

Telephone Note Out

Matter No: INP - I&S - Ian Pace
Client: Countess of Chester Hospital NHS Foundation Trust
Matter: Advice regarding neonatal unit
Lawyer: Ian Pace
Date: 25 January 2017
Subject: Telephone out to client re regarding announcement and 1
LL return to work (Sue Hodgkinson)

Call out to Sue Hodgkinson. I spoke to Sue regarding the announcement which she sent to me relating to Lucy Letby. I explained that my view was that the announcement was potentially too wide and inflammatory and suggested some amendments to be made to it. I sent her through a draft copy which I appreciated there may need to be a hybrid between the version that she had suggested from mine as well as any comments that Sue had. Sue reviewed the announcement whilst she was on the phone and said that she agreed with it in principle but said that a couple of things would need to be tweaked in particular in relation to the nature of the investigation which had been completed and also whether the colleagues had been made aware of the outcome of the investigation or whether they will be.

We discussed the next steps and she said the board meeting is due to be held tomorrow to discuss the reintegration of LL to the neonatal unit. She said that the BMA rep is going to be attending the meeting because of the concerns that have been raised by the clinician. The clinicians still raised various complaints and the issue for the Trust is the manner in which they raised the complaint. They consider this to be a failure to follow reasonable management instructions specifically the continued comments they make. I explained that there was a potential risk in respect of the clinicians because they would allege that the comments or concerns that are raised were protected disclosures and if they are subjected to a detriment and/or are constructively dismissed as result it is likely to refer to these as being protected disclosures because they relate to patient safety. We need to distinguish between the concerns that have been raised and if we are going to take any further action against them if they continue to exclude LL from the unit. This is likely to be a challenge. Sue agreed and said that this is the reason why the BMA representative is going to be allowed to attend the meeting and explained that the board minutes should be reflective of comments that the Trust would like the tribunal to see if the matter proceeded to a tribunal hearing. The Trust should explain that it was prepared to listen to any concerns raised in respect of patient safety and Sue agreed that she would be able to support this by the fact that the three investigations have been raised and considered and each have concluded that LL has played no part.

I said that this evidence is also likely to be helpful if, worst-case scenario, LL is found to have had some form of involvement in the future. Applying the Daily Mail test, I explained that we could justify the reasons why she was allowed to return to the ward with supervision on the basis of the findings reached in the investigation.

We discussed the potential live claim that still exists with LL and said that the announcement would go some way to this. In particular, LL still is a potential for her to raise a constructive unfair dismissal