer target pressures.  

As you are well aware, surgery for urological pelvic cancers is a major undertaking, with significant morbidity and indeed mortality. There is a risk of major bleeding both during and after the procedure and habitually this has merited high dependency care in the immediate post operative period. With increasing pressures on high dependency care and with improved anaesthetic and surgical techniques within the specialist team, the post operative care for radical prostatectomies has devolved to general wards. To date, this has alleviated pressure on high dependency areas with little adverse impact on patient outcome. However, this arrangement is threatened by a number of factors. Firstly, the establishment of resident on call specialist urological medical staff falls well below the level that could provide effective ward cover on a 24 hour basis and indeed struggles to provide this cover during the working week. This was highlighted at the time of reconfiguration of urology cancer services and remains a significant clinical risk area. Secondly, the surgical experience of the junior staff covering the wards both during the working week and out of normal hours is such that although adequate patient care is provided, the recognition of serious postoperative complications is suboptimal. Thirdly, the capability of ward staff to monitor and care for these major postoperative cases is limited by the staffing levels on the ward which often falls well below the ideal. Finally and most significantly, the enormous pressure exerted by the cancer targets has resulted in ad hoc arrangements for surgery at short notice, as sessions beyond the working day, or as sessions occurring at weekends. Beyond this, the expectation for my oncological surgical colleagues to undertake cases at short notice, outwith their normal job-planned hours and often on patients with whom they have had no prior contact is unacceptable. This is not only prejudicial to ongoing patient care, but present enormous and unsustainable pressure on the operating surgeons. This cannot be tolerated.
in all but exceptional circumstances. If, as indeed seems the case, the capacity for ULH urology to meet the pelvic cancer demand is insufficient, then we need urgently to recruit additional surgeons.

My colleagues have indicated to me that with immediate effect they do not feel able to undertake additional sessions outside of their job plans to chase the cancer targets – which, as we all acknowledge for prostate cancer, are arbitrary and have little impact on cancer survival. In view of the recent tragic outcome and the lack of resident specialist support within the department, I fully support this. I am happy to work with you to identify what additional resource we require to provide a safe service in the future.

Yours sincerely

Andrew Simpson, Lead Clinician Urology
Annex L

Case no 3501140/10

IN THE EMPLOYMENT TRIBUNAL
NOTTINGHAM

BETWEEN

MR GARY WALKER

Claimant

and

UNITED LINCOLNSHIRE HOSPITALS NHS TRUST

Respondent

WITNESS STATEMENT OF GARY WALKER

I, Gary Walker, make this statement in support of my claim to the employment tribunal;

1. I was employed within the NHS from October 1989 to February 2011 (just over 21 years), holding a variety of operational, finance and general management positions including: General Manager, Assistant Director, Deputy Director, Director, Chief Executive within a range of acute hospitals and other NHS organisations. I have held posts including: Civil Servant at the Department of Health and also worked as an independent consultant for many NHS organisations with roles ranging from coaching incumbent: Chief Executives to providing management assistance as an interim Director and interim Chief Executive.

2. The structure of the NHS is highly complex. A simplified diagram of the inter-relationships between NHS organisations is given at Appendix 1.

3. In 2004, I was asked by Duncan Selbie at the Department of Health to leave my employment at the Norfolk and Norwich Hospital where I held the post of Deputy Director of Clinical Services, to commence as an interim Director of Service Delivery at Brighton and Sussex University Hospitals NHS Trust the following Monday. It was thought that there had been significant manipulation of the waiting list at that Trust and the Department of Health was extremely concerned as to the implications. During my investigation it transpired that there was deliberate falsification of records in order to
report achieving the waiting times targets. The manipulation of waiting times involved several employees and affected over 1,500 patients. After uncovering the problem, I ensured that every patient was treated urgently by the NHS or transferred to the private sector. These treatments cost the NHS over £5m. An external inquiry was held and I understand those responsible were moved to roles in the local Strategic Health Authority.

4. From the period September 2005 to October 2006, I was Chief Executive of Surrey and Sussex NHS Trust, successfully turning around an organisation that had been described as the toughest job in the NHS. This was an organisation that had failed to achieve targets for many years and one that had been overspending at a rate of £3.2m per month (circa. £36m per annum) prior to my appointment. I was also instrumental in renewing governance procedures, and implementing a culture of safety and performance.

5. I joined United Lincolnshire Hospitals NHS Trust ("ULHT") as Chief Executive in October 2006 on an interim management consultancy contract.

6. During my time at ULHT, I held other unsalaried positions including Chair of the East Midlands Regional Critical Care Network and representative, on behalf of the NHS Confederation, for all NHS Acute Hospitals on the National Influenza Planning group chaired by the Chief Medical Officer for England. I was also a founding member of the NHS internal management consultancy, called IMAS, and among other things asked to be interim CEO of Royal Cornwall Hospitals NHS Trust.

THE BACKGROUND TO MY DISMISSAL AND ULHT'S RELATIONSHIP WITH THE SHA

7. By way of background, in June 2006, four months prior to my arrival at ULHT, there had been an external investigation into bullying and other allegations from employees at ULHT into the conduct of the senior management. Amongst other matters the Healthcare Commission (the external regulator at the time) reported a lack of confidence in management. I understand that there had been a vote of no confidence and that the Healthcare Commission had discovered: poor staff relations; staff not being listened to; lack of engagement of staff in planning and decision making; staff not feeling able to speak out; allegations of bullying; intimidation and a blame culture; and poor communication with the community and the media. The report also highlighted a perceived ‘culture of fear’ that operated in ULHT and that staff feared ‘repercussions’ if they use the whistle-blowing policy (page:212). ULHT was also overspending by around £13.8m per annum.

2 of 74
8. ULHT was in an NHS process called 'turnaround'. The organisation had been overspending by around £1.5m per month and had missed several targets (page:214). This was, in part, due to the fact that it had, for many years, provided services that it was not paid to provide. It was also one of the lowest funded Trusts within the UK and had one of the lowest percentage market forces factor ("MFF") adjustments. By way of example, if ULHT received the same MFF percentage uplift as say a London Trust (of around 28% in 2008/09) it would receive an additional £70-75 million per year. In fact the uplift was only 3%. Therefore, one of the underlying factors, from ULHT's perspective, was that the amount of debt it had was due to severe underfunding in addition to the provision of services for which it was not paid either appropriately, or as it transpired for some services, at all. That is a matter of public record and openly reported by ULHT.

9. In July 2006, ULHT employees and specifically the Interim Chief Executive, Helen Scott-South had been accused of waiting list manipulation in order to report achievement of waiting times targets when in actual fact ULHT was not meeting those targets. A review was undertaken at the request of the East Midlands Strategic Health Authority (the "SHA"), and conducted by Eric Morton, Chief Executive of Chesterfield Royal NHS Foundation Trust. The review later concluded that there had been waiting list manipulation and employees were scared to tell the truth. Ken Hutchinson, an Interim Director of Human Resources at ULHT also conducted a review into the conduct of Interim Chief Executive, Helen Scott-South, to which I was not privy. As it transpired, the published reason for Helen Scott-South leaving ULHT was retirement.

10. In August 2006, Barbara Hakin, Chief Executive of the SHA, approached me to discuss an opportunity to work as an interim Chief Executive at ULHT. Prior to the meeting itself, I had no prior knowledge of either Barbara Hakin or ULHT. We met for about 2 hours in a hotel lobby in August 2006 in Grantham. Barbara Hakin informed me that ULHT was a failing Trust due to the current interim Helen Scott-South's poor performance. She went on to explain that Helen Scott-South would be leaving. Barbara Hakin emphasised that she wanted someone who was both capable and committed to seeing changes through.

11. There was a delay in meeting ULHT's newly appointed Chairman, David Bowles. I recall during a telephone conversation that Barbara Hakin clearly stated that if David Bowles did not deal with Helen Scott-South, she would need to "get rid of him". Media reports focussed on the 1200 patients that had been affected by the waiting list manipulation.
12. Although all NHS Trusts are formally accountable to the Secretary of State for Health, in practice, this power is exercised through SHAs. They directly influence the appointment of Chairmen by vetoing decisions of Appointments Commission appointment panels and all CEO appointments have to be with SHA 'blessing'. Therefore a threat of removing a chairman is very real. SHAs are also keen to report that they are dealing with "noise" in the system. Noise is generally considered to be bad publicity.

13. The local NHS area comprises of Lincolnshire Primary Care Trust (the "PCT") whose primary role is to 'buy' or 'commission' services. There are several 'provider' organisations of which ULHT is one. The PCT also 'buy' or 'commission' services from themselves as they too are a 'provider' of services such as General Practitioners ("GPs") and of community services. The PCT has a purchasing budget of over £1bn per annum and spends around a quarter of their budget with ULHT. From ULHT's perspective however, the PCT accounts for around 85-90% of its income. Both providers and commissioners are overseen by the SHA. The SHA is responsible for the performance management of PCTs. All 'provider' organisations such as ULHT were, at that time, all heading for Foundation Trust status ("FT"). An NHS FT is a self-governing independent body. All NHS Trusts are controlled by a variety of levers controlled by the SHA such as cash limits, borrowing and resource limits, as well as influencing local and regional targets and services, all in addition to national targets.

14. Around two weeks or so after the initial meeting with Barbara Hakin, I met David Bowles and Bill Proudlock, non-executive director of ULHT to discuss my suitability and the logistics of commencing the role. As far as I can recall, during that meeting he confirmed that he had wanted to see some evidence before suspending Helen Scott-South. In any event, she "retired" and I subsequently took on the role of Interim Chief Executive (after two short term appointments made by Barbara Hakin, namely: Avril Johns, a director of the SHA and Eric Morton).

15. During my first 2 years as Chief Executive, we turned around the breaches of the waiting list target, achieved key targets, reduced hospital infections by half, repaid the historic debt, improved the Healthcare Commission ratings from 'weak' to 'good', and ensured that ULHT ran to surplus rather than deficit. This is contained in ULHT’s annual report for 2007/2008 and 2008/09. During this period I discovered a range of services that required significant quality improvement. In developing the future plans for ULHT, I considered it was extremely important to put patient safety and quality as the central priority for ULHT and worked hard to instil this culture where patient safety
came first. I recall Sylvia Knight, Chief Nurse for ULHT, pointing out to me that this had been a key feature I had brought to ULHT, something she felt had not been given a high priority before. I was pleased to note that, in 2009, the SHA recognised that all staff at ULHT gave a high priority to patient safety.

16. During the first 6 months or so of my appointment, I spoke to Barbara Hakin on a 2-4 weekly basis when we had ad hoc telephone calls to discuss any issues as required. As far as I am aware Barbara Hakin was happy with my own and ULHT’s performance as key targets had been met for the first time in many years and finances had been transformed with ULHT now in annual financial surplus. We only had a handful of face-to-face meetings in the first two years and the telephone calls reduced after the first 6 months or so.

17. In the first few weeks of commencing my role, I recall Barbara Hakin had made comments with regard to the relationship between the Chief Executive of Lincolnshire Primary Care Trust (PCT), John McIvor and myself. The gist of the comments was that there had always been relationship issues between the PCT(s) and ULHT - the new PCT was formed on 1 April 2006 from three former organisations - and that Barbara Hakin felt that this would be a continuing issue. The comments, as far as we were concerned, were incorrect and of no concern given we had both recently been appointed.

18. On 12 January 2008, I informed David Bowles that ULHT’s Hospitals had been on ‘Red Alert’ in accordance with health system’s escalation procedures, used when hospitals were at risk or when adverse incidents were considered imminent. ULHT was on Red Alert because demand for emergency care was in excess of the capacity at that particular time. The calling of ‘Red Alert’ is common practice across the NHS. I explained to David Bowles that as a result of reporting the ‘Red Alert’ status to the SHA, they made personal threats to me. Shortly before this I had been informed by Dale Bywater, Director of Performance of the SHA, who had spoken to Barbara Hakin, of the SHA that she considered there would be ‘serious implications’ for me as this had ‘compromised’ the SHA in the eyes of Ben Bradshaw, then Minister of State, Department of Health (page:214AI). It is well known by CEOs and most Directors in the NHS that the normal style of SHAs is to imply threats of some kind for failure to deliver targets although this was the first occasion I had personally experienced it. Shortly afterward Barbara Hakin threatened the removal of £11m funding as a result of declaring ‘Red Alert’. This would have led to ULHT failing its statutory duty to break-even, which would have consequences for my continued employment since that is a
core requirement of all CEO and Finance Director Job Descriptions. I contend these are protected disclosures (PD 1a & 1b).

19. The provision of services by ULHT is governed by a contract for services ("the Contract") and the Payment by Results Code of Conduct ("the PbR Code"). The Contract relates to a range of services including: Emergency Care (referred to as "non-elective care") and Elective Care. The latter included planned care such as operations and other procedures that patients have waited to receive.

20. In May 2008, ULHT informed the PCT that the Contract was a problem as ULHT was over performing. ULHT was treating more Elective Care patients than contracted to treat. ULHT therefore requested a 'Capacity Review', provision for which is contained within the Contract (page:xxxx). This would have prevented ULHT from being fined in the event that targets were breached and would have enabled an open and transparent discussion in respect of the potential 'target breaches' and how to handle the excess demand in order to ensure patients receive timely care. Despite this request, the PCT made no formal response at the time and no 'Capacity Review' was undertaken. I note that at that time emergency care was slightly under the contracted levels. These problems continued. During the contracting round for that year, April 2008 to March 2009, ULHT had explained that it could not provide the capacity for the level of demand indicated by the PCT. ULHT had put forward a range of initiatives to support demand management. The PCT had rejected the proposals and set out to commission activity from other providers (page:220M). Despite this, demand on ULHT increased significantly and over the contracted levels of activity.

21. In July 2008, my 2-year contract was renewed for a further 2 years with the support of Barbara Hakin and ULHT remuneration committee (220AP).

22. In October 2008, problems began to arise as a result of a significant rise in the need for Emergency Care that had a direct impact on accident and emergency targets, which also indicated the potential for new breaches of the waiting list targets in the forthcoming months. During multiple contract meetings and correspondence, the PCT were reminded that they needed to manage external demand, something that is within their remit rather than ULHT’s remit. PCTs may manage demand by, for example, creating alternative services in the community, or screening referrals from GPs in order to divert the referral to other services, or challenging the clinical practice of their GPs or by purchasing sufficient capacity from a range of providers, or by developing services in the community. The latter was then and is today an important national strategy.
23. During November 2008, the SHA commissioned a review of UL-IT to determine its readiness for applying for Foundation Trust status. The review was extensive and consumed many senior staff for several weeks. The review was undertaken by the Heart of England Foundation Trust ("HEFT") and explored a comprehensive range of measures including finance and governance. HEFT concluded that ULHT was on course to apply for FT status in December 2010 (page:1519). HEFT's representative confirmed to me that ULHT were the most advanced they had seen in comparison to all potential FT applicants they had assessed in East Midlands SHA.

24. On 16 December 2008, Richard Bailey, Deputy Director of Business Development for ULHT, wrote to the PCT, copying in a wide range of people including the SHA, stating that ULHT was likely to fail their national targets due to an increase in demand for emergency care (page:223). This was in addition to previous concerns regarding demand for elective care. It described for example the need to move to 'black alert'. This is the final stage before declaring a major incident such as those called in the event of a train crash for example. The reasoning for the increased demand, according to ULHT, was different from the PCT's and Richard Bailey sought to explain ULHT's opinion, together with suggesting action to be taken. The SHA dispute that they were aware of the potential failure to meet targets at this time although I fail to understand how given the contents of Richard's letter, which was sent to Dale Bywater, SHA, Deputy Performance Director. The letter also referred to previous requests for a 'Capacity Review'. In any event the SHA is responsible for performance management of the PCT and would have been aware that activity was significantly above the contracted levels.

25. Demand continued to rise, on average by 8-10%, for outpatients, planned inpatients and emergency inpatients compared to the previous year and compared to the 2009/2010 contract. ULHT provided many hundreds of services and demand was increasing at a much greater rate than the average for many. Some services had 60% more demand than the contract provided for. The consequences of this were many and included, for example: that more than 100 additional people per week requiring admission to ULHT services, equating to approximately 100 additional beds being required. In 2008/2009, ULHT had planned for a 5% contingency to deal with a shift in demand. ULHT simply could not cope with the unexpected additional increase in demand, particularly at Lincoln Hospital, which was the largest of the four hospitals operated by ULHT. During this period ULHT cancelled over 700 operations due to lack of bed capacity.
The additional demand, which was then consuming every bed in every patient area, was causing 'bed occupancy' to be 95-100%. Bed occupancy above 82%, leads to significant risk of patients picking up dangerous infections, which is a view supported by the National Audit Office, Royal College of Surgeons, and the Department of Health (page:1150 and 1168). Excessive unplanned demand leads to high occupancy rates, which leads to dangerous conditions for patients. Earlier in 2008, I had already personally intervened, with the support of Sylvia Knight, ULHT's Chief Nurse, when patients had been put on trolleys in the Medical Admissions Unit in such a way that nursing staff had told both of us that they feared for the safety of patients. This is just one example of what can go wrong in a hospital when people work with demand greater than capacity. George Briggs, the General Manager who was responsible for this situation left in mid 2008 but, a year later, he became a witness for ULHT during its disciplinary investigation into my alleged conduct. During the investigation and following my discovery that George Briggs had worn a t-shirt with my picture on it at a leaving do with the words "Fuck Off" and "Gary Wanker" printed on it, ULHT were unable to contact him again, although ULHT continued to rely on his original statement.

On 23 January 2009, I wrote to Kevin Orford, Deputy Chief Executive SHA, expressing concern that, in my view, he had made threatening comments during a meeting attended by my Director of Operations on 22 January 2009, which I was unable to attend due to a prolapsed disc. He had stated that the SHA would delay ULHT's Foundation Trust ("FT") status application for 15 months if targets were not met. I explained what ULHT had done to improve performance and confirmed it was my intention to request the support of the Department of Health Intensive Support Team (IST) in the event that support from the SHA was not received (page:227). Dawne Bloodworth, ULHT's Director of Operations, informed me that Kevin Orford had been very angry to learn that the IST team at the Department of Health had been contacted.

During January 2009, Ruth Carnell, Chief Executive of NHS London Strategic Health Authority, approached me, via Odgers Berndtson, a specialist executive recruitment consultancy, to ask me to apply for the post of Chief Executive for the newly created South London Healthcare NHS Trust. She had concerns about the acting CEO who was at that time the only other candidate. We spent an hour on the phone discussing the role and I considered the offer overnight. I declined the offer the following day and explained that I had a number of changes I wished to see through in Lincolnshire including achieving Foundation NHS Trust status.
On 2 February 2009, I wrote to John McIvor explaining that the statement of joint working - an agreement stating shared aims and principles of cooperation similar to commercial strategic partnerships - remained unsigned by the PCT. In essence, I was looking for a formalised partnership agreement between ULHT and the PCT (page 229). All parts of the NHS have a duty to work together as set out in section 72 of the NHS Act 2006 and also the PbR Code (page 166). In practice this means joint planning between organisations, partnerships, sharing of resources, and general cooperation albeit in a complex 'sudo-market' environment. Whilst there is evidence that ULHT attempted to meet this duty the PCT did not wish to co-operate. The PCT had not signed the partnership agreement, and as far as I am aware have never signed the agreement, despite stating that they would on several occasions. I also mentioned that I had asked the SHA to undertake an external review into performance, planning and commissioning in Lincolnshire since the current arrangements did not appear to be working. In effect this was ULHT carrying out a 'Capacity Review' in place of the PCT who had failed to act since May 2008, despite promising to do so.

On 3rd February 2009, I attended a teleconference with the Department of Health, PCT and SHA. I was asked by the SHA to present the health economy's plans to address the demand and supply issues to meet targets (page 232). Amongst other matters the presentation describes how ULHT had opened all its beds. I was specifically asked by Kevin Orford of the SHA to remove all reference to a 'Capacity Review' from the presentation to the Department of Health. I reluctantly agreed and there was much tension in the room from ULHT representatives about seeking to mislead the Department of Health. As it transpired, Nick Chapman, representing the Department of Health suggested that he would like a review once the current issues had been resolved. That review was never completed by the DH.

I informed David Bowles that the SHA instructed me to remove reference to ULHT requiring a formal 'capacity review' from the presentation to the Department of Health and that pressure had been in breach of the NHS code of conduct for managers, the PbR Code, and the NHS Contract, provisions of which are there to protect patients (PD 1c).

On 6 February 2009, John McIvor replied to my letter of 2 February 2009, stating that he was disappointed with the way I had raised issues and confirming that he would respond in more detail following a review of the actions and inter-relationships with ULHT since April 2008 (page 247). The PCT's view of their relationship with ULHT has always been that of the PCT being a buyer and ULHT being a seller. However,
continuing the analogy, if amounts alter (i.e. demand) there needs to be a degree of renegotation/discussion of the Contract, not simply financial payment. I was taken aback at the PCT’s refusal to sign the partnership agreement or willingness to demonstrate joint working.

33. On 10 February 2009, Kevin Orford responded to my letter dated 23 January 2009. He indicated that he was unhappy with ULHT’s failure to meet targets and also alleged failure to raise this earlier with the SHA. This was despite ULHT copying the letter dated 16 December 2008 to Dale Bywater confirming, in my view, that they were fully aware of the potential problems. In addition, it was also the primary responsibility of the PCT to keep the SHA updated as a matter of routine, including for example ULHT’s request for a capacity review as far back as May 2008. Kevin Orford stated that his reference to an impact on ULHT’s FT application was not a threat but was rather a statement of fact confirming that ‘to fail two such highly important national targets would make it difficult for the SHA to support ULHT as a credible FT applicant’ (page 248).

34. On 12 February 2009, I responded to Kevin’s letter correcting a range of inaccuracies in his account of events and confirmed the actions taken by ULHT, while also stating that I continued to seek an external review into performance, planning and commissioning. I pointed out that the SHA had been fully aware of the serious operational issues from ULHT being on the highest state of alert from 8 December 2008. ULHT had for example previously reported 722 cancelled operations resulting from this high state of alert. I mentioned that ULHT had double the level of delayed discharges (something which is directly for the PCT to resolve) and which severely affects the availability of beds for patients. I also mentioned how I had been specifically asked by Kevin Orford to remove all reference to an capacity review in a presentation I gave to the Department of Health on 3 February 2009 as the SHA did not wish to inform the Department of Health (page:251).

35. On 17 February 2009, I replied to John McIvor’s letter dated 6 February 2009. I sought to explain various issues and provide an explanation as to ULHT’s performance problems, including that despite ‘over-performing’ by around £10-11m on the Contract, demand was increasing and unmanaged, and as a result, ULHT’s performance was suffering. I described the lack of communication from the PCT about commissioning plans and that at the time of writing ULHT did not have the planned activity levels from the PCT for April onwards, despite this being a national requirement the previous October (2008). ULHT had only received demand forecasts. I concluded that in my
view, a joint review was required so as to ensure patient safety was not put at risk again. My intention was not to apportion blame on the PCT but to seek to prevent the situation continuing and to allow us to improve going forward. I understood, at that time, that the PCT Chairman had recently agreed to an external review. Barbara Hakin had been copied into all of the correspondence on this matter but never referred to it (page:253).

36. Also on 17 February 2009, David Bowles wrote to Richard Childs, PCT Chairman, confirming there was a difference in understanding between ULHT’s and the PCT’s respective Executive teams in respect of activity and demand. He provided an overview analysis of certain figures in an attempt to demonstrate the acute pressures ULHT faced. He confirmed, upon review of PCT Board papers, he had not seen any significant references to excess demand and steps the PCT were taking to address this, nor reference to numerous ‘Capacity Review’ requests made by ULHT. Given the seriousness of what had occurred in the preceding months, I was surprised that the PCT board were not aware (page:257). In addition, David Bowles wrote to Richard Childs under cover of a separate letter the same day with particular reference to a concern he had raised regarding ULHT’s Retinopathy service. The letter describes how the SHA had complained to ULHT that the service was not in place, despite the fact that the PCT had not commissioned it.

37. On 18 February 2009, Dawne Bloodworth, emailed me highlighting concerns that she felt she was being harassed by Barbara Hakin and the SHA. Dawne Bloodworth alleged several serious issues from comments made by Barbara Hakin relating to the achievement of A&E targets and how this was linked to personal futures. Dawne Bloodworth described to Barbara Hakin saying to her: "If you can't manage an A&E (referring to hitting the 98% target) you can't run a hospital". Dawne Bloodworth had found this threatening. This phrase was also said at several East Midlands Chief Executive meetings and often attributed, by Barbara Hakin, as the view of David Nicholson, Chief Executive of England's NHS. In my opinion, this is a simplistic and arbitrary view that fails to take into account the complexities of running acute health services and the responsibility of PCTs to commission effectively (page:261).

38. ULHT wrote to the PCT to explain that the demand forecasts from the PCT for the forthcoming year 2009-2010 were 10-15% above the forecast outturn for the current year. This, ULHT explained, was far more than could be achieved from within existing capacity. It was also at odds with the PCT’s strategy of reducing demand on Acute Hospital Trusts, following the PCT’s ‘Shaping Health’ consultation and subsequent
commissioning strategy. It was also at odds with the national strategy of moving care out of hospitals. ULHT asked the PCT to review their demand assumptions for ULHT's services since this represented a significant shift in commissioning without any prior warning.

39. It was at this stage, I asked for the construction of additional wards to hold an additional 100 beds at Lincoln County Hospital. At this stage, all existing facilities had been opened. The cost of the additional wards was estimated at £7m and this required a business case to be developed. As the value was out with the authorisation limits of ULHT it would require SHA approval. Five months later, and by my last day at work, on 27 July 2009, the scheme, comprising 2 wards of 28 beds and the refurbishment of two other wards (i.e. 4 wards in total), had not been approved by the SHA.

40. On 20 February 2009, Kevin Orford responded to ULHT's plan for delivery of the '18 weeks' target. He was of the opinion that it was of extremely poor quality and unlikely to deliver the target in March. I disputed this. My intention was to produce a joint recovery plan between ULHT and the PCT but this had proven difficult due to the lack of action by the PCT. In my view, this lack of action is due to the PCT's inability to appreciate that it is within their remit to manage demand (page:266). This is despite both the Department of Health and the PbR Code confirming that it is the responsibility of the PCT (section 19.2 of the Payment by Results Code of Conduct, March 2009) - (page:181).

41. On 23 February 2009, I met with Barbara Hakin to discuss matters. I recall during that meeting she stated that if I did not deliver the 18 weeks target, she would be 'unable to protect me'. This was somewhat surprising to me as I was not aware I needed protection and I was unclear as to what she meant by that comment. I explained the action being taken and the risks involved including that the safety of patients was the top priority. I was aware from other Chief Executives of the management style of the SHA but this appeared to be more of a personal threat than I had previously experienced. Barbara Hakin also raised concerns she had with the performance of Bernard Chalk, and Dawne Bloodworth. I asked for specifics but received none. I made it clear I found those individuals to be highly capable and competent.

42. I informed David Bowles that I had been subjected to bullying and harassment by Barbara Hakin on 23 February 2009, and that I had been instructed to deliver targets ahead of all other concerns or face repercussions (PD 1d).
43. On 26 February 2009, I discussed the content of the meeting with Barbara Hakin and also the content of the email from Dawne Bloodworth with David Bowles. He wrote to me on the same day to reassure me that he and the Board had full confidence in me and that I worked for ULHT not the SHA. He also described how such behaviour had affected ULHT once before resulting in the Health Care Commission report that described a climate of fear, in part created by the conduct of the SHA, that the new management had worked hard to eradicate. The letter also described a number of practical steps that he recommended including getting support for the stress I was under (page:268).

44. On 27 February 2009, Barbara Hakin wrote to me detailing her view of our discussions. She summarised her view of the situation and appeared to suggest all the fault lay with ULHT, she had no confidence in ULHT and there would be an inevitable delay in the FT application. She also suggested if the path to FT was to take much longer, I would wish to consider whether I would see this through. This was untrue and not what was discussed. We had discussed that I would only consider my future career after FT status was achieved. This would have been in 2011 at the earliest. Barbara Hakin stated in her letter she was “extremely pleased that [I] have sought additional support and advice from such an experienced Chief Executive as Eric Morton”. Again, this appeared strange to me given that it was Barbara’s suggestion that I speak to Eric Morton rather than it being my own idea. It is unclear to me as to why Barbara Hakin appears to have presented the involvement of Eric Morton in the manner in which she did and misrepresented the facts (page:270). I emailed this letter to David Bowles confirming that it was not my intention to leave and that had been Barbara Hakin’s suggestion (page:271A)

45. As a result of making contact with Eric Morton, he attended ULHT for a couple of hours and expressed the view that as ULHT was over-performing and missing targets, he would need to speak to the SHA about its role in performance managing the PCT in relation to demand management. As a result, he saw Dale Bywater and asked for the Performance Management Record between the PCT by the SHA. However, one was not available, as it had never been completed. Eric Morton told me he had suggested to the SHA that it would not be in the SHA’s interests to report his work formally so only provided a verbal report to Dale Bywater. He determined that it was the SHA’s role to performance manage the PCT and the lack of records at that time was indicative of a failure in that responsibility. I received no feedback from the SHA.
On 2 March, I responded to Barbara Hakin's letter dated 27 February 2009. I felt that I needed to clarify that there were a number of issues in her letter that I wished to pursue in person, when more time was available. Chief Executives are frequently reminded by the SHA not to put controversial matters in writing to the SHA because of the FOI Act. This was not something I agreed with but I understood the consequences of upsetting the SHA. However, I did mention whilst there was now a plan in place that the SHA felt was appropriate to submit to the Department of Health, there remained limited assurance by the PCT that it could manage emergency demand. I stated that it would be useful to explore how the SHA could assist the PCT with this process when we met the following day. I had prepared a draft of this letter that was far more direct. I did not send this as I felt it would irritate the SHA and not assist in resolving the safety issues (page:272).

A meeting with Barbara Hakin had been scheduled for 3 March 2009 to meet both John McIvor and myself in a public house. Barbara Hakin requested to meet me first and then for John McIvor to join us. The essence of the meeting was to go over the action we had previously agreed. Barbara Hakin raised the issue of her perception that relationships between John and I were a problem. Both of us refuted this.

Barbara Hakin cancelled my end of year review meeting on 4 March 2009. I assumed that there were no issues with my performance that Barbara Hakin wanted to discuss. It was never rescheduled.

On 10 March 2009, I received, as did every NHS CEO and Chairman in the East Midlands area, an e-mail from Barbara Hakin and John Brigstock, Chair of the SHA. The e-mail explained how Barbara Hakin had just had "a VERY difficult conversation with David Flory, Deputy NHS Chief Executive, re our A&E [targets]". Barbara Hakin asked that because the SHA missed the 98% target last week there was a need to achieve "99% for the next three weeks" and that she needed to "make it very clear that [she] expected [the NHS CEOs] personally to ensure that [our] organisation deliver[s] 100%". John Brigstock added that: "the consequences of not meeting this national target in the East Midlands overall could be considerab[e]. This was interpreted by ULHT directors and me as a threat to all CEOs and Chairs (page:274).

On 25 March 2009, I wrote to Ros Edwards, Human Resources director at ULHT about an ongoing issue of her performance that was identified in her annual review in respect of introducing a bona-fide constitution for the Staff Side Executive Committee, in accordance with ACAS guidance, and following comments made by Ros Edwards at an Executive Team Meeting the previous day (page:276). The constitution as it stood
had not been agreed with ULHT. I had proposed a Proportional Representation Model
to engage all trade unions. The effect of a constitutional change to a proportional
representation model would most likely see a change in the leadership of staff-side
committee, a post held by Carol Pilsbury. The matter had been brought to my
attention on 17 June 2008 in an email from a member of the Royal College of Nursing
(page XXXX). The email had also included a complaint about Carol Pilsbury, which I
described as bullying. In any event the complaint had resulted in a public apology from
Carol Pilsbury. However, many issues remained which I had felt Ros Edwards had
been unwilling to address.

51. During March a number of clinicians from A&E, Trauma and clinical directors raised
general concerns about the increased pressure ULHT was under from high levels of
demand. They were concerned with general issues of safety including for example the
very high levels of cancelled operations due to the hospital being full combined with
the highest ever level of emergency admissions. The Director of Performance at the
time, Richard Lendon, himself a GP, commented to me that: 'something big will go
wrong if we carry on like this' or words to that effect. A&E departments are one of only
two NHS services that must accept all demand placed on them. They cannot and
would not turn away emergency patients. As the situation showed no sign of improving
with elective demand, what was required was a substantial shift in behaviour of the
PCT to address demand and for the SHA to reduce pressure on ULHT to achieve the
18 week target and performance manage the PCT. ULHT was at that time significantly
over-performing on its contract.

52. On 8 April 2009, I emailed Barbara Hakim explaining a range of concerns and actions
that were needed including external support. I explained that the health system was in
distress. I felt I had no alternative but to raise these serious concerns with the SHA as
ULHT was increasingly powerless to address them. I described some of the action that
ULHT had taken and my hope that the PCT had taken action also. I explained my
genuine concern for patient safety and asked for help and support. I included a
presentation on the activity data from ULHT which included a rise of 30% in A&E
attendances between 1 February 2009 and March, and a rise of 9.9% in emergency
admissions compared to the previous year (2008/09 compared to 2007/08). I asked for
support to prevent what I believed was a significant risk to patient safety (page:277).
At no time did ULHT or I receive support. ULHT received only criticism, blame and two
ad hoc reviews (PD 1e).
On 9 April 2009, I met with Barbara Hakin. The meeting I thought was to discuss how the SHA could support ULHT and explore what the PCT could have done to manage demand and improve performance. During that meeting Barbara Hakin’s attitude was confusing. Barbara Hakin referred to the email and seemed to provide a mixture of praise and attack in respect of my performance. More particularly, she claimed I was not facing the reality of the comments made against me. I did not understand what comments were being made. Barbara Hakin did not accept that the PCT’s failure to assist with demand was a relevant issue. Barbara Hakin was clear that demand was something Trust’s just had to deal with regardless of the Department of Health’s provisions as set out in the Pbr Code (page:181).

The Pbr Code exists specifically to protect the NHS system, and in particular patient safety. Barbara Hakin’s actions were to knowingly disregard the Pbr Code. Barbara Hakin then criticised Bernard Chalk and Dawn Bloodworth again but then extended the criticism to Mike Speakman, ULHT’s Director of Estates. The essence of the criticisms appeared to be that Barbara Hakin felt they were not good at their jobs. Given she had little if any direct experience of them, I was concerned how she had formed such a view, but given her manner and tone there was clearly going to be no debate over it. I found her criticism to be unfounded and inappropriate.

At this same meeting, Barbara Hakin then praised me for turning around the historic poor performance. She also stated that if things continued as they were, my career would be 'in tatters' and she would not be able to 'save me'. Barbara Hakin said that the other option was that I could agree to leave. At that stage, I stated that I knew how the system worked and that I did not want to be in the way but that I did not want to leave either. I asked what difference it would make if I left, as, in my view, the problems were not directly attributable to me. I did not receive a response to this question. I felt that my career was over in the NHS if I did not cooperate and was extremely concerned for my future but I knew I was correct in the stance I had taken to put patients first and I had the backing of the Board. Barbara Hakin said that I was very young with a long career ahead of me. I did not see how this was relevant as I was appointed to the role due to a proven track record.

I was utterly shell-shocked during the meeting, and for sometime afterward, as it had become clear to me that there was some kind of agenda against me. Any explanation I provided, or action I requested others to take, appeared to 'all on deaf ears. This seemed to stem from a few months of problems that I had worked very hard to turn around. Performance had turned around and the targets were achieved from May
onwards, in part due to demand easing. The targets were achieved despite being hindered by the PCT and the SHA.

57. Barbara Hakin instructed me to make up a story which would be told to David Bowles to explain 'my decision' to leave ULHT. As it was not my intention to do so, I did not do this. Instead, I informed David Bowles of what I had been told to do by Barbara Hakin. It was clear to me that if ULHT did not deliver the targets, I would be sacked and that any reference I made to patient safety was dismissed. Just before the meeting ended Barbara Hakin stated: "About patient safety...I do not know what to do about that". She said she would give it some thought and get back to me. Finally, Barbara Hakin asked if extra money would help. I again explained that, apart from the need to agree the business case for the additional wards, money wasn't the issue; it was excessive demand. I realised this was causing great irritation so I did not mention it again. As we walked out, Barbara Hakin asked what else the PCT could have done. It was clearly her view that they had done all they could (PD 1f).

58. On 14 April 2009, Barbara Hakin wrote to me to confirm the outcome of the meeting on 9 April 2009 (page: 281). This was not an accurate account of the meeting. The letter claims that I stated that I 'had only ever intended to stay in Lincolnshire until FT status was achieved'. This is incorrect. The letter referred to her understanding that I would discuss leaving ULHT with David Bowles. This was Barbara Hakin's suggestion. The letter also referred to short-term measures I would later detail to the SHA and also the additional funding for building new beds at Lincoln required to meet demand. This was accurate. I note the letter also said the SHA and PCT would provide support. No support was provided by the SHA prior to my last working day, 27 July 2009, although I understand Geoffrey Worrell, of the SHA, was sent in, for 3 days per week, sometime in August or September, to help Bernard Chalk when he was acting Chief Executive.

59. It was clear to me that Barbara Hakin chose to ignore the PbR Code and the provisions of the Contract, preferring instead to place all responsibility for demand on ULHT. This is reinforced by an email dated 20 April 2009 from Barbara Hakin, obtained under FOI Act 2000, that confirms Barbara Hakin's view of the 'need to meet targets whatever demand'. In my view, her comments to me, this handwritten note, and the pressure placed on me and other directors at ULHT was a serious danger to patient safety. I believed that at the time and I believe that now (page: 282).

60. On 27 April 2009, Richard Childs wrote to David Bowles to confirm that two separate reviews would be conducted by each organisation about the problems encountered in meeting targets and that Richard Childs would be willing to share the outcome of the
PCT’s review. Two separate reviews were needed, according to Richard Childs, to "avoid the dangers that come from joint reviews when each party can tend to look to blame the other player" (page:283). In my experience separate reviews offer a relative guarantee of differing views that would lead to parties blaming each other. I was obviously disappointed that a single independent ‘Capacity Review’ could not have been put in place in accordance with the Contract. Richard Childs stated he was determined to do everything necessary to achieve the targets.

61. However, the following day, on 28 April 2009, Richard Childs wrote to John Brigstocke. He raised concerns about ULHT’s performance and stated ‘there is only a finite amount the PCT can do and that this had been done’. This letter was in stark contrast to the letter sent by the PCT the previous day where he had stated he would do everything necessary to achieve the targets. I dispute that both the PCT and the SHA had done all that could be done and consider this was a blatant attempt by the PCT to pass the blame to ULHT (page:284).

62. Following a ULHT Remuneration Committee meeting on 28 April 2009, I met with all non-executive directors. Present were David Bowles, Phil Scarlet and Stan Keyte, (vice-Chairman), Tim Staniland, Karl Cook, and Keith Brown. I explained that Barbara Hakin had subjected me to bullying and harassment on 9 April 2009 and on previous occasions. David Bowles expressed concern that I was now being pressurised to leave by Barbara Hakin. He confirmed that I had previously raised concerns with regard to the SHA’s attitude and that discussions with Barbara Hakin had been difficult (PD 1g).

63. David Bowles went on to confirm that ULHT had made significant progress under my leadership and my employment contract had been extended to September 2010 with the full support of Barbara Hakin in 2008. Concerns were raised with regard to the way the SHA had behaved and David Bowles confirmed that a number of clinicians including clinical directors had expressed their support for me. The view was that my immediate departure would be damaging to ULHT.

64. The Non-Executive Directors expressed their support for me and agreed that I should only leave if I wanted. If a decision to seek to terminate my employment were made, it would be through proper process and not due to pressure from the SHA. While I note that there was recognition of recent poor performance against targets, there was also recognition that any performance assessment should take into account failure of the whole system in Lincolnshire rather than just within ULHT. However, there was also
recognition that if I were to stay, it was likely that the relationship with the SHA would deteriorate further and this could have implications for the FT application.

65. All non-executive members of the Board were present and all gave their full support to me and considered that the Board’s position was based on the correct principles. I stated that as a result of the Board expressing their support and giving assurances that any decisions would follow proper process, I felt protected and supported by ULHT. At no point then, or at any stage prior to my dismissal, was my performance raised as an issue.

66. On 30 April 2009, further to the meeting on 9 April 2009, I emailed Barbara Hakin to set cut a range of actions ULHT would be taking, and which the SHA and PCT could take to support ULHT and the local NHS. These examples were taken from activities already in place elsewhere in East Midlands and as such, in my view, it was not unreasonable to believe they could be achieved in Lincolnshire. I copied this to John McIvor. This paper included 5 further actions ULHT would take, 27 actions the PCT could take and 3 the SHA could take. I included specific suggestions with regard to managing demand by the PCT and suggestions of what the SHA could do moving forward. I understand that perhaps 1 or 2 of the suggested actions were taken forward by Barbara Hakin or John McIvor (page:289).

67. On 5 May 2009, John Brigstocke wrote to Richard Childs and David Bowles confirming that while ULHT had performed well in the past, there were concerns with regard to relationships between ULHT and the PCT. His view was that the PCT and ULHT were in essence asking the SHA to do their jobs for them and that this was a fundamental misunderstanding of the SHA’s role and authority. Within that letter, he went on to state that Barbara Hakin’s formal authority was limited to removing a Chief Executive’s Accountable Officer status. I was disturbed by this since, given the context, it was clearly a threat to my continued employment. Removal of an Accountable Officer status would have the effect of terminating my employment, as set out in section 24.2 of the employment contract (page:152), rather than going through any due process. This is because all NHS bodies are required to have a Chief Executive Officer who is also the Accountable Officer for the organisation. So if the Accountable Officer status was removed ULHT would be forced to terminate my contract (page:296).

68. John Brigstocke proposed three possible ways forward: 1) the SHA send in a team to investigate, 2) the PCT and ULHT work together to create a recovery plan or, finally, 3) that both Richard Childs and David Bowles stand down. John Brigstocke stated that the SHA would be pleased to offer appropriate support for option two. Subsequently, the
SHA instigated three reviews: one by Peter Garland (external contractor), one by Dame Catherine Elcoat (SHA Director), and one by Deloittes on the finances of ULHT.

69. During this period ULHT had sought to terminate its contract with Dawne Bloodworth, by mutual agreement. The SHA said they could not approve the payment because Treasury would not approve it. The proposal was for no more than the contractual entitlement. As I recall, the SHA finally approved the same proposal drafted in April, three months later, in July 2009. This delay contributed to an increase in my workload and associated stress, as I had to undertake the majority of Dawne Bloodworth’s work in addition to my own. Performance improved and key targets were met from May/June onwards.

70. On 6 May 2009, I met with Barbara Hakin and discussed Richard Child’s letter to the SHA of 28 April 2009. I recall Barbara Hakin stating that she did not know ‘who to get rid of’. I confirmed that I did not think it was a good idea for me to leave. Barbara Hakin said that she would pick this up with me later in the year and that I should continue to think about leaving ULHT. She confirmed she had spoken to the Chief Executive of an NHS body called Interim Management and Support and its Chief Executive, Anthony Sumara had considered a secondment and wanted to make contact with me. She suggested that the SHA could support my salary for 1 year in that role but not for any period of time after 1 year.

71. On 10 May 2009, David Bowles confirmed in an email to the ULHT Board members that the PCT had now agreed 'Option 2'; that this had been confirmed in an email to John Brigstocke on 8 May 2009; and that there would be a number of changes including the signing of a memorandum of understanding on partnership working (page:299).

72. On 13 May 2009, David Bowles wrote to me to confirm the comments made at the meeting with non-executive directors on 28 April 2009 and to ask if I wished to make a formal complaint about Barbara Hakin (page:300). Within a few days, I confirmed to David Bowles that making a formal complaint was unlikely to improve matters and would most likely lead to retaliation by the SHA.

73. In my report to the Remuneration Committee meeting on 14 May 2009, I highlighted a range of achievements and areas requiring improvement. I also reported events that had previously occurred with the SHA (page:306)
On 19 May 2009, I emailed Barbara Hakin regarding 1 of 3 reviews the SHA was planning to undertake. Her reply stated it was ‘pointless’ to review relationships and that another review would be carried out which had not yet been defined. I was concerned that yet another review was being contemplated at a time when more productive courses of action had been ignored (page:309).

On 21 May 2009, Barbara Hakin wrote to criticise me and ULHT. She claimed the SHA was doing a great deal to support the Lincolnshire Health Economy. I was not aware of any support from the SHA (page:312).

On 27 May 2009, David Bowles wrote to Richard Childs about agreeing how to progress matters following the response to the SHA on 8 May 2009 and he offered potential solutions for all the areas mentioned. David Bowles raised concerns that John McIvor, did not appear to agree with 'Option 2', as stated to John Brigstocke, and that this was of concern. It was clear there was not full support for 'option 2' within the Board of the PCT (page:313).

On 28 May 2009, I wrote to Barbara Hakin referring to previous correspondence from our meeting on 6 May. I commented that I was pleased to have agreed that the best course of action was for me to remain in post. I confirmed that progress was being made with the PCT and performance was improving as a result. It was my view that continued dialogue between us would be useful and I suggested that Barbara Hakin met with John McIvor and me every three to four weeks. These meetings did not materialise (page:316).

On 1 June 2009, Richard Childs wrote to David Bowles indicating that he was less interested in partnership working although this didn't mean that it couldn't apply to key initiatives. The letter indicated a general retraction from what had been promised to the SHA. There was agreement to hold a joint meeting of non-executive directors of both organisations on 22 June. Richard Childs said that he wanted his Chief Executive to be present at the meeting because his view was that a separation between executive and non-executive was ‘inappropriate’ and ‘unhelpful’. My view at that time and in that context is the separation of powers between executive and non-executive was very relevant and highly appropriate and forms the basis of good governance (page:317).

On 2 June 2009, Richard Childs and David Bowles wrote a further joint letter to the SHA Chairman. They explained that performance targets had been met and that formal arrangements were being made with partnership working, despite the PCT’s letter the previous day indicating otherwise (page:319).
80. On 8 June 2009, Barbara Hakin responded to my letter dated 28 May 2009, stating further issues at ULHT had developed with regard to ULHT’s accounts, A&E deterioration and problems with Healthcare Acquired Infections (HCAIs). This was simply not the case. She requested an urgent meeting upon her return from annual leave (page:321).

81. On 18 June 2009, I responded to Barbara Hakin’s letter on 8 June 2009. While I was happy to meet with her, as I had previously suggested meeting every 3-4 weeks, I was surprised that she felt performance had deteriorated and provided statistics indicating an improvement and delivery of the targets, some ahead of schedule. I provided further detail of the actions taken by ULHT to improve performance and confirmed regular meetings were being held with the PCT. In addition, I did note that the annual accounts were a concern and an internal review was being undertaken to consider this further. The reason for the apparent problem with ULHT’s accounts was that ULHT had decided to bring forward a technical accounting change that most NHS Trusts were leaving until the following year. This recognised change in accounting practice had caused problems for ULHT’s auditors who were underprepared. ULHT had considered making a formal complaint to its auditors. The final accounts still showed a surplus and that ULHT had met its five-year statutory break-even duty. I note that there was a reduction in the surplus but this was due to a change in the way accounting for impairments were undertaken. This was a technical accounting issue. ULHT’s accounts were essentially in good shape having met all the requirements under the NHS performance management / failure regime (page:330).

82. David Bowles wrote to me following the Remuneration Committee meeting on 14 May 2009. The letter thanked me for my work and set out new objectives to be developed at a later stage (page:322).

83. On 22 June 2009, the non-executive Directors and Chief Executives of both ULHT and Lincolnshire PCT met. John McIvor and I had agreed a presentation to both groups of NEDs that set out each organisation’s responsibilities. This included the PCT having responsibility for demand management. Richard Childs stated that the PCT could not really be responsible for demand management, contrary the PBR Code and the NHS Contract. I left the meeting after my presentation but the PCT wished John McIvor to remain as they saw no difference in the role of Executives and Non-executives and were ‘one board’, which given the circumstances was not an application of good or appropriate governance (page:333).
The SHA's deputy Chief Executive, Kevin Orford, emailed me with an outline terms of reference for what was later known as the Peter Garland review. I spoke to Kevin Orford that evening as I was concerned that the terms of reference already judged the outcome of the review. For example, the terms of reference assumed there was blame to apportion (page:332). Kevin Orford was clear the terms of the review would remain.

The PCT had appointed Courtyard to carry out an internal review to which ULHT was not privy, although in a telephone interview that I agreed to, the interviewer from Courtyard indicated how odd it was for a PCT to be reviewing itself rather than the health system.

That week I received a draft of the Catherine Elcoat report. This was a review that had explored safety issues by for example talking to employees in corridors and unstructured meetings rather than investigating governance systems or data. Richard Lendcn, Sylvia Knight and I reviewed the draft report and together considered it to be unintelligible, poorly written and a poor investigation. Sylvia Knight said she felt very uncomfortable about speaking to Catherine Elcoat about it so I agreed I would (page:346B). Barbara Hakin said the review was a "mini-CHI" review. CHI refers to a regulator that existed until 2004 when its roles was transferred to the Healthcare Commission. Catherine Elcoat's review and report fell far short of the quality undertaken by CHI or any other regulator.

On 29 June 2009, I wrote to Barbara Hakin in advance of our meeting planned for the same day. I highlighted areas that I wished to discuss with her (page:347). During the meeting, while we did discuss some of the points I raised in my letter, Barbara Hakin was dismissive of any concerns I had about patient safety or those areas outlined in the letter. She ignored the fact that the problems of excessive demand for ULHT services, significantly above contract, were again predicted and presented a genuine risk to patients and staff. She repeated her position and did not appear as if she wanted to listen to my explanations/reasoning. I raised serious concerns about conclusions that had been reached by the second of 3 reviews conducted by the SHA's director of nursing, Dame Catherine Elcoat. These included my comments on statements that had been made without evidence. Barbara Hakin responded angrily that I should challenge one of her directors. The report, issued later and announced in the media by the SHA in July concluded there were no safety issues (PD 1h).

On 30 June 2009, there was a ULHT Board meeting at which the Board formally supported the Chairman's position in respect of not providing an unequivocal assurance (a guarantee) to the SHA in respect of achieving 18-week targets. Bernard
Chalk, ULHT’s Director of Finance had attended the meeting where Mr Bowles had been asked by the SHA to give unequivocal assurance and remarked to me and the Board that: "it was the worst meeting [he had] been to in [his] career".

At the public board meeting in June, Paul Richardson (who was later appointed interim chairman of ULHT) attended the public gallery. At the end of the meeting he came up and spoke to me. He did not identify himself and I assumed he was simply a local resident with an interest in how hospitals are governed. Paul Richardson later confirmed to me, on 23 July, that he had approached the SHA chairman to ‘OK’ his attendance prior to the board meeting. His attendance and presumably his appointment was clearly unusual and demonstrates that plans were already in place to replace David Bowles whilst he was still in post.

It was not known to me at the time but confirmed in 2010 by the Chief Executive of the Appointments Commission, that Paul Richardson had been appointed in or around June 2009. The Commission confirmed that: “Paul Richardson was identified by the Strategic Health Authority”. The appointment panel comprised of three people: a representative of the appointments commission, John Brigstock and Barbara Hakin. Whilst the appointment commission claim this appointment was carried out in line with their normal practice I find that difficult to reconcile with my experience. Firstly, it is highly unusual to appoint a Chair whilst another is in post. Normally the deputy Chairman, another NED or a serving NED or Chair would act up. Secondly, there was no independent member on the appointment panel. This is normal for all senior appointments. Thirdly, it is highly unusual to have an executive officer on the panel of a non-executive appointment. It fails the basic test of governance since non-executives are independent appointments from the executive. Indeed non-executives exist to hold executive functions to account.

I discovered in August 2011 that Ros Edwards had briefed David Bowles on 2 July 2009 on a number of highly relevant issues. This briefing note describes bullying and harassment by the SHA and provides advice for David Bowles including Ros Edward’s recommendation that ULHT should not pursue my complaint with the SHA. This conflicts with Ros Edward’s statement in the disciplinary proceedings that follow, in which she states she encouraged me to make a formal complaint. The note confirms the SHA might delay a settlement payment to Dawne Bloodworth if any further allegations were made. I am unclear as to what allegations are being referred to. The briefing also reports that I have a close relationship with a partner from Capsticks. This is untrue. This note was not disclosed by ULHT during the disciplinary proceedings.
that followed or at any point afterward. In my view this is one of many examples where highly relevant information has been withheld or overlooked by ULHT as it was detrimental to their case (page:347A).

92. On 10 July 2009, Barbara Hakin wrote to me summarising some of the issues we had discussed in on 29 June 2009. However, she also stated that we had discussed my career and said that I had indicated a desire to move from Lincoln in the autumn and that I had a range of options. I deny that I said this. I noted that Barbara Hakin copied the letter to Kevin Orford and Kathy McLean at the SHA. I was extremely upset that this letter had been inappropriately copied to other SHA staff. It was wrong and improper to do this. It was a deliberate attempt to undermine and bully me. Further, I understand that this type of action falls under the definition of harassment as set out by ACAS (page:205A). I note that the Goodwin Review that followed from August to October made no mention of this (page:350).

93. On 15 July 2009, I wrote to David Bowles expressing my view that ULHT, as my employer, had a duty of care towards me to take all reasonable steps to safeguard me from bullying, intimidation and harassment by Barbara Hakin. I asked David Bowles to take action to prevent the situation continuing (page:351). I confirmed in writing what I had previously stated to David Bowles and the remuneration committee: that I had been repeatedly asked to leave my post and was asked to manufacture a story as to why I was leaving. I felt that the issues were undermining my position as Chief Executive and causing my family and me a great deal of stress and anxiety. I clarified my position in respect of what ULHT had done to improve performance and the difficulties I was facing with the PCT, together with Barbara Hakin's oscillating attitude towards me and in particular her comments in respect of my career. I also referenced Barbara Hakin's inaccurate reporting of our meeting on 29 June 2009 and that she had copied that inaccurate statement to directors within the SHA. In my view, this was misleading, inaccurate, undermined my role and damaged my reputation significantly. I was concerned about writing to Barbara Hakin to correct the letter of 29 June 2009 as I feared that this would result in continued harassment. I requested that my employer provide me with support within the next seven days. This was a formal complaint (PD 11).

94. On 17 July 2009, I wrote to John McIvor stating that ULHT was more than 10% over Contract, across the board, at the end of Quarter 1, 2009/2010 with waiting lists rising. I was concerned that demand for emergency care was going to increase further repeating the events from 2008/2009. I provided statistics which supported my
comments and reaffirmed my position that it was ULHT’s and the PCT’s responsibility to meet national targets which required the PCT to manage demand and ensure adequate and appropriate services were commissioned across the area. I did not receive a response. Again for the contracting round 2009/2010, ULHT agreed a level of patient activity in the contract that was equivalent to ULHT’s capacity. Demand was expected to be higher than this and it was the PCT’s responsibility to ensure that it’s remaining £750m per annum budget was spent effectively to manage demand (page:355).

95. Also on 17 July 2009, in relation to a programme of organisational development that I had led, I approved a Behavioural Evaluation Framework for General Managers and Directors of ULHT. This was part of a transformation programme I had initiated for the top 300 leaders in ULHT. This described acceptable behaviour of management within ULHT, something I was passionate to improve (page:359).

96. On 21 July 2009, David Bowles responded to my letter of 15 July 2009, stating that he was saddened but not surprised that I had written to him in those terms. He confirmed that the Remuneration Committee and the Board took the matter very seriously and reminded me that the Board had noted in February 2009 that in light of concerns expressed by a number of staff about the conduct of the SHA the board noted that: ‘the Chairman stated that the organisation had in the past been described as operating in a ‘climate of fear’ and he wished to confirm that ULHT would not tolerate this in any circumstances and would support any Executive member under pressure’ (page:368).

97. David Bowles asked for supporting documents and other evidence. He commented that as the alleged bullying came from outside ULHT, and while he intended to take the matter up with the SHA, given his own recent experiences, he was not confident that it would be taken seriously or properly investigated. He did offer his support and asked if there was anything further ULHT could do to protect me, I should let him know.

98. On 21 July 2009, I responded to Barbara Hakin’s letter dated 10 July 2009, expressing my concern that she had openly described a discussion in respect of my future career in an inaccurate fashion and had copied that information to SHA staff. I felt that her actions undermined my role as Chief Executive and could seriously damage my career. I confirmed it was not and had never been my intention to leave my post. I also confirmed that on almost every occasion we had met that year, she had proposed that I leave my post and had asked me to construct a story to tell David Bowles that I wished to leave because the FT time line was delayed. I requested that if she was
going to put anything which we had discussed which was of a confidential nature in writing, she should ensure that it was both accurate and not copied to SHA staff. I never received a reply from Barbara Hakin to this letter (page:367).

99. Also on 21 July 2009, there was a ULHT Board Away Day - a developmental meeting of the Board not held in public session. At the end of the day, I received a telephone call from Barbara Hakin and had to excuse myself from the meeting. She told me that David Bowles had been suspended that morning although at that point in time he did not know that himself. Two hours previously, he had sent an email to all ULHT employees stating that he would resign at the end of August. Barbara Hakin asked me to ensure that David immediately called the Appointments Commission. She called me back within half an hour and said that if he had not already called the Appointments Commission, I was to stop him acting as Chairman of ULHT. I felt that this was entirely inappropriate but I was in no position to decline so I was left with the difficult task of informing my own Chairman that, according to the SHA, he had been suspended. A short while later Barbara Hakin called me back and stated that she wanted to meet me on 23 July 2009, privately first and then with the new interim Chairman, Paul Richardson to discuss my future. Sometime later I discovered that David Bowles had not in fact been suspended.

100. Before David Bowles left the office that day he gave me a copy of a draft appraisal summary that he claimed was handed to him by John Brigstocke in June prior to any discussion. In this document a number of allegations are made about ULHT and about me. It states that "Neither the SHA nor the Department can find any unique challenges faced by the ULHT". I am unaware of any analysis or review that could have determined that. The document states that ULHT is unwilling or unable to work in partnership with a range of organisations including the Department of Health (DH), SHA, PCT, Independent Review Panel (IRP), Health Overview and Scrutiny Committee (HOSC). I do not have any evidence to support this view (page:321D).

101. In contrast, the HOSC in the Care Quality Commission (CQC) annual declaration who stated: "The Health Scrutiny Committee welcomes the level of engagement from the United Lincolnshire Hospitals Trust in the activities of the Committee, whether formally at meetings or informally as part of visits by members of the Committee to members of staff at health establishments. The Committee also wishes to record that the senior management at ULHT are always willing to attend meetings of the Committee, often at short notice". This had been a considerable improvement on the past relationship with ULHT. Further, the IRP wrote in their review of a transferred pathology service that
they welcomed ULHT's input. There is no evidence that the DH had stated that ULHT had been unable or unwilling to work with them in anyway. The DH were complementary towards me the last time I spoke to them in February 2009.

102. The appraisal summary also described ULHT as isolationist, which is at odds with countless requests for support that I personally made to the SHA and the attempts by others at ULHT to engage the PCT and SHA such as those made in April but also multiple attempts at joint working, facilitated workshops, and attempting to agree a partnership working agreement.

103. The document confirms that Barbara Hakin put "pressure" on me although it does not describe what that pressure was. I am clear it was to force me to resign for putting patient safety before targets.

104. On 22 July 2009, I wrote to David Nicholson, NHS Chief Executive and Accounting Officer (page:369), disclosing the issues between myself and the SHA including:

   a. The threat to patient health and safety due to ULHT being forced to comply with certain targets.

   b. The threat to patient health and safety due to the SHA bullying members of ULHT for failing to meet targets

   c. The SHA had asked me to leave my post, and that I had been bullied, harassed and intimidated by the SHA

   d. That SHA reviews were biased and flawed.

105. I considered that I had no choice but to raise my concerns with David Nicholson. I believed the situation was escalating in terms of risks to patients due to the failure of the SHA and PCT to carry out their responsibilities and that I had a duty to inform the Accounting Officer of the NHS. I had already raised these issues with my employer and the SHA. I considered this was my last resort and I was concerned that with the new contract already overheating by 9-10%, events earlier in the year looked set to repeat themselves.

106. I expressed my view that the SHA's bullying and harassment of me threatened my career. I outlined my past performance and the recent issues at ULHT as well as my concern for patient safety. I mentioned that on 20 July 2009, David Bowles had written to David Nicholson setting out concerns about the SHA's conduct (although I had not
seen this letter) and had, I believed, been suspended the very next day. As it transpired, David Bowles was never suspended but in fact resigned. Because of what appeared to have occurred following David Bowles’ letter to David Nicholson, I was concerned about raising the issues with him myself but felt I had a duty to do so. I enclosed a copy of the correspondence received from David Bowles suggesting he had little confidence that the SHA would desist or deal with the issues effectively. His forced departure only confirmed the point. I requested a full independent investigation be carried out into the bullying and harassment claims that myself and David Bowles had made against the SHA and requested that my letter be considered within the context of whistle blowing and as such, should not be freely copied to the SHA or the PCT (PD 1j).

107. Phil Scarlett informed me that all ULHT’s Non-Executive Directors wrote to David Nicholson, on 22 July 2009. While I did not know the entire contents of the correspondence until after my dismissal and whilst preparing for this hearing, I was aware that they asked for a review of the SHA’s conduct in respect of the removal of David Bowles (page:363).

108. On 23 July 2009, I met with the new Interim Chairman, Paul Richardson whilst waiting for Barbara Hakin to arrive. He introduced himself and immediately stated that he was "not an SHA stooge". This struck me as an unusual comment on a first meeting. I informed Mr Richardson about the threat to patient safety due to ULHT being forced to comply with certain targets and that I had asked the previous Chairman for protection from the conduct of the SHA under ULHT’s duty of care to me. He explained he had no agenda and asked whether I thought it was a good idea that he took the role on. I explained that I could not make that judgment for him.

109. I explained the substance of the ongoing issues and referred to correspondence that I suggested he read. I did not refer to them as protected disclosures for the simple reason that I did not know what a PD was until after engaging legal advisers in August 2009.

110. Barbara Hakin had requested a meeting with me privately prior to the joint meeting with Paul Richardson. During the private meeting she informed me that I needed to confirm whether I was ‘at war’ with her. I did not respond to this for the simple reason that I did not know how to. I did not think that I was at war and was concerned by that suggestion. She stated that I was ‘naive’. Barbara Hakin had a copy of the ‘draft Garland Report’, which she stated raised serious concerns about the governance of ULHT. A copy of the report was not shared at that time.
111. When Paul Richardson joined the meeting, Barbara Hakin asked me what I wanted and I responded that, as I did not initiate the meeting, it was for her to tell us what was required. She then immediately threatened me with removal of my Accountable Officer status, which I considered would have had the effect of forcing ULHT to terminate my employment.

112. Barbara Hakin stated that she had no confidence that I could run ULHT in the long term and even with a new Chairman there was a 'slim chance' I could do so. Barbara Hakin said I was a great 'turnaround merchant' but that she had concerns for the long term. Paul Richardson questioned Barbara Hakin on this point and confirmed that the briefing he had received on 13 July 2009 from the SHA did not contain these points. I have asked for a copy of this briefing and been told it does not exist. I consider it odd that an incoming chair, in this context particularly, would not have had a briefing.

113. My view was that I could run ULHT - a view supported by the Board of ULHT - and that it would be difficult to do so if I did not have support. When this was expressed to Barbara Hakin, she failed to respond. At that point under the immense pressure I was under I stated that I believed my position was untenable as I felt the SHA had lost confidence in me. Barbara Hakin did not respond to that either (PD 1k).

114. Paul Richardson asked her if there was anything he needed to act on from the 'draft Garland Report'. Barbara Hakin confirmed that whilst the 'Garland Report' raised concerns, there was nothing she wished to act on immediately. It is difficult to put into words how I felt being spoken about like this. It was as if I was not in the room.

115. Within 30 minutes of the meeting, I received an emailed letter from Barbara Hakin regarding my Accountable Officer status. I replied the same day repeating the conversation we had had in the meeting. There was clearly some sense of urgency for a letter to be dictated in the car, typed and emailed within 30 minutes of a meeting. The DH later explained that they had sent me a form to sign in 2006 with the wrong name on it (page:376).

116. Following the meeting, I wrote to Barbara Hakin requesting a copy of the 'draft Garland Report' which had been used as evidence to remove David Bowles and which, she had stated, was causing serious concerns in respect of the governance at ULHT, although nothing with which she wished to act on immediately. I confirmed that there were alternative counter views and evidence against the brief extracts that had been quoted by Barbara Hakin to me and I was surprised that such serious concerns had been arrived at by the report's author from interviews with only four of ULHT's Board.
members and through reading a sample of Board papers. For example, Peter Garland had met me over a cup of coffee and did not take any notes during our discussion that lasted under 1 hour. While it was meant to be a formal process, the format of the meeting did not strike me as such (page:375).

117. That evening I received a copy of the 'draft Garland Report' and was asked to give any comments to Kevin Orford at the SHA by 29 July 2009 (page:377).

118. Not known to me until preparing this statement, Stan Keyte had emailed all NEDs. In this e-mail he described the deplorable pressure from the SHA. He was also concerned that he had been overlooked at acting chair (page:377J).

119. On 24 July 2009, I wrote to Paul Richardson as I wished to put on record the comments made at the meeting the previous day. I made reference to Barbara Hakin's comments as set out above. I referred to the fact that Paul Richardson questioned Barbara Hakin on this point and he had confirmed that the briefing he had received on 13 July 2009 from the SHA did not contain these points. Paul Richardson had also asked Barbara Hakin if she had any information that would mean that action should be taken against me immediately and she confirmed that there was none. I confirmed that I required the full support of the SHA Chief Executive so as to allow me to operate effectively as ULHT's Chief Executive but, given Barbara's comments, I clearly did not have this (page:379).

120. I noted that while I understood that it was the first day in Paul Richardson's new role and he would require time to understand the situation, I still required a response to my letter sent to the previous Chairman on 15 July 2009. I requested the convening of the Remuneration Committee to discuss the action ULHT would take to protect me. Stan Keyte a member of the Remuneration Committee confirmed in an e-mail to me and the other Board members that he supported me and the proposal to hold a remuneration committee meeting (page:381). A meeting of the remuneration committee never occurred between this date and at least 23 December 2009, the period of the disciplinary action towards me, which is a breach of ULHT's standing orders (PD 1m).

121. In addition, on 24 July 2009, I wrote to Barbara Hakin and expressed my serious concerns with regard to the inaccuracies and apparent lack of objectivity in the Garland report. I confirmed I had written to the Auditors asking why the issues raised about alleged failures of governance had not been raised with the Board or contained within any Auditor's report (page:383). I confirmed I had sought legal opinion (page:397). Finally, I confirmed that if there were significant failures of governance it
would be essential for the entire Board to consider the report in light of internal evidence and professional advice which would take some weeks to complete (page:382).

122. I sent a copy of the letter I had written to Paul Richardson earlier that day to David Nicholson, NHS Chief Executive stating that I considered my position untenable as a result of the action by Barbara Hakin (page:378).

123. A statistical briefing note was prepared internally by ULHT on 24 July 2009 covering the period of June 2008 to June 2009 and shared amongst directors. This identified the performance issues for A&E and 18 weeks. It demonstrated the period the targets were missed and that most were then being achieved (page:392).

124. The SHA issued a media briefing on 24 July 2009 that described the Catherine Eicoat review and stated: "...there were no immediate areas of concern in terms of patient safety or experience highlighting only a few areas for improvement...". This media briefing also included a statement from me stating that I always put safety and quality first (page:395).

125. On 25 July 2009, the Telegraph website ran a story about David Bowles' resignation and quoted me as saying ULHT always put safety and quality ahead of any other priority. This was the same statement issued the previous day via the SHA media briefing. The story was repeated the following day in the Sunday Telegraph.

126. Not known to me at the time but Phil Scarlett called for a remuneration committee meeting to be held (page:398A/398B). There were now 2 experienced members of the Board calling for a meeting of the Remuneration Committee.

127. I already had a doctor's appointment scheduled (signing on to a new GP) on 27 July 2009. During the appointment, I explained what was happening at work and how I was coping and my GP immediately signed me off work with stress.

128. On 27 July 2009, Paul Richardson responded to my letter dated 24 July. He acknowledged the serious nature of my concerns but stated that he was of the opinion that in view of the 'draft Garland Report' and events which had transpired over the weekend, the best interests of ULHT were not served by instigating an investigation into my allegations in the immediate term. He requested that I delay pursuing my request until such time as he had the opportunity of understanding the conclusions of the Garland report and what was needed to rectify any shortcomings in governance arrangements. In my view the 'draft Garland Report' was an instrument of bullying and
harassment by the SHA and that by not acting on my concerns already described to him, Paul Richardson had considered that my health and well-being were secondary to the report. I considered this to be completely unacceptable, as Paul Richardson was clearly not treating my concerns with the gravity they required. I would have expected an independent chairman to assess the situation himself rather than rely on a report commissioned by those I had raised concerns about. I also considered that Paul Richardson’s reference to ‘events which had transpired over the weekend’ should not have been the justification for refusing to investigate my concerns (page:399).

129. The same day I provided my initial comments on the Garland Report to ULHT’s Board Secretary, Mike Napier, once again expressing my concern as to its contents and the manner in which it had been used. In essence my concerns were that the report was based on opinion rather than fact and evidence. This is unlike any other report I have been involved in such as the inquiry in Brighton (page:400). I also wrote to ULHT’s Director of Finance, Bernard Chalk, with reference to my letter to John McIvor dated 17 July 2009, recommending, that as a consequence of further rising demand, that the Board support another request for a Capacity Review (page:401).

130. Also on 27 July 2009, a number of further media reports were made including:

a. A BBC Lincolnshire radio interview with Sir John Brigstocke, which made reference to the resignation of David Bowles and actions the SHA were taking, and the Garland Report (which, to my knowledge, was still in draft format, with the remainder of the week for me to comment on and return it to the SHA) (page:1207).

John Brigstock said Barbara Hakin had been getting increasingly concerned and alleged that ‘standards had been maintained by poor governance’. In addition, he said that “the leadership of that Trust (which must include myself) is not managing to achieve what other people are doing” and further “we are providing all the help we can with help teams and turnaround teams and so on to get this Trust to perform to the same very high standards the others in the East Midlands do”. I note that Sir John stated that the SHA were providing all the help they could, despite my previous requests for assistance going unanswered, and were taking immediate action which had so far only included three reviews for the SHA’s benefit. There were no ‘help teams’ or ‘turnaround teams’ working at ULHT then or at any point.
I further note that Sir John Brigstocke asked if the interviewer was aware of the Mid Staffs and Maidstone issues. He stated that it was his duty to "...avoid a Mid Staffs...". This was an alarmist comment given Catherine Elocat's review had stated that there were no safety concerns.

b. In a BBC Look North interview with Barbara Hakin she claimed that the SHA had considerable concerns in respect of ULHT's governance and indicated there were concerns with management (which therefore included myself) (page:1206).

c. A Health Service Journal ("HSJ") online article made reference to David Bowles' resignation on the basis that he was asked to give unequivocal guarantees as to performance and allegations of bullying by NHS staff outside ULHT.

d. The Lincolnshire Echo ran a front-page story with regard to David Bowles' resignation and quoted me as saying "safety and quality have always come first in this trust". This was the same statement as given in the SHA media briefing. The article described David Bowles' claim that he had been asked to guarantee that targets would be achieved despite 'out of control' demand and that he had asked David Nicholson for an inquiry.

e. Further coverage was reported in the Nursing Times and the Pulse (Magazine for General Practitioners) and many other sources.

131. On 28 July 2009, an article in the Echo (carrying a large picture of myself) quoted comments from Barbara Hakin stating that my job was "on the line". The SHA asked that the quotes be removed, and the Echo apologised, the original story with the quotes removed continues to be on the website (as at 18 August 2011). This was confirmed in an email from the Editor (page xxxx).

132. Also on 28 July, I sent an email to David Nicholson and Laurence Tallon of the Department of Health and copied this to Andy Burnham, Health Secretary (page:411). I once again expressed my concerns that I was the victim of bullying and harassment with particular reference to the recent media coverage. I noted that on 27 July 2009 Barbara Hakin had confirmed for the first time, and in public, that the SHA had concerns with regard to ULHT's governance and the way the organisation was being managed would not guarantee patient safety. ULHT was then attacked publicly at the expense of the reputation of the NHS. Once again, I highlighted concerns with regard to the Garland Report and the fact that it was being discussed in the media while still in draft format. I had no control over the damaging remarks made by the
SHA and needed the DH to intervene. In my view there had been a material breach of the NHS Code of Conduct for Managers (page:051) which states that a Manager must “ensure that judgements about colleagues are consistent, fair and unbiased and are properly founded”. The media reporting was hugely damaging to me as it undermined my reputation and credibility as Chief Executive and brings matters into the public domain which neither the Board or I had been able to make appropriate comment on. I believe the comments made by Barbara Hakim and John Brigstocke were designed to force ULHT to consider my future as Chief Executive. I never received a reply to this email. (PD 1n).

133. On 28 July 2009, David Nicholson responded to my letters dated 22 and 24 July but not my most recent email (page:413). He confirmed that Neil Goodwin had been asked to lead a review and enclosed a copy of the review’s terms of reference and biographies of the proposed authors. The review was to be conducted in the following terms:

i. to investigate the allegations of bullying and harassment;

ii. to determine whether the SHA’s response to the performance issues ULHT and health system faced are consistent with the SHA’s own procedures, and to determine whether their response was fair and equitable; and

iii. to advise whether, in light of (i) and (ii), and subject to any relevant legal requirements, any further action should be taken in respect of any of the individuals involved.

David Nicholson added:

"What is clear is that there have been/are serious performance problems at United Lincolnshire Hospitals NHS Trusts. The terms of reference focus on how the SHA has responded to these issues, and in particular the allegations of bullying and harassment." (emphasis added) (page:413)

134. Whilst on sick leave, I was continuously called by officers at ULHT including the Communications Department. So on 28 July 2009, I arranged for an email to be sent to all 7,800+ employees at ULHT as a result of their obvious concern with regard to the adverse media coverage. This was sent in an attempt to improve morale and ensure that all staff members were aware that while there were recent performance concerns there were also significant improvements that needed to be considered too. Extract of this appeared in local papers the next day (page:426).
I received a copy of an email sent by the SHA communications team to a wide range of NHS staff across East Midlands -- approximately 150 staff prior to distribution to thousands of others within respective NHS organisations. In the email it states that: "Management at Lincolnshire's Hospitals has been criticised and the Chief Executive's job is on the line". Whilst the SHA may have asked for a correction to the article they were continuing to promote the message across the NHS (page:418).

On 29 July 2009, I wrote a further letter to Paul Richardson expressing my concern that he had placed the Garland Report ahead of my own personal wellbeing and had refused to take action to support me in light of our discussions and previous correspondence. I considered that the report itself was an instrument of the continued bullying and harassment I had been receiving for many months and that he was under a duty to protect me against such acts. I described the comments in the media made by the SHA as an effort to discredit me. I asked that ULHT take steps to address this and as far as I am aware they did not (page:428).

The same day, HSJ published an article reporting that the Department of Health were launching an independent review into allegations of bullying and harassment against the SHA. It went on to quote a comment I had made that I had been informed by Barbara Hakin and Paul Richardson that they had no concerns they wished to act on immediately. This was consistent with the e-mail to all staff at ULHT.

Also on 29 July 2009, Barbara Hakin was again reported on the front page of the Lincolnshire Echo newspaper discussing my future employment. The further report (which is still available online as at 18 August 2011) stated that Barbara Hakin had said she would be working with Paul Richardson "to decide if my position is tenable" (page:1239).

At this stage it is difficult to describe how I felt. My career had been destroyed in the media, unfairly, unjustly and without cause. My employer was putting the findings of a report ahead of my own wellbeing. My employer was not defending me against the public attacks made on my career and reputation by the SHA. I was close to breaking point. Subsequently my GP placed me on medication.

On 30 July 2009, Paul Richardson responded to my letter dated the previous day and apologised that I felt his letter did not take into account my own personal wellbeing. He stated that while the allegations were being taken very seriously, given his recent appointment, he needed to establish the current situation for himself so as to consider the best way forward for myself and ULHT. He confirmed that the Department of
Health had commissioned an investigation into the allegations of bullying and harassment by David Bowles and he proposed to ask that my allegations were dealt with by the same report (i.e. the Goodwin report). He said that ULHT's own internal procedures did not provide for this scenario. He also requested that I refrain from commenting to the media or staff. I followed that instruction (page:429). I would have expected Paul Richardson to use ULHT's 'Voicing Your Concerns' policy that explicitly applies to whistle-blowing allegations; a policy that applies to all staff (page:565C).

141. In the early part of August, Mike Napier, Board Secretary completed an analysis of decisions and procedures that provided evidence of good effective governance (page:XXXX). The analysis demonstrated that on more than 50 occasions in the past year the Board had considered, debated and approved action regarding finance and performance aspects of the organisation. This had been overlooked by the Garland review. The draft report, which was not published, stated 'there is very little evidence from Trust board papers or board minutes of extended debate about performance or serious challenge of the executive team'. This statement is clearly at odds with the evidence provided by the Board Secretary.

142. On 7 August 2009, Neil Goodwin sent an email to all CEOs in East Midlands titled "Review of ULHT" (page:576C). David Nicholson had clearly stated that the review was about the SHA and how they responded to performance issues and "in particular the allegations of bullying and harassment [by ULHT]".

143. At the time I was concerned that Neil Goodwin had been asked to conduct the review given that he has the SHA as one of his clients and is also a former SHA Chief Executive. I was concerned that he could not be impartial or able to act without bias or a conflict of interest. I raised these concerns during the review in my statement to the Goodwin Inquiry.

144. On 16 August 2009, I emailed Connie Galati (my Executive Assistant) and Elaine Walsh (the Chairman's Executive Assistant) requesting that Paul Richardson approve the release of the following information to enable me to present to the Goodwin Review (page:577). I requested:

* All correspondence from the SHA to me between October 2006 and January 2009.

* A copy of the letter from Barbara Hakin to me dated 14 April 2009 and 24 May 2009
* A copy of all correspondence from David Bowles to me including the letter dated 26 February 2009

* A request that Richard Bailey contact me by phone as soon as possible to discuss the records held by the contract department

THE COMMENCEMENT OF THE DISCIPLINARY PROCESS BY ULHT

145. At some point in July or August 2009, ULHT received a complaint about me via the SHA (page:430). I was not aware of this email until 14 August 2010 (one year after ULHT received it) when I received a copy of ULHT's ET3 form. This email was first shown to me on 19 January 2011 (17 months after it was given to ULHT) and was not made available to me at any stage prior to this date. I am unclear as to how the email was sent from the SHA to ULHT.

146. On 20 August 2009, whilst still on certificated sick leave, I received a letter from Paul Richardson making reference to "a potentially serious matter" being brought to ULHT's attention and requesting I meet with him the next working day to discuss my working arrangements, including whether I could continue working while an investigation is undertaken. This letter was copied to a member of ULHT's external legal advisors, Bernard Chalk and Ros Edwards. It was also copied to David Grafton who had been appointed as ULHT's external human resources consultant. The letter was aggressive, received while I was on sick leave and exacerbated my health problems (page:578).

147. On 21 August 2009, I responded to Paul Richardson's letter outlining my concerns, as above, including the fact that the letter had been copied to inappropriate people. I also queried why I would not be allowed legal representation at the meeting given that it could impact on my career going forward. I requested specific details of the allegations then and on multiple occasions during the following four months until December 2009 (page:579).

148. On 22 August 2009, I received an email from Paul Richardson in which he expected me to meet him irrespective of the outcome of my appointment with my GP because he considered that the past four weeks should have eliminated any stress I had (page:581). I note this was subsequently copied to Ros Edwards and Bernard Chalk along with another person whose name has been redacted.

149. On 24 August 2009, I replied to Paul Richardson's email repeating the contents of my letter dated 21 August, asking for specifics of the allegations, and confirming that my
GP had signed me off work for 6 weeks and advised that I should not attend any meetings. I also repeated my request for legal representation.

150. On 25 August 2009, I was informed informally by Paul Ahmet, an interim project director at ULHT, that Bernard Chalk had already been made up to acting Chief Executive and his finance role was back-filled by an interim Director of Finance before I was asked to attend a meeting with Paul Richardson to discuss the allegations and before ULHT had any knowledge as to my expected return to work or medical prognosis. In my view Paul Richardson had already determined a course of action against me.

151. On 26 August 2009, I received a further letter from Paul Richardson within which he stated “the meeting proposed for Monday (i.e. 24 August 2009) has been somewhat superseded by events... Legal representation at such a meeting would have been inappropriate and unnecessary”. Once again, any further explanation was omitted. I was informed that I may not contact any employees of ULHT without prior consent and I was asked not to attend ULHT's premises unless I or my family required medical attention. I was given the number of an employee helpline. In effect I was put in the same position as a person suspended (page:583).

152. I responded the next day, 27 August 2009, asking for an explanation of the comment "superseded by events" and repeated my request for details regarding the allegations as requested in my letter of 21 August 2009. I confirmed that the meeting, at least in part, was to discuss the allegations against me. I also repeated a request for information to assist me in responding to the Goodwin review (page:584).

153. On 28 August 2009, Paul Richardson wrote to me stating it was his intention to hand the documents I had requested for the Goodwin review to me at the meeting on the previous Monday. These documents were not provided for a further 2 weeks (page:585).

154. On 10 September 2009, I received a letter from Ros Edwards asking that I contact the Occupational Health Service at Queens Medical Centre in Nottingham (page:586). About this time I also received a set of papers from ULHT hand delivered to my house. They contained only a few of the documents I had asked for.

155. On 14 September 2009, I met with Neil Goodwin and Susan Pyper who had been appointed to undertake a review of David Bowles and my allegations and I assume ULHT's non-executive directors allegations concerning the conduct of the SHA. I gave
the statement as at page:587 of the bundle. The meeting lasted 3-4 hours and was held in the same hotel Barbara Hakin met me in on 9 April 2009. This was the same venue that I had been told my career would be 'in tatters' unless I agreed to leave my post. Neil Goodwin apologised and said that the venue was suggested by the SHA. At the commencement of the interview, Neil Goodwin agreed to provide a copy of the minutes, in bullet point form.

156. On 15 September 2009, I emailed Neil Goodwin requesting a copy of the bullet point minutes, when they were available. He replied on the same day stating that there would be no notes and that it was an error on their part. I felt I had commenced an interview, in already difficult circumstances, now under false pretences (page:610).

157. On 17 September 2009, Paul Richardson wrote to me confirming that an appointment with Sheffield Northern General Hospital's Occupational Health Department had been arranged for me. He also confirmed that Bernard Chalk was now acting CEO and that Marilyn Smyth had been appointed to investigate the allegations of which I still had no specifics (page:315). Under the NHS Code of Conduct for Managers 2002, the investigator should be from another NHS organisation (page:061).

158. On 22 September 2009, I wrote to Paul Richardson explaining that I was still on sick leave with stress and that continuing not to explain to me what the allegations against me were adding to that stress. At that stage the stress was such that I was too unwell to drive the 116 mile round-trip to the occupational health service safely. I repeated my request to know the details of the allegations, their nature and who made them (page:618).

159. On 23 September 2009, Marilyn Smyth, ULHT's investigator, wrote to me explaining that she was investigating "a complaint from a former employee of alleged threatening behaviour in a meeting and a complaint from a union concerning behaviour in meetings generally". Marilyn Smyth requested to meet at a mutually convenient time and gave this to be 2 October 2009 at 12:30 or 1pm (page:619).

160. On 28 September 2009, Paul Richardson replied to my letter of 22 September explaining that it would be inappropriate to comment further since Marilyn Smyth had been appointed (page:620). It would normally be the case that investigations relating to Chief Executives and Directors would require the approval of the remuneration committee.
161. On 30 September 2009, I wrote to Marilyn Smyth stating that I was in dialogue with my medical advisers and would confirm my availability after 5 October 2009.

162. On 2 October 2009, my legal advisers, Ford and Warren, wrote to ULHT requesting on my behalf clarification about the nature of the complaint against me (page:625).

163. On 5 October 2009, I received a letter dated 1 October 2009 from Ros Edwards suggesting that I had cancelled a 'number' of appointments with Occupational Health. In fact, I had cancelled only one, for the reasons given above (page:624).

164. On 6 October 2009, I wrote to Marilyn Smyth with an update of my medical prognosis, which, as a result of ongoing stress, had resulted in increased medication and a further period of being signed-off work. I explained that I wanted to co-operate as far as possible and had discussed with my GP dealing with matters via written correspondence, which I offered to Marilyn Smyth (page:627).

165. I also wrote to Ros Edwards, requesting a second date for an Occupational Health appointment and updating her on my medical prognosis (page:628).

166. On 9 October 2009, I sent an email to Marilyn Smyth asking for details of the allegations against me and other evidence she held. Marilyn Smyth refused to provide either (page:623B).

167. Separate from these events, and as yet unexplained, in an email from the Chief Executive of the Appointment Commission to her staff, dated 12 October 2009, Andrea Sutcliffe discusses my position as someone claiming 'whistle-blowing privileges'. This matter was being discussed openly amongst officers in another organisation whom have no legitimate reason to be aware of my position. I do not know how or why such comments came to be made. I had not discussed them beyond Paul Richardson and David Nicholson to whom I made disclosures. The email also refers to various versions of a report and implies that the Chief Executive of the Appointments Commission would like not to refer to information that the organisation holds (page:633).

168. On 13 October 2009, Beachcroft responded on behalf of ULHT suggesting that the Goodwin review and the disciplinary action was unrelated, that I had been informed of the allegations against me, and denied that ULHT had allowed media speculation concerning my future. I dispute that I had any information relating to the allegations made about me and it was self evident ULHT had not rebutted or challenged any media story about my future, despite my requests.
169. The correspondence from Beachcroft included an undated letter signed by Carol Pilsbury in which she makes allegations relating to my use of foul language although no specifics are given (page:634). A second version of this letter received in December 2009, would include a handwritten date and other amendments.

170. On 23 October 2009, Ros Edwards wrote to me informing me that a new private occupational health service had been appointed and that I should contact them or ULHT may require me to attend an examination (page:647).

171. On 28 October 2009, Bernard Chalk, the interim CEO of ULHT emailed all employees (circa. 7,800 people) regarding the outcome of the Goodwin Review. The email states that I had made complaints about East Midlands SHA. This was the first time such information had been made public (page:686).

172. The findings of the Goodwin Review were announced in a press statement from David Nicholson attaching a summary of the findings. The full report was given to those directly involved but not published. In his statement David Nicholson states that the review found 'no evidence whatsoever of bullying and harassment' (page:685L). This phrase is not contained in the Goodwin report and is inconsistent with the findings of the review. For example, at para 15 of the Goodwin report it states that the reviewers frequently encountered 'differing accounts' of the nature of meetings between ULHT and the SHA. These meetings presumably referred to the occasions where I, and others, had described bullying and harassment (page:653).

173. Further, on receipt of the review, I made a list of the issues I had with the review. I considered the most serious to be:

i. The report did not mention ULHT restricted my access to information.

ii. At the commencement of the interview process with Neil Goodwin and Susan Piper I was informed that I would receive a copy of the bullet points recorded by them. Subsequently I was informed that no notes would be provided and that it had been a mistake on their part to offer notes. I undertook the meeting under false pretences.

iii. The report dismissed media speculation and suggested it was not the role of the NHS to correct inaccurate media coverage.

iv. The report did not report on the persistent requests over a six-month period by the SHA CEO for me to leave my post.
v. The report did not mention the document supplied by ULHT's former Director of Operations alleging bullying by Barbara Hakin.

vi. Para 20 of the report talks of a payment of £11m to reward ULHT for good performance. No mention is made that ULHT provided services for much of that £11m and in the previous years provided services that it was not paid for or that this amount was threatened with withdrawal for reporting 'Red Alert'. Para 20 demonstrates a superficial level of understanding and analysis of the situation.

vii. There is no reference to ULHT requesting a capacity review or the issues surrounding that which demonstrates ULHT was active in managing performance and the SHA was not active in managing the PCT.

viii. There is no mention that the Department of Health requested a review into the health system at a teleconference on 3 February 2009 and that this had still not been carried this out.

ix. Para 55 misleads the reader by not reporting the defamatory remarks made on radio and TV by John Brigstock and Barbara Hakin. These comments are contained within the transcripts and include an unfounded comparison of ULHT to Mid Staffordshire.

x. Para 58 is at odds with the SHA's own Board assessment earlier in the year. This is not reconciled in the report.

xi. Para 73 no mention is made of ULHT's turnaround with financial recovery achieved, 5 year break-even duty achieved, targets achieved, infections and waiting times cut in half: improvements made by ULHT Board since 2006.

xii. In para 74, the report's states that issues from an unrelated 2006 Department of Health report are entirely applicable here. This is highly misleading.

xiii. Para 77 ignored that my departure was discussed openly in a letter from Barbara Hakin, which was copied to her staff in an attempt to undermine and humiliate me (ACAS April 2009 definition of harassment) - (page:205A).
xiv. In response to a request from David Bowles to have sight of a draft of the report, David Bowles received an email from David Nicholson stating that the review would not be checked for ‘factual accuracy’ as the report relied on written evidence of bullying and harassment. In my view there was documentary evidence of bullying that was given to the review but not mentioned in the report. In addition, most of the bullying and harassment that occurred during this period was verbal.

xv. The review was about the conduct of the SHA. The report did not describe failings of any kind relating to the conduct or behaviour of the SHA. Instead the report criticized ULHT and the local Primary Care Trust leadership and called for a three-month review into the Boards of the PCT and ULHT by the SHA (page:1143). This was not part of the Terms of Reference. However, it demonstrates a high degree of SHA control over the employment of the executive directors, CEO, Chair and non-executives.

xvi. ULHT made no attempt to correct the accuracy of the report,

xvii. The report did not answer the question as to why it was appropriate for SHA chair to say different comments about David Bowles on BBC Radio than to the Appointments Commission.

xviii. The report did not explain why the SHA CEO stated that Gary Walker’s ‘job is on the line’ in the local paper but instead the reader is told this is a matter for the media.

xix. The report did not answer why the SHA CEO was ‘working with the new Chairman to determine if [my] future was tenable’ also stated in a local paper without any due process.

xx. The report made reference to many documents provided by the SHA that I had never seen. These were not provided during the review or with the report. I note that some were disclosed on 30 September 2011, three weeks before this hearing, and 2 years after the publication of the report.

174. I noted that although ULHT had met key targets from May 2009, from October ULHT began to miss most targets and continued to do so until the end of 2009/10 although it ended the year in surplus. I understand that in 2010/11, ULHT again missed its key targets and ended the year with a deficit of over £14m.
On 3 November 2009, Marilyn Smyth emailed me to confirm that a meeting was booked for us to meet. I replied to Marilyn Smyth confirming that I had been signed-off for a further month due to stress and depression. I requested again to know the allegations against me.

On 6 November 2009, Marilyn Smyth emailed a list of questions. No context was given and I was still unaware of the allegations against me.

It was not known to me until preparing this statement that Marilyn Smyth had advised Ros Edwards to provide the allegations to me (page:698). This advice is repeated on 13 November (page:704). I did not receive the allegations for a further 3 weeks and not until 3 December 2009.

On 13 November 2009, I submitted a form to Marilyn Smyth answering written questions she had put to me. I raised concerns that a number of matters raised in the questions had not been raised before, and that I had not been provided with any documents or supporting evidence save for the undated letter from Carol Pilsbury. I pointed out the style of questioning appears to suggest matters have been pre-judged and no context was given. These answers were later used in Marilyn Smyth's report as responses to 4 allegations. At the time of answering these questions I did not know what these allegations were (page:707).

On 16 November 2009, I attended the private Occupational Health Service in Nottinghamshire. Dr Quinlan, who was to assess me, had no referral documentation and discussed rescheduling the appointment. It had taken some effort to make the meeting and I was keen to continue. This was agreed. Someway through the assessment, referral documentation was emailed from ULHT (page:705).

Dr Quinlan's advice was that I was suffering from a 'functionally significant mental health disturbance' attributed to unresolved issues/circumstances in the workplace and I should obtain psychological support. Dr Quinlan added that "At this stage I did not feel Mr Walker is in a fit state to actively / productively engage with you, or line management and certainly not without an appropriate level of advocacy". Dr Quinlan said that my mental state was something to do with 'adjustment' and that once matters were resolved I would probably not require psychological support. I discussed this with my GP who agreed with the advice. Dr Quinlan stated he would be prepared to review this situation in 6-8 weeks.
181. On 25 November 2010, Beachcrofts wrote to Ford and Warren to explain that an investigation had been carried out and that I would be subject to a disciplinary hearing. However, if I were to accept three months pay and sign a compromise agreement, then matters would not be taken further. I was given 48 hours to decide. No response was made. Even though it was marked ‘without prejudice’ I mentioned it here as it later became public knowledge and reported in the media. The offer of any termination payment must be approved by ULHT’s remuneration committee and the SHA in accordance with guidance issued by the Department of Health in 2007 (page:214Z).

182. It is evidenced by the absence of any minutes from ULHT, that the remuneration committee was not consulted as it should have been (page:312A). It would also be normal practice to obtain advice from the SHA and is also a requirement as set out by the Department of Health (page:214Z). No evidence has been provided that any of these requirements were met.

183. On 3 December 2009, I received a letter from Paul Richardson (who would later became chair of the disciplinary panel) stating that the investigation into my alleged misconduct had been completed. Attached was a copy of the investigator’s report without any supporting evidence including no witness statements. I was asked not to copy it to anyone except my professional advisors. The letter described "...prima facie evidence of gross misconduct...". The allegations against me were described for the first time. I was informed that the hearing would be held on 23 December 2009 and that one possible outcome could be dismissal. Marilyn Smyth’s report was attached to the letter described how the allegations had been 'upheld' or 'partially upheld' by Marilyn Smyth (page:710).

184. Ros Edwards wrote to Dr Quinlan to inform him that serious allegations has been made about my conduct and asked Dr Quinlan ‘in light of his [earlier] report’ to reconsider whether I would be fit enough to attend a hearing (page:869).

185. On 15 December 2009, I received, via email, further details of the allegations against me in the form of a management statement of case and some of the statements from ULHT’s witnesses, along with the transcript of a meeting held on 21 April 2008 and Carol Pillsbury’s undated letter, which had been amended and was now dated. Apart from Carol Pillsbury’s letter and Marilyn Smyth’s report this was the first occasion I had seen these documents. There were also incomplete/missing witness statements. One statement was redacted with the name of the witness removed. The name of the witness was later disclosed following a CMD, on 14 February 2011.
186. I emailed Paul Richardson to inform him that I had made arrangements to see Dr Quinlan at his first available appointment on 21 December 2009, two days prior to the hearing. I explained that I did not feel in a correct mental state to attend a hearing and that documents provided so far appeared to omit statements and evidence. I also asked how I might make contact with any witnesses I required since I had previously been warned of consequences should I approach any ULHT employee or attend ULHT other than for medical reasons. I also requested funding for a psychotherapist that Dr Quinlan and my GP thought might offer me some support (page:872).

187. On 16 December 2009, Paul Richardson replied to my email. He confirmed ULHT would be willing to fund the psychotherapy appointments. He also stated that he would consider my ability to attend the hearing on 23 December 2009 after my appointment on 21 December 2009. He asked for a list of witnesses and what evidence that I believed they had that would support me (page:873).

188. On 17 December 2009, I emailed Paul Richardson in response to his letter the previous day. I again expressed my concern about my health. I asked for:

- The instructions to Marilyn Smyth;
- Copies of all statements taken during the course of the investigation which were not included in the disciplinary pack;
- Copies of all questions posed by Marilyn Smyth (or anyone else) to interviewees during the course of the investigation;
- All notes taken by Marilyn Smyth (and anyone else) during the course of the investigation;
- All internal notes, memos and correspondence between management in relation to the investigation; and
- All correspondence / notes of telephone calls between Marilyn Smyth (or anyone else) and all those approached for interviews.

189. I did not receive any of the above. I also requested:

- 9 of ULHT's 10 witnesses to attend the hearing so that I could question them with regard to their statements.
190. I explained that I considered the naming of my witnesses to be potentially prejudicial as they may feel under pressure not to criticise ULHT given the possibility that they could be victimised for providing supporting evidence. I asked for confirmation that they will not suffer a detriment in so doing (page:874).

191. Following the Occupational Health assessment on 21 December 2009, I wrote to Paul Richardson to confirm that Dr Quinlan had reviewed my condition and felt that I had sufficient cognitive awareness to understand the hearing providing appropriate advocacy was provided. I requested that given the proximity of this new advice to the hearing, the hearing should be postponed. I added that I still required the missing witness statements and confirmation that my witnesses would be protected (page:876).

192. On 22 December 2009 I received a letter from, Paul Richardson dated 21 December 2009. He refused to call any of the ULHT's witnesses stating that it would "not be appropriate to call them solely for the purposes of cross-examination". ULHT's disciplinary policy states, at paragraph 5.4.6: "witnesses may be called and cross-questioned". Paul Richardson offered a further opportunity to call my witnesses, and assured me that nobody would suffer reprisals. I was also offered the opportunity to present other documents along with an explanation of their relevance for the panel to consider. This was 1 day before the hearing (page:877).

193. On the same day, Paul Richardson emailed me to state that I was required to attend the hearing, that legal representation would not be permitted, as it would be 'inappropriate and disproportionate'. As previously stated, I did not agree with this. Paul Richardson suggested that I might be represented by an 'external person (not a lawyer)'. I was required to confirm my attendance by 4pm that day. I also received a text message from Elaine Walsh the Personal Assistant to the Director of Human Resources asking me to respond to this email by 4pm. I confirmed by e-mail (page:882).

HEARING (PART 1) - 23RD DECEMBER 2009

194. On 23 December 2009, I arrived at a local hotel on time at 11:00 and was met by David Grafton.

195. Paul Richardson introduced David Grafton, Marilyn Smyth, and the panel with himself as Chair, Tim Staniland, and Mike Cutts. The procedure Mr Richardson described
was that ULHT did not have a note taker so the meeting would be recorded to be transcribed later.

196. Paul Richardson set out the procedure of the hearing which would be for ULHT's investigator to present her case, for me to present my case, and both to be questioned by the panel and myself. Marilyn Smyth confirmed she would not be calling any witnesses. I explained that I would not be bringing witnesses or presenting a statement of case as I had not had enough time to write one. David Grafton, the Human Resources Adviser, informed me that this would be taken into account and asked Paul Richardson to proceed. I asked if I could raise a few procedural issues and other matters in relation to the hearing.

197. I explained that I wanted to engage with this process properly and thoroughly. I added that I had seen my GP that morning and been signed off work for two months with depression caused by the stress I had been under but that the drugs and therapy were making a difference. I had not slept for more than three hours a night for the past five months, with the exception of a few nights when taking prescribed sleeping tablets (page:887).

198. I stated: "As I am not allowed to have the witnesses I requested, I consider it fair that I am given the opportunity to get statements from them myself and potentially others as well. I have not had adequate time to do so whereas ULHT have had months to prepare the case against me and I wanted to know whether I would be granted the time to do that". I said that I believed some of these statements would completely clear me of these allegations: For example Mr Bowles’ statement would indicate the matter of my language has already been dealt with. I requested that the panel grant me the time to gather these statements.

199. Paul Richardson asked for advice and David Grafton questioned me regarding why those statements were not available today. I explained that one of those documents was sent that morning and I read out David Bowles’ email to me sent at 9.30 that morning (page:886).

200. David Grafton then asked me if I had any other statements. I explained I had not had time to gather them because up until two days previously, I had thought I would not be attending on the advice from ULHT's own Occupational Health Service. David Grafton continued to question me at some length as to why I had taken no action when I was informed of the case. I explained that my health had prevented me from doing so.
David Grafton explained that the panel would take note of this during the proceedings and their deliberations later that day.

201. I asked for the panel to confirm, as I had not been allowed to question witnesses or been able to obtain a suitable companion, what adjustments to the process had been made. Paul Richardson said that he understood that ULHT had offered to provide a companion. I explained that it was Paul Richardson that had made that offer the previous day. I explained that I felt the timing was not right and a person supplied by ULHT not at all appropriate.

202. I asked if I might be allowed to make my opening statement, which was all I could prepare in the time allowed, on the grounds that this also described my concerns regarding the constitution of the panel.

203. David Grafton suggested that the panel adjourn to discuss the matters I raised. During the adjournment, which was for about an hour, Marilyn Smyth remained present with the panel, which is a breach of ULHT’s own procedures for carrying out a disciplinary hearing, as at page 21 of those procedures.

204. The meeting reconvened at 12:30 and Paul Richardson asked that I raise any further issues of procedure. I explained that I had prepared a short statement but that this wasn’t my statement of case as I had not had sufficient time to prepare one. I read the statement as set out in (page:888).

205. In this statement and during the hearing I confirmed to Paul Richardson and the panel the issues in respect of bullying and harassment by ULHT and the SHA and that this was victimisation directly related to the previous allegations. I received no response or questioning about this (PD 1o).

206. In responding to my statement, David Grafton explained that it was for the management side, namely Marilyn Smyth, to decide what witnesses they wish to bring forward or not. He then confirmed that it was his understanding that Marilyn Smyth did not approach David Bowles, who had been my line manager from 9 October 2006 to 21 July 2009. David Grafton then suggested to the Chairman of the panel, Paul Richardson that he may wish to adjourn again. Tim Staniland stated that he had never been asked to resign. Marilyn Smyth confirmed she did not approach David Bowles ‘at all’. That in itself is surprising given David Bowles had been my line manager throughout the period relating to the allegations. It appeared to me that his evidence was highly relevant particularly given the nature of the allegations and potential
consequences for me. Paul Richardson then stated he was totally impartial and that our working relationship had been "for two and one half hours", and that he was "completely neutral in all this" and "always [had] been". David Grafton suggested a further adjournment, which was agreed to. After a further 20 minutes, with Marilyn Smyth again remaining in the room, the meeting was reconvened and then formally adjourned. On leaving the room Paul Richardson followed me and asked if I would like to stay for lunch which was on a trolley just outside the room. I said I didn’t think that would be appropriate and left.

207. I received by post on 30th December 2009, a letter (dated 24th December 2009) from Paul Richardson. It stated, amongst other matters, that I was wrong to have formed a view that until 21 December 2009, I was unable to attend a meeting with ULHT, based on Occupational Health Advice. The letter confirmed the members of the disciplinary panel would stay the same and be rescheduled for 1 February 2010 (page:903).

208. Also on 30th December 2009, I emailed Paul Richardson, to ask for a copy of the minutes as I felt his letter did not reflect the contents of the meeting. I also informed Paul Richardson that I had not received a reply regarding my therapy session costs and had cancelled an appointment on 23 December 2009 and had not booked further appointments until the matter was resolved (page:905).

209. Around this time, I contacted Phil Scarlett. I asked him if he had been involved in making the offer to terminate my contract. Phil Scarlett had been a member of the remuneration committee until his resignation. He confirmed that at no time had the remuneration committee been called or consulted. I would have expected the committee to have been called at the outset of any action and also to considered the offer of a termination payment. The Remuneration Committee must be consulted in these circumstances (page:214Z). ULHT were unable to provide any minutes of the Remuneration Committee meetings between August 2009 and February 2010.

210. On 2nd January 2010, Paul Richardson was reported in the local Echo newspaper in which he stated that he wanted me back to work and that he had the ‘full confidence that [I] had been doing a very good job’. He added that he ‘fully expect[ed me] back in 2010’. In the same report Paul Richardson stated that he had ‘the power to dismiss the chief executive but that no chairman would dismiss anyone without the backing of the board’ (page:1250).
211. I note from the Respondent's disclosure in January 2011 that, according to Ros Edwards in an email to Marilyn Smyth on 5 January 2010, David Grafton was now more confident about the management case (page:878).

212. On the 6th January 2010, I received 2 letters from ULHT. The letter from Paul Richardson confirmed that the minutes of the meeting held on 23rd December 2009 would be sent as soon as they were available, and that ULHT's decision to fund my counselling arrangements was under review. The letter from Ros Edwards regarding my counselling arrangements described disappointment that I had not used a counsellor recommended by the Occupational Health Service (RPS). Reluctantly ULHT agreed to fund eight sessions. RPS had suggested counsellors they knew but made no such preconditions and advised me to contact my GP (page:907/908).

213. On 7th January 2010, I sent an email to Paul Richardson. In the letter, I stated that the comments made in the Echo Newspaper were an attempt to discredit me in a public forum and I asked for an apology. I stated that the comments made to date by Paul Richardson had been contradictory. I then raised a new issue relating to Phil Scarlett, former Non-Executive Director (resigned in December 2009) who had made a public statement about ULHT's proposal to terminate my contract with three months notice, which I felt was a breach of confidentiality. I was approached by a local journalist at this time and asked to comment which I did not. I also explained that I did not consider Dr Quinlan's offer to put me in touch with a psychotherapist a requirement and that I had been referred by my GP. I also confirmed my GP's assessment of depression from the ongoing stress I was under (page:909).

214. On 12th January 2010, I received a letter from Paul Richardson reminding me to submit papers and a list of witnesses by 18 January 2010. This date was not agreed and was 1 week earlier than discussed at the first hearing (page:919).

215. The same day I emailed Paul Richardson asking for a substantive reply to the issues I raised in my email of 7th January 2010. I again requested a copy of the minutes of 23rd December 2009. I raised my concern that ULHT were now imposing new deadlines not discussed or agreed and outside ULHT's disciplinary procedure. I stated that I had been putting together a list of questions for the witnesses ULHT had refused to call or allow me to cross-examine. I asked how ULHT would handle such a request from me and an assurance that the witnesses would not be assisted in their response (page:920).
On 14th January 2010, I received a letter from Paul Richardson. He explained he had not breached confidentiality regarding the offer to terminate my contract. He stated that only two other people knew of such an offer. This was clearly not the case since this offer was discussed in the presence of 5 people at the hearing on 23rd December 2009. Paul Richardson confirmed the hearing on 23rd December was adjourned and that I would now not be provided with a transcript of the hearing or a copy of the recording and that there would be 'no further discussion on this point'. These notes were provided to me on 19 January 2011, which was a year after ULHT had refused to provide them (page:892). Paul Richardson confirmed that I would not have the opportunity to cross-examine witnesses because this was to protect my confidentiality and that each witness felt uncomfortable to the point of being intimidated by the prospect of giving evidence and of being cross-examined (page: 923). No evidence was provided, as to how this conclusion had been reached and knowing the people concerned it is unlikely to be the case for all, if any, of the witnesses. Paul Richardson also complained that I had not sought his approval for a period of leave between 15 and 21 January, during a period of certificated absence. I responded the following day to confirm my annual leave had been approved by the former Chairman on 11 July 2009 (page:924).

On 15th January 2010, I provided ULHT with a list of questions to be asked of the witnesses (page:925).

On 25th January 2010, I received from ULHT three documents: (1) A supplementary statement from Marilyn Smyth (page:941); (2) a supplementary statement from Ros Edwards (page:946) and (3) a copy of the Remuneration Committee Minutes of 17th June 2009.

The supplementary report of Marilyn Smyth was made in relation to the points I raised at the hearing on 23rd December 2009. I emailed this statement to David Bowles for his comments since it referred to statements he had allegedly made.


On 27th January 2010 I received a letter from Paul Richardson. He confirmed that Ros Edwards would circulate my questions that I had provided 2 weeks earlier, to witnesses and that one of the witnesses, Carol Pilbury, would now be attending. This was 2 working days before the hearing (page:976).
222. Also on 27th January 2010, I received an email from David Bowles as I had asked him to comment on the supplementary statements provided by Marilyn Smyth and Ros Edwards as both had referred to his actions. David Bowles raised a number of concerns about Ros Edwards. David Bowles also stated that he believed Marilyn Smyth had deliberately reported a matter of fact in her supplementary report that was not known to her and indeed was not fact. Marilyn Smyth described in her supplementary statement that David Bowles had confirmed that he had issued me with a verbal warning on 17 June 2009 which he had not in fact confirmed and in any case was untrue (page:967).

223. On 28th January 2010, I confirmed that I did not intend to call witnesses, as ULHT appeared to allow statements provided by Marilyn Smyth to stand without witnesses attending. I confirmed that legal representation, which I had requested, had been denied on numerous occasions. I considered my future career as a Chief Executive in the NHS was at risk if I were dismissed by ULHT and that it was entirely reasonable for me to be allowed legal representation. I also confirmed that I would provide witness statements for Hayley Jackson, Phil Scarlett, and Richard Lendon the following day (page:981).

224. On 29th January 2010, I provided an amended Statement of Case (page:947) in response to the supplementary evidence provided by ULHT, and supplied the three remaining witness statements (page:994-999).

225. Also on the 29th January 2010, I received a letter from Paul Richardson containing an index of the files ULHT had and informing me that a copy of the bundle would be available to me at the hearing. The letter also attached responses from six of the nine witnesses to my written questions (page:1000).

HEARING (PART 2) - 1 FEBRUARY 2010

226. On 1 February 2010, I attended the second part of the disciplinary hearing.

227. ULHT continued to refuse my request for a legal representative. I felt attending the hearing was against the 'appropriate advocate' advice received from ULHT's occupational health doctors. I was still quite unwell and found it difficult to concentrate whilst on strong medication. I had been promised a transcript of the previous hearing, verbally and in writing, but subsequently Paul Richardson refused to provide any record of that hearing. In those circumstances, I didn't feel I could trust them. I felt I needed to record the meeting to make notes later.
228. As it transpired the version of the minutes ULHT produced (page:1017) are significantly different from the actual events (page:1016A). ULHT’s version contains many inaccuracies. By manually comparing the two documents I noted that there were significant discrepancies. For example: there is no mention of the SHA or protected disclosures in ULHT’s version. I had previously issued a statement to ULHT regarding the proceedings and allegations against me as set out in (page: 947). In this statement, I confirmed bullying and harassment by ULHT and the SHA and that this was victimisation directly related to the previous allegations. This matter was raised on many occasions at the hearing. Additionally, I received no response or questioning about this at the hearing. I would have expected at least Tim Staniland or Mike Cutts to inquire what these protected disclosures were (PD 1p).

229. On arrival, David Grafton gave me a folder with documents I had not seen prior to the meeting including some of the responses to questions I had raised and a faxed witness statement from Adam Wolverson (page:1009C-H). I was given 10 minutes to read the contents of the pack of information, which comprised of over 300 pages. I was unable to verify what was included but I later noted that for example correspondence between myself and Paul Richardson requesting details of the investigation, and correspondence between David Bowles and Paul Richardson and Marilyn Smyth relating to the investigation was not included. I noted that 3 witnesses had not responded to my questions and that pages 13 to 32 of ULHT’s disciplinary policy was not provided. It had not been provided in either hearing or at any time. The missing sections included guidance on the disciplinary hearing (appendix D) and procedure for formal disciplinary hearings (appendix E).

230. Without explaining what the process was for the hearing, Paul Richardson immediately asked Marilyn Smyth to begin giving evidence at which point I asked if I was able to raise any issues that had arisen between the previous hearing and the current hearing. Paul Richardson agreed.

i. I explained that I had received from David Bowles a copy of the private minutes of the remuneration committee held on 17th June 2009 two days previously. These were accepted by the panel (page:328).

ii. I said that I understood that the Appointments Commission was investigating the appointment of the Chairman. The Chairman responded that he was not aware of the investigation and would proceed anyway.
iii. I raised concern that at the previous hearing on 23rd December, Marilyn Smyth had remained in the room with the panel during the two adjournments that had lasted 1 hour and 20 minutes in total. I considered that this was a significant breach of procedure and created an impression of bias within the panel. At this point Marilyn Smyth stated: "No hearing was undertaken". Paul Richardson followed with: "Exactly. I wanted to make the point that we didn't have a hearing" (page:1016C). Neither comment was recorded in ULHT's minutes of the hearing.

231. Marilyn Smyth presented her case. This was significantly at odds with the guidance in the disciplinary policy that it should be a "balanced view of the case". Marilyn Smyth summarised the aspects that furthered ULHT's case and the conclusions of her report. Indeed only one negative comment was made in her case: that Liz Murray did not confirm Viv Delafuente's version of events. In reality there were many aspects of her investigation that provided conflicting accounts. However, Marilyn Smyth chose not to mention them. Later in the hearing Marilyn Smyth attempted to justify her "upholding" and "partially-upholding" the allegations which she said was in order to defend her case. At no time did the panel or David Grafton challenge this approach or that Marilyn Smyth had moved from being an investigator to adopt the role of prosecutor.

232. Marilyn Smyth was asked about the status of my contract. She replied that "it is still an ongoing contract for now" (page:1016D).

233. One of the claims made by 'Witness 4' was that it had been reported to her by George Briggs that I had claimed to have taken a photograph of the Emergency Assessment Unit and shown it to George Briggs. I would frequently walk around facilities at the Trust and on one occasion I was stopped by nursing staff in EAU as they were concerned by instructions they had been given by George Briggs that they considered had put patients at risk. Sylvia Knight attended the EAU with me and was shocked by what she had found. This practice was stopped immediately. I asked for George Briggs to meet me later that day when I showed him the picture as at page 1254 of the bundle. It strikes me as odd that anyone could have confused this photocopy of the Maidstone and Tunbridge Wells report with anything else.

234. Carol Pilsbury was the only witness to give evidence. Marilyn Smyth's first question to Carol Pilsbury: "Was Gary's use of language for example, oh for fucks sake, typical of language you have heard Gary using previously". Carol Pilsbury responded with "no" (page 1016K). Carol Pilsbury stated that I swore once at a meeting on 18 June 2009 and that I had apologised on 15 July 2009.
235. Carol Pilsbury struggled to recall dates in her statement and suggested that the date, manually added at para 17 of her statement, was incorrect. Carol also claimed she had a different version of her statement. I was not given a copy of the other version.

236. There was an extended discussion on 'the sequence of events' and Carol Pilsbury changed her version of events several times adding new events that were not in her statement. I struggled to keep track of these at the time. Carol revealed that she had met and discussed her letter dated 'May 09' in which she complained about my language, with Paul Richardson. He had asked questions about it although the precise details of the discussion were not shared. Carol explained that she had manually backdated the letter. I assume this occurred sometime after 13th October since that is when I received a version without a date. Carol confirmed the date of the letter could have been June but wasn't sure. In Carol's statement she refers to the letter as dated "June 2009". Carol was pressured into re-reading her statement several times by Marilyn Smyth and David Grafton. It was a confusing discussion as evidenced by the transcript (page:1016X).

237. Carol Pilsbury then explained that she had received a call from a friend who works in Lincolnshire PCT in April 2009 who told her that she had been told that I had sworn in an Emergency Care Planning meeting; in other words third-hand hearsay. Carol could not confirm the date but stated that this had prompted her to write the letter now dated 'May 09'. I asked Carol for further information about the meeting. Carol responded: "What I said was very clearly in my statement is that a colleague informed me that a colleague of hers had attended the emergency care planning meeting and was very distressed about you swearing in that meeting" (page:1016C) Carol confirmed she believed there was a transcript. I asked for the transcript of this meeting. There was none. In the letter dated 'May 09', Carol Pilsbury accuses me of bringing ULHT into disrepute. Marilyn Smyth makes reference to this in her report.

238. Mike Cutts suggested that this meeting might be the April 2008 meeting previously referred to by Marilyn Smyth but Paul Richardson intervened and this question was not answered.

239. Carol Pilsbury stated that what 'had brought this all to a head' and prompted her to write the 'May 09' letter to Ros Edwards was because of the Stephen Boreham case. Carol explained that this was the case of a nurse at ULHT going through a disciplinary procedure for swearing at a patient among other allegations. Later, Tim Staniland asked Carol Pilsbury about the outcome of this case. Carol confirmed that no disciplinary action had been taken against Stephen Boreham.
240. Carol Pilsbury claimed that on 18 June 2009, whilst I was at a staff-side meeting, that I swore. When this was brought to my attention a month later by Ros Edwards I promptly apologised. Carol Pilsbury confirmed that I apologised on 15 July 2009 and stated that she felt: "It was a very good meeting. We got a lot of business discussed and a lot of agreements were made" (page:1016L).

241. Carol Pilsbury claimed that at a meeting on 22nd July 2009, attended by herself, Carol Brown, Adrian Morgan, Ros Edwards, David Bowles and myself, that I swore again. This was not raised with me at the time nor did I recall swearing. Carol Pilsbury stated at the hearing: "during that meeting Gary used the F word again because I can remember very clearly after he left the meeting instead of saying things like you know that went really well we just looked at each other and said I can’t believe he did it again" (page:1016L). I pointed out to Marilyn Smyth that Carol's statement was incorrect including that David Bowles could not have been at the meeting as Carol claimed simply because he had resigned and left the previous day. Marilyn Smyth stated: "yes that's fair enough comment" (page:1016AM). Again there was no apparent challenge by any of the panel as to the accuracy of witness evidence, and in the face of inaccuracies there was no concern expressed, questions asked or challenge about the motivation of witnesses. Indeed Paul Richardson said he did not follow why I was questioning the motivation of Carol Pilsbury (page:1016V). Given the many inaccuracies in her statement and lack of any evidence to support most claims I felt it was appropriate to explore her motives.

242. Ros Edwards made a statement but did not give evidence at the hearing. Ros claimed that Carol Pilsbury and Carol Brown, Regional Officer for UNISON, complained to her regarding my use of language at the meeting on 22nd July 2009. However, after I was dismissed and at the end of March 2010, I was contacted by Carol Brown who had been at the meeting on 22 July 2009. She informed me that she had not complained about me. She informed me, among other things, that it was ULHT that had approached her to make a complaint about me. It was clear to me that my concerns about the process had been well founded since ULHT had sought to solicit complaints about me.

243. Of equal concern was that Carol Brown obviously had highly relevant evidence that was known to ULHT but was not provided at the hearing. I had previously asked Paul Richardson for the names of the witnesses approached by ULHT but Carol Brown's name was never declared.
Further, the Respondent disclosed on 19 January 2011, that at least one further witness was approached (page:638). I was not aware of this and I do not know if there are any further witnesses that had relevant information known to ULHT but not disclosed to me.

In the letter I received notifying me of my dismissal, Paul Richardson explained that it was evidence provided in relation to the meeting on the 22nd July from which the panel had concluded that I had brought ULHT into disrepute. ULHT knew their evidence to be untrue at the time of their decision.

In the hearing, Carol Pilbsbury explained that whilst she did swear at work she "like most people" did not do so "at formal meetings" She said: "I'm not going to lie to you and tell you that I haven't sworn in the sluice when I have been having a really really bad shift but I've made sure that I positioned myself appropriately where I'm not actually technically in the workplace" (page:1016C).

I asked Carol Pilbsbury if she had ever had a complaint against her. She replied "no". I then drew her attention to a complaint that had been made by the RCN for which she had issued a public apology. I was not given a response and the panel did not challenge this (page:221).

Marilyn Smyth confirmed that she had in her possession the questions asked of witnesses (page:1016AC). I had previously asked for them. They were not given to me then and have not since been disclosed by the Respondent. I asked for these along with the terms of reference of the investigation and evidence gathering method on many occasions since August 2009. These have not been disclosed either.

Marilyn Smyth revealed that the alleged transcript of the hearing on 21 April 2008 had been provided to her by one of the management witnesses (page:1016O). I have requested the genuine signed and approved minutes of the meeting held on 21 April 2008. These were not provided at the hearing and have not been disclosed by ULHT.

The alleged transcript of the meeting on the 21st April 2008 was 20 months old when I was first given a copy. Aside from witness statements, it was the only document provided as evidence. Adam Wolverson was present at the meeting on 21 April 2008 but did not recall the use of language described in the transcript or that I had sworn at anyone then or that I had ever sworn at anyone in his presence. This was contrary to George Briggs account of that meeting. George Briggs also had claimed that he found the use of foul language shocking and disgusting. However, in my evidence and that of
Adam Wolverson it was revealed that George Briggs had attended a leaving party and that he had worn a t-shirt with my picture on it and the words “Fuck Off” and “Gary Wanker”, details of which I have already described. The panel made no comment on this (page:1016AK).

251. Following my disclosure regarding George Briggs, ULHT were unable to contact him again. I was informed at the hearing that the email had ‘bounced back’ and ULHT had no other contact details for him. I was informed that ULHT only had an email for George Briggs and that only email had been used to obtain his statement. The panel made no comment on this (page:1016F).

252. Marilyn Smyth and Paul Richardson were highly critical of David Bowles during the hearing. Marilyn Smyth also attacked Adam Wolverson attempting to discredit his evidence by stating that he made ‘incongruent’ statements (page:1016AW). Adam Wolverson had raised what I consider to be legitimate concerns regarding the interview he had with Marilyn Smyth. He felt he had been asked inappropriate questions such as whether I was having improper relationships with employees and what relationship his wife had with my partner. Adam Wolverson asked for his responses to these questions to be removed from his statement. However, reference was made to whether I was having improper relationships with employees in Liz Murray’s statement. The panel made no comment about Adam Wolverson’s complaint about the style of questioning or that he was asked improper questions.

253. The panel made no comment on the contradictory statements made by Marilyn Smyth’s witnesses.

254. In my written questions to Viv Delafuente I asked the question:

a. “Please explain in detail how and when you were contacted by Marilyn Smyth, the manner in which questions were put to you and the questions themselves.”. Viv Delafuente responded: “I was contacted by telephone by the HR dept at ULH and then a follow up call from Marilyn. I was asked to confirm my exit interview statement which I did. There were no questions put to me and I was not interviewed”.

255. As Viv Delafuente’s statement was dated 12 October, which was 2 months after the investigation had commenced and 2 weeks after Marilyn Smyth had been appointed I questioned whether Viv Delafuente had been interviewed by Marilyn Smyth. In response to this Marilyn Smyth said:
a. "I see in her responses to Gary that she said she wasn’t interviewed but what I think has happened here is I did a telephone interview with her. So what I think is the case is that she didn’t perceive it as an interview as it wasn’t face-to-face. I’m assuming. It’s a bit of an assumption on my part but I most definitely did speak to her...whereas for most of the witnesses I produced the statement and they confirmed all changed them as they chose. But I didn’t do that with her. She drew this statement but she did tell me about the fact that the language was incessant" (emphasis added) (page:1016K).

256. Marilyn Smyth had stated in her report, which she read out at the hearing, that Viv Delafuente had claimed that during a meeting between myself, Viv Delafuente and Liz Murray on 26 March 2009 that I had used the F word throughout the meeting and that it was a tirade of abuse (page:1016F). This was not contained in Viv Delafuente’s witness statement. David Grafton later highlighted this inconsistency between what Marilyn Smyth has said which she had read from her report, and Viv Delafuente’s statement (page:1016J).

257. Despite the discrepancy between Viv Delafuente’s own evidence and also the discrepancy between Marilyn Smyth’s report and Viv Delafuente’s evidence, the panel made no comment and asked no questions.

258. I asked Viv Delafuente several written questions. In her responses she contradicted many of the claims she had made in her original statement of 12 October. For example: Viv had claimed that I would put people on a "hit list". In answering my written questions she denied that I had ever referred to a 'hit list'. Additionally, Viv had claimed in her statement that Patricia McAdam, Ann Wood and Julie Pipes had witnessed her ‘personal situation in respect of bullying tactics employed at the Trust and GW behaviour’. However, in answers to my written questions she accepted this statement was not true (page:973).

259. Both George Briggs and Viv Delafuente had serious performance issues. I suggested that these would be found in their personal files. For example, George Briggs had a letter on his file (page:215) that ran to six pages listing his conduct and performance issues; Viv Delafuente had failed to deal with a grievance for over 8 months, had a complaint against her from Lisa Creed (who decided to resign as a result), and was struggling with most of her objectives. None of these appear to feature in ULHT’s investigation and Marilyn Smyth considered these irrelevant (page:1016AR)
Throughout the hearing Marilyn Smyth commented on my responses to the written questions she had asked during the investigation. My answers have been included in Marilyn Smyth’s report under ‘Responses from GW’. However, my answers were originally made not in response to the allegations in the report, but in response to a completely different set of questions in a completely different context. I stated this at the hearing. Marilyn Smyth did not respond but stated that she didn’t “want to get caught up in the semantics of it” (page:1016AM). The panel did not challenge this process or make any inquiry. I had not seen the allegations against me until 3 December 2009 and yet my answers, given on 13 November 2009, were now set against these allegations in Marilyn Smyth’s report.

Marilyn Smyth disclosed that it had been her decision not to call witnesses. She explained that they were all afraid (page:1016AY). Justification was given for 1 witness but not for the other 8. I understand that 2 had left the organisation; 2 were medical consultant’s. No attempt was made to verify their motivation for not wanting to attend. Further Marilyn Smyth redacted the evidence of one witness known as ‘witness 4’. I was not informed of who this was at any stage during the disciplinary process and have only discovered this following disclosure, as ordered by the employment tribunal.

In response to the written questions to ULHT’s witnesses the following answers were given to the question: **Is it not true that swearing occurs at all levels?**

<table>
<thead>
<tr>
<th>ULHT’s witness</th>
<th>Answer (emphasis added)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carol Pilsbury</td>
<td>Not in formal meetings</td>
</tr>
<tr>
<td>Ros Edwards</td>
<td>Not in formal meetings</td>
</tr>
<tr>
<td>Sheila Donaldson</td>
<td>Not in formal meetings</td>
</tr>
<tr>
<td>Lisa Vickers</td>
<td>Swearing does occur but not in formal meetings</td>
</tr>
<tr>
<td>Viv Delafuente</td>
<td>I do not know</td>
</tr>
<tr>
<td>Witness 4</td>
<td>No answer</td>
</tr>
<tr>
<td>George Briggs</td>
<td>Witness no longer contactable</td>
</tr>
<tr>
<td>Dr Adam Wolverson</td>
<td>[Yes]</td>
</tr>
<tr>
<td>Dr Liz Murray</td>
<td>I have heard many other people than Gary Walker swearing at work (more given in statement)</td>
</tr>
</tbody>
</table>
263. I refer the Tribunal to ULHT’s witness statements and answers to my supplementary questions at pages: 973-975, 977-980, 983-991, 1016.

264. ULHT and most of its witnesses all chose to distinguish swearing 'in formal meetings' from the general swearing that occurs at ULHT. This distinction is not mentioned in the disciplinary policy, dignity at work policy, or any related procedure or policy of ULHT. I raised that the answers to questions had been led (page:1016AY).

265. I read out the statements from my witnesses, which included two directors (both doctors), a non-executive director, a general manager and my executive assistant for the previous three years. All of the witnesses confirmed that swearing was normal in ULHT and felt my conduct was appropriate and that they had never seen me swear at anyone. The panel asked no questions in relation to these statements aside from the criticism that I have previously described.

266. I raised an issue with the panel regarding a statement that Marilyn Smyth made to the panel that she knew to be untrue. In Marilyn Smyth's supplementary statement she says: "Mr Bowles stated that he had issued Mr Walker with this warning on 17 June 2009 after a remuneration committee meeting on the same day". This was incorrect and Mr Bowles had made no such statement. Marilyn Smyth and David Grafton both claimed that this was an assumption and not an attempt to mislead the panel. David Grafton then later stated it was an error (1016AI). This is not recorded in ULHT's minutes but was again referred to as fact in the subsequent appeal hearing.

267. Towards the end of the hearing Marilyn Smyth attempted to justify her "upholding" or "partially-upholding" the allegations, which, as she claimed, was for her to be able to defend her case (page:1016AY). At no time did the panel or the HR adviser, David Grafton challenge this approach or that she had not provided a balanced view as required by ULHT's policies. Marilyn Smyth's view about this is not in ULHT's record of the hearing.

268. I was then asked to present my case and I went through my statement in full and read extracts of my witness statements. I would refer the Tribunal to my statement (page:947) and to corresponding witness statements (page:944, 994, 996, 998).

269. I also raised a number of other points, the most important of which are:

a. That I wrote to Paul Richardson with regard to ULHT's treatment of myself following protected disclosures relating to bullying and harassment by ULHT and
the SHA which referred to potential endangerment of health and safety of myself, patients and staff.

b. That Paul Richardson was present when I was threatened by Barbara Hakin of the SHA which included a threat to remove my accountable officer status.

c. That Tim Staniland was present at a meeting where the threat to my continued employment if I were to continue to complain about the SHA conduct towards me was discussed.

d. That I would describe my swearing if it does happen as situational due to the pressures of my role in particular the bullying and harassment from the SHA.

e. That ULHT had manufactured a case against me following issues of bullying and harassment by ULHT and the SHA being raised by me.

f. That I believed ULHT’s actions were as a direct result of the claims I had made against ULHT and the SHA.

g. That witnesses were guided in their response to written questions since most gave identical answers to a question that wasn't asked.

h. That Paul Richardson also swears whilst at work.

i. That Paul Richardson discussed my future in a local paper on 2 January 2010.

j. That David Bowles was not interviewed by Marilyn Smyth.

k. That ULHT’s own witness evidence contradicted ULHT’s other witness statements.

270. None of the comments I made about the SHA, protected disclosures, bullying or harassment by the SHA and ULHT, the comment that Paul Richardson also swears, or my comment that ULHT’s witnesses provided contradictory evidence has been recorded in ULHT’s minutes of the hearing.

271. In her summing up Marilyn Smyth presented her case as it is set out in the transcript (page:1016AY) as if all the issues raised in the hearing were irrelevant. Marilyn Smyth referred to the case of Horkuluk V Cantor Fitzgerald International and stated: "I believe the Horkuluk case is a prime example of the kind of management being used by Gary
Walker on a regular basis". I wasn't aware of the specifics of this case at the time nor did she give me a copy.

272. I concluded my evidence with the statement as set out at (page:1016AY). In my summing up I again referred to complaints about the SHA being the driver for ULHT's action against me. ULHT's minutes do not include this.

273. Tim Staniland confirmed that he had been at the meeting of non-executives on 28 April 2009, when the threats made by the SHA, and the position ULHT would take on patient safety, were discussed (page:1016AW).

274. Marilyn Smyth, ULHT's investigator together with David Grafton, HR adviser to the panel, asked almost all of the questions. The panel said very little that was directed at me and asked only a few questions each of me. I imagine that during the 5 hour hearing, Marilyn Smyth and David Grafton asked around 80-100 questions each and the panel asked a handful.

EVENTS POST DISCIPLINARY HEARINGS

275. On 3rd February 2010 a courier delivered the dismissal letter to my partner. The same day, an email was sent to all 7,800 employees that I had left. Recruitment for my replacement also began that day (page:1044).

276. The dismissal letter states that I was dismissed for the following reason:

"The panel considered that on the balance of probabilities [I] did use foul and abusive language at formal meetings and that this had the effect of significantly damaging the reputation of ULHT"

277. In my email of 12 February 2010 to Paul Richardson, I formally appealed against my dismissal. I would refer the Tribunal to that email for my grounds of appeal (page:1050).

278. On 16 February 2010, two letters were received which between them acknowledged my request, set the date of 24 March 2009, and stated the minutes would follow.

279. On 22 February 2010, I wrote to Paul Richardson requesting reimbursement of counselling fees and fees for an Open University course (page:1054). On 25 February 2010, I also wrote to Paul Richardson asking for a copy of my annual leave card and an explanation as to how my final salary was arrived at (page:1056). On 26 February
2010, Paul Richardson confirmed he had passed my request regarding my salary to Ros Edwards.

280. On 4 March 2010, Paul Richardson wrote to me to agree payment of the counselling fees and to refuse payment for course fees. The latter had been a previous agreement with my employer. I was asked to return all ULHT property (page:1059).

281. Also on 4 March 2010, I received another letter from Pau Richardson, setting out the appeal process, the panel members, the venue and time. Enclosed were a copy of the minutes and an extract of ULHT’s disciplinary procedure. I was told that this was not a retrial but a review of whether the decision was reached fairly and reasonably. Two out of the three panel members, Keith Darwin, chair of the panel and Nick Muntz were non-executive directors of ULHT and therefore directly accountable to Paul Richardson (page:1058).

282. On 12 March 2010, statements were exchanged.

**APPEAL HEARING**


284. I was asked to present my case. I referred to my Statement of Case (page: 1078) and stated that I did not wish to add anything at that stage.

285. Paul Richardson and David Grafton, ULHT’s HR Advisor, had authored the management case. It was presented to the panel entirely by David Grafton. I raised this at the hearing and was told that this was unusua but that this didn’t matter (page:1060).

286. I raised concern about several inaccuracies and bias created by ULHT’s minutes of the hearing held on 1 February 2011. For example ULHT’s minutes claims that Paul Richardson made various comments when in fact David Grafton had made them. David Grafton stated that I was incorrect. The transcript of the meeting demonstrates that I was correct. In addition, I raised concern regarding the words I actually spoke regarding Marilyn Smyth remaining in the room with the panel is not accurately recorded in the minutes. David Stone asked me if this materially affected the outcome. I said yes the words spoken and record present were materially different.

287. I presented my statement of case. I would refer the Tribunal to my statement (page:1078).
I made further comments that the language used in the management case (page: xxxx) was misleading:

i. Para 9 - Occupational Health had originally said I should not have any dealings with ULHT and this was supported by the GP. It was only a second meeting when ULHT instructed Occupational Health Service that changed this advice – given I was showing signs of improvement.

ii. Para 10 - The Hearing on 23 December 2009 was postponed at my request, after initially being denied a postponement at the hearing, but only after I gave evidence. Paul Richardson had claimed it was not a hearing. I stated it had been a hearing for 2.5 hours and that I gave evidence later used to strengthen the management case.

iii. Para 11 - No reference is made to case law or precedent set at ULHT for legal representation as discussed at the hearing. The request was for me to be represented by a lawyer. ULHT allowed this for other members of staff, but not for me, despite several requests.

iv. Mr Richardson's Stewardship of ULHT had been under investigation by the appointments commission.

v. Para 12 - The treatment of witnesses was not correctly explained to me, nor was the written responses to questions adequate. It was unclear as to the weight attached to this evidence. Witnesses responded in a way that suggests they were led or coerced. Witnesses did not reply to the questions I asked and gave identical answers such as 'in formal meetings'.

vi. Para 13 - This appears to suggest more weight is attached to Management witnesses than my own.

vii. Para 18 - David Bowles was not asked questions directly, and was not asked until 15 January 2010, many weeks after the management investigation concluded. I pointed out that a statement made to the hearing by Marilyn Smyth was knowingly untrue. I also commented that David Bowles had not been involved in the hearing.

viii. Para 21 - There was no mention of Carol Pilsbury's conflicting evidence. Such as a claim that I had sworn in the presence of David Bowles on 22
July 2010, when David Bowles had left ULHT the previous day, and therefore could not have been present

ix. Para 28 - The panel accepted this without hearing from all witnesses and having been privy to criticism of witness evidence i.e. Carol Pilsbury. The Panel did not comment on allegations that Paul Richardson (or any other senior staff) swears.

x. Para 60 - I did not choose not to be represented. I had no suitable choice.

xi. Para 64 – It was I that suggested written questions to management witnesses but it is claimed Marilyn Smyth proposed this when the reverse is the case.

xii. Para 65 - The language used by Marilyn Smyth indicated pre-judgment in her investigation report. I stated that for example, Marilyn Smyth ‘upheld’ the allegations, failed to contact my line manager until 15 January 2010, following my evidence on 23 December 2009. Marilyn Smyth also was selective in her interpretation of the evidence provided, and criticised in her interrogation-like behaviour by one witness.

xiii. The Panel do not appear to have definitively found exactly when bad language was used.

289. The responses for the each issue were a denial of each point or that it did not matter. I refer the Tribunal to ULHT’s transcript of the hearing (page:1089).

290. I was allowed closing comments. I stated that the Appeal Panel had not been given the true facts of the case and were being misled as a result. Given the errors in process and inaccuracies in the account of the hearing, the hearing on 1 February 2010 had reached an unreasonable view that swearing in meetings can lead people to consider swearing was directed at them. Witness evidence was not conclusive. I failed to see how the panel could reach any other verdict than to uphold my appeal. I stated that ULHT had only instigated the action because of the protected disclosures I had made against it and the SHA.

291. The panel also raised a number of inaccuracies in the management case.
292. The Appeal Panel did not uphold my appeal. The panel failed to recognise failures in the investigation process, the contradictory witness evidence between the management witnesses or the significant breach of trust policies. The panel gave no reason for their decision. They simply stated (page:1098):

"My colleagues and I have considered the points made by both you and ULHT representatives in connection with your recent dismissal. The conclusion we have reached is that your appeal cannot be upheld."

293. Minutes of the appeal hearing were first supplied to me on 19 January 2011, some 10 months after the event.

**FOI REQUEST**

294. On 28 October 2010 I received a letter from EMSHA in response to my FOI request (page:1128). The letter states that there was no communication between the SHA and Paul Richardson prior to 3rd February 2010. I consider that given previous experience that would be unlikely. The SHA should have at the very least: approved the disciplinary action, approved the appointment of the external adviser and investigator, approved the offer of payment and compromise agreement, and had regular contact with ULHTs Chair. Further, given ULHT began to fail targets from October 2009 onwards; it seems improbable that there was no communication with ULHT’s chairman at all. A new version of the Garland Report was attached. It did not accord with the version I had seen in July 2009 and I understand it neither version has been published or discussed by ULHT’s Board. Given it was used in an attempt to remove a chairman with immediate effect I find that situation inexplicable. The two-page report had no analysis or supporting evidence.

**REFUSAL TO PAY ANNUAL LEAVE**

295. ULHT continued for three months to refuse to accept there was any amount owing in respect of annual leave. After submission of the ET1 form indicating that payment was disputed ULHT agreed to make payment at the end of May 2010 for just under £8,901.76 (net). No further amounts in respect of annual leave are therefore claimed.

**LACK OF DISCLOSURE BY ULHT**

296. Following a review of disclosure it is concerning that documents easily discoverable at the respondent were not disclosed by them. For example: emails between myself and ULHT's investigator and advice from Ros Edwards to David Bowles in July 2009. This
followed a lengthy period where the respondent refused to disclose over 90 documents on the basis they were not relevant. On review by the Employment Tribunal Judge he found these documents be relevant and ordered their disclosure. The failure to disclose concerned me and continues to concern me.

**CARE QUALITY COMMISSION (CQC)**

297. Whilst campaigning to become the MP for Lincoln, I was informed of a number of concerns. On 29 April 2010, I passed on those concerns to the CQC (page:1105). On 28 August 2010 the CQC published its report (page:1923). My MP wrote to the CQC asking why the CQC had not approached me or any of those who had raised the original concerns. My MP was unable to get a satisfactory response from the CQC or DH. Following another visit by the CQC a few months later a further announcement was made by them in which they gave ULHT a formal warning in March 2011 (page:1511).

298. On 14 September 2011, the Health Select Committee published a report that criticised CQC inspections generally and also called for a ‘cultural change’ in the NHS to encourage whistleblowers and that “it is their employers responsibility to take [whistle-blowers] seriously and support them as improvers of service”.

**DISCLOSURE BY THE RESPONDENT ON 30 SEPTEMBER 2011**

299. On 30 September 2011, the Respondent disclosed a further 118 pages of information. Within this disclosure was a selection of file notes held by Barbara Hakin relating to the period 2007-2009. These do not reflect all the meetings between ULHT and Barbara Hakin such as the file note of 12 February 2008, which was not disclosed. I note that these documents formed part of a number of documents provided to the Goodwin Review in 2009. Other documents provided to the Goodwin Review have not been disclosed. I requested all of these documents under the FOI Act from the SHA in October 2010. The SHA refused to provide them.

300. Of those now provided, many are an inaccurate account of discussions and contradictory in nature. For example:

   i. The file note dated 4 April 2007 (page xxxx) proposed that the SHA would provide support from Jane Meggitt, Catherine Elcoat and David Walker. No such support was received at any time from these individuals.

70 of 74
ii. A file note dated 13 February 2008 (page xxxx) records that Barbara Hakin suggests that I am not able to run ULHT 'in the longer term'. However, a few months later, Barbara Hakin puts arrangements in place for me to become permanent. When I instead ask for my contract to be extended Barbara Hakin approved my contract extension for a period in excess of 2 years to September 2010.

iii. A file note dated 11 November 2008 (page xxxx) records no issues with ULHT.

iv. A file note dated 3 March 2009 (page xxxx) confirms Barbara Hakin's view that 'irrespective of the PCT's ability to manage demand', ULHT simply had to cope with emergency demand and hit 18 week targets. This is inconsistent with national guidance on "the Code" and the NHS Contract. Further the file note confirms that Barbara Hakin reminded me about previous discussions. I recall that these were about my future if I did not hit the targets regardless of my concerns about patient safety. Many of the comments noted by Barbara Hakin were not stated. However, I note that the SHA stated it was 'very difficult to get to the bottom of the performance issues'.

v. A file note dated 6 May 2009 (page xxxx) again suggests that I did not have the skills to take ULHT to FT status, despite Barbara Hakin approving my contract to September 2010, which was just before the date of the FT application. The note also states that Barbara Hakin discussed 'career options' with me. The note inaccurately records other matters. For example Barbara Hakin agreed to my proposal that I should remain in the role following Richard Child's letter of 28 April 2009. I confirmed this in my letter of 28 May 2009.

vi. A file note dated 21 July 2009 (page xxxx) is inaccurate. Barbara Hakin states that I had suggested telling David Bowles he had been suspended. If that was the case then why did Barbara Hakin specifically ask for me to be called from ULHT's board meeting and not David Bowles. Rather it was the case that Barbara Hakin suggested I ask David Bowles to contact the Appointments Commission. Barbara Hakin then called back within 30 minutes and instructed me to inform David Bowles as I have previously described.
Within these late disclosures is a typed note that appears to be from John Brigstock in preparation for his meeting with David Bowles on 30 April 2009. There are several issues with the note the most important of which are:

i. John Brigstock confirms that I had raised safety concerns with Barbara Hakin.

ii. The issue of Standardised Mortality Ratios (SMRs) is mentioned later in the note. ULHT’s work in this area had already resulted in the conclusion that there were no issues. ULHT’s review was independently confirmed by Verita, a specialist in conducting independent investigations and reviews. In any case the SHA found no issues regarding SMRs.

iii. John Brigstock states: “If [Gary Walker] is so good, whose fault is it” confirming that the SHA were seeking to blame someone.

iv. The note states ULHT should ‘open extra wards’ and that ‘most trusts would be delighted’. John Brigstock seems to be unaware that all beds had been open for months as noted in the presentation to the Department of Health in February 2009 (page: 232) but also recorded in situation reports called ‘sitreps’ provided to the SHA on a daily basis.

v. John Brigstock suggests ULHT creates an impression of ‘isolationism’ and there had been ‘no real dialogue with the SHA’. These comments are at odds with the substantial evidence I have already provided. Indeed I was not the only officer of ULHT to have met and discussed matters with the SHA. Other officers of ULHT, including all 5 executive directors, had a regular dialogue with their counterparts at the SHA.

vi. John Brigstock appears to blame ULHT for signing the contract with the PCT. He appears unaware that ULHT’s contract was significantly over-performing. The significant over-performance of the contract in a Trust that had opened every bed and was running at 98-99% occupancy should have been a concern to the SHA. The statement "no let out clause against demand” is also mentioned. As previously stated this in inconsistent with “the code” and NHS contract.

CONCLUSION
302. I have found this whole episode incredibly difficult and this has resulted in huge pressures being put on both myself and my family. During the period I was on sick leave from ULHT and up until August 2010 my GP has prescribed various medications.

303. For four months during this process, I was completely in the dark as to my future career with ULHT and what, if any, allegations were being made about me. As outlined above, despite repeated requests, further details were not provided despite my former employees and others being made aware of the fact that allegations have been made.

304. In the absence of these unfounded and unproved allegations there is no possibility that dismissal would have resulted.

305. I expected to continue to work in the NHS, in my chosen career and profession, for the next 25 years as I had for the previous 22 years. In 2007, I had relocated to Lincolnshire. In 2008, my contract had been extended to 4 years and I fully expected to renew my contract given the view of the Board and the process already begun to achieve Foundation Trust status which required the stability of the executive team particularly the continuity of the Chief Executive. I wanted to stay and spent much of 2009 trying to resolve the safety and performance issues across the NHS system despite the negative actions of the SHA and PCT. I had also turned down other roles.

306. For the reasons previously stated prior to and during the hearing I considered that the process had been completely unfair, designed for only one purpose, to remove me for raising concerns about patient safety and the conduct of the East Midlands SHA Chief Executive.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are accurate and true.

Signed: ........................................

Dated:......3 October 2011.......
Source: Developing the NHS Performance Regime, Department of Health, NHS Finance: Performance & Operations, Publication date 4 June 2008