

**REPORT IN TO COMPLAINTS RAISED
BY MR GREEN
AGAINST
MR BLUE, MR YELLOW & MISS SCARLETT**

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EXECUTIVE SUMMARY

- 1 This is a complaint made by Mr Green. Mr Green's complaint revolves around a surgical procedure carried out by Mr Blue in March 2012. Mr Green alleges that Mr Blue removed the patient's ovaries without consent. Mr Green then alleges that following requests for Mr Blue's actions to be investigated Mr Yellow and Miss Scarlett produced reports which covered up for Mr Blue. Mr Green also claimed that the accused attempted to have him removed from his role as College Tutor.
- 2 In describing his complaint Mr Green claims that he was subjected to discrimination on the grounds of his religion. Mr Green states that he is a Muslim.
- 3 Based upon the evidence that is reasonably available there is insufficient evidence to sustain a reasonable belief:
 - 3.1 That Mr Blue removed the patient's ovaries without consent;
 - 3.2 That either Mr Yellow or Miss Scarlett covered up the alleged removal of ovaries without consent;
 - 3.3 That the accused attempted to have Mr Green removed from his position as College Tutor because of his religion or for an improper reason.

INTRODUCTION

- 4 Vista has been instructed by the Trust to conduct an independent investigation into a grievance raised by Mr Green, Consultant Gynaecologist. The subjects of Mr Green's complaint are Mr Blue, Mr Yellow and Miss Scarlett.
- 5 According to the terms of reference I am required to establish the circumstances surrounding Mr Green's complaint. I therefore undertook an evidence based investigation into the facts of the case to determine whether in the light of those findings of fact any of the accused has a case to answer in line with the Trust's Dignity at Work Policy. In order for there to be a case to answer in respect of the allegations made by Mr Green against the accused, there needs to be sufficient evidence upon which to sustain a reasonable belief that the alleged conduct occurred and that such conduct is prohibited under the Trust's Dignity at Work Policy. Given that Mr Green's allegations also suggest serious wrongdoing on the part of the accused (i.e. irrespective of discriminatory behaviour) I have also had regards to the Disciplinary Policy.
- 6 I understand that in the event that I do make a finding that there is a case to answer, then further internal proceedings (such as disciplinary proceedings) may take place and that this report may be used in such proceedings.
- 7 Mr Green submitted the following documents which relate to this complaint:
- 29.11.12 Formal complaint about Mr Blue's clinical practice **[Appendix 1]**
 - 29.11.12 Formal complaint about Mr Yellow's clinical practice and probity **[Appendix 2]**
 - 06.03.12 Amendment to grievance against Mr Blue of bullying harassment and victimisation **[Appendix 3]**
 - 23.05.13 Claim of discrimination on basis of my religion against Miss Scarlett Chief of Maternity at the Trust **[Appendix 4].**

8 The documents above appear in a redacted form in the appendices because they also contain information which is specific to the individual accused but not relevant to this particular complaint.

9 In order to prepare this report I conducted a number of interviews. The record of each interview is appended to this report. The interview records appear in redacted form because they also contain information which is specific to the individual accused but not relevant to this particular complaint. The interviewees were:

Mr Blue	Accused [Appendix 5]
Mr Yellow	Accused [Appendix 6]
Miss Scarlett	Accused [Appendix 7]
Mr Pink	Chief of Surgery [Appendix 8]
Mr Orange	Director of Medical Education [Appendix 9]

10 I did not interview Mr Green the Complainant. I am required to deliver this report notwithstanding that I have not taken Mr Green's evidence. The Trust informs me that Mr Green refused to meet with me because of a series of procedural objections; that each of those objections was determined; that inordinate delay was occasioned by that series of objections; and that it was in the interests of the accused to conclude the report given the rights of the accused and finality of due process. This investigation commenced in November 2013 and the report is being delivered on 4th July 2014. Whilst I recognise that not having had the benefit of interviewing the Complainant may affect the weight attached to this report I have taken care to set out his concerns as he expresses them; attempted to carefully analyse upon what basis he makes them; and I have been careful to take his concerns at face value as his genuine belief, but subjecting them to a proper scrutiny based upon the evidence reasonably available to me.

11 During the course of the investigation I was also provided with additional documents referred to by some of the interviewees by way of support for some of

- the oral evidence given. I also append those documents to this report and have referred to those documents where appropriate.
- 12 Throughout this investigation and in drawing up this report I have been mindful of the legal context. Mr Green complains of discrimination because of his religion. That is a complaint of direct religious discrimination. In order to find that such a complaint is well founded it would be necessary to establish that the treatment complained of is less favourable than it was or would have been for a person of a different religion in the same or similar circumstances. Religion has to be established as the reason why that less favourable treatment has occurred (although it does not have to be the only reason but one of the causative factors). I am also mindful that it is rare to find direct evidence of discrimination and that ultimately in determining such complaints the approach is to draw inferences from the available evidence.
- 13 This report and the recommendations take account of the oral evidence given, documents received and my experience/knowledge of advising on matters such as these. Save for findings on clinical issues, the findings in this report are my own and reached independently and impartially. In respect of findings on clinical issues I have been assisted by Mr Brown, Consultant Obstetrician and Gynaecologist. The Trust appointed Mr Brown following a request from me for such assistance and in response to a request from Mr Green for an external clinical investigator to be appointed. Mr Brown is not and never has been in the employment of the Trust.

EVIDENCE & FINDINGS

THE OVARIES CASE

14 Mr Green is a consultant in the Obstetrics and Gynaecological Department. At the time that the matters relevant to this complaint unfolded he was based at Site A. Mr Blue, Mr Yellow and Miss Scarlett are colleagues of Mr Green and are consultants working in the same department.

15 On Friday 30th March 2012 Mr Blue, Consultant Obstetrician and Gynaecologist, conducted surgery on a patient, AS, to remove her uterus. During the course of that surgery Mr Blue removed the patient's ovaries.

16 On 1st August 2012 Mr Green wrote to Mr Yellow requesting that he review that case [**Appendix 10**]. Mr Green's letter read:

It came to my attention that [AS] was admitted for total abdominal hysterectomy for fibroid uterus, twenty two weeks size. She had a consent form for total abdominal hysterectomy only and during the procedure she had bilateral salpingo-oophorectomy depriving her of her ovaries for the rest of her life without consent. I would like to know what is the opinion of the clinical governance in this matter.

17 On 6th August 2012 Mr Yellow, Consultant Obstetrician and Gynaecologist, wrote to Mr Green in response [**Appendix 11**]. Mr Yellow is also the Lead for Gynaecology Risk. Mr Yellow copied his report to Mr Blue and to Miss Scarlett in her capacity as Deputy Chief for Safety for Women. In that report Mr Yellow stated that he had reviewed the medical records and discussed the case with Mr Blue in order to prepare his report. Having reviewed the medical records Mr Yellow noted that the patient had been under the care of Mr Blue since 29th July 2002; that Mr Blue had obtained written consent on three occasions for total abdominal hysterectomy; that Mr Blue discovered a large vascular and solid left ovarian tumour; that because of the risk of ovarian cancer Mr Blue carried out the bilateral salpingo-oophorectomy at the same time.

18 Mr Yellow went on to state in his report in the penultimate paragraph of page 1 that it was recorded in the patient notes that:

you [Mr Green] saw her on your ward round on 31.3.12, one day after surgery, the patient stated, and I quote the medical records, "**if there was any doubt towards diagnosis during procedure she had told Mr Blue to remove the concern**" (my emphasis)

- 19 Mr Yellow also stated that the patient notes recorded that Mr Blue had seen the patient on 31st March 2012 at which time he explained the decision to perform the removal of the ovaries. Mr Yellow then stated his opinion at page 2 paragraph 1:

Therefore this patient had a total abdominal hysterectomy and bilateral salpingo-oophorectomy in keeping with the fully informed consent that she gave, and is consistent with the consent forms that she signed on three occasions.

- 20 The next phase in this case began with Mr Pink writing to Miss Scarlett on 29th August 2012 [**Appendix 12**]. He wrote:

I would be most grateful if you could feed back to me on the case of AS. Correspondence relating to the review of her case and the question of appropriateness of consent have hit my desk and I think it is absolutely essential that we are confident that the investigation undertaken has been robust and fair. I say this particularly in the context of the backlash received by Mr White and Mr Green over a recent consent issue and I am really just wanting to be confident that you were sure that everything has been done appropriately.

Would you please drop me a note when you have had a chance to review this case.

- 21 Miss Scarlett then reviewed the AS case and reported on the 11th October 2012 [**Appendix 13**]. Miss Scarlett stated that she had reviewed the case notes and discussed the case with Mr Blue as the clinician involved. In paragraphs 3 and 4 she wrote:

In March this year, the above patient was under the care of Mr Blue for symptoms related to a large fibroid uterus (22 weeks size) diagnosed clinically and on ultrasound. A total abdominal hysterectomy following GnRH analogues was planned. At the time of the surgery a large ovarian mass with features suggestive of possible malignancy was found and a bilateral salpingo-oophorectomy and omental biopsy were performed in addition to the total abdominal hysterectomy.

It is my opinion this was a reasonable line of action to take and in line with the terms of consent. However, I acknowledge that there is a spectrum of actions that could have been taken.

- 22 It is apparent from a letter dated 18th December 2012 that Mr Green was not satisfied with Miss Scarlett's review or the conclusions that she reached. That is stated in the letter that Miss Scarlett sent to Mr Green on 18th December 2012 **[Appendix 14]**. In this letter Miss Scarlett stated "*I have not changed my opinion regarding the outcome of the investigation and I do not think that an additional review is appropriate or necessary*".

MR GREEN'S COMPLAINT DOCUMENTS

- 23 On 29th November 2012 Mr Green had submitted written complaints against Mr Blue and Mr Yellow. The complaints were addressed to Mr Black, Medical Director.

24 Mr Green's complaint about Mr Blue read **[Appendix 1]**:

I am writing explaining my serious concern about Mr Blue and Mr Yellow clinical practice as you may see from the attached documents, I raised this serious concern about the substandard care involved the management of [AS], in August 2012. The assault involved removal of an organ without consent either verbal or written. Mr Blue had removed the ovaries of 42 years woman without her consent. I raised my concern with Mr Yellow who obviously abused his position as gynaecology risk lead and tried to cover up instead of putting the patient as his priority.

I wrote to Miss Scarlett explaining the serial of serious substandard care involved in this assault and asking for independent investigator for transparency, fairness and protect patients from such irresponsible behaviour in the future but unfortunately the case has not been appropriately investigated up till now and I am waiting for you to achieve fairness and transparency and protect other patients from such behaviour.

25 Mr Green's complaint against Mr Yellow read **[Appendix 2]**:

Mr Yellow abused his position in the Trust as gynaecology risk lead which involves investigating the gynaecology incident forms and breached the patient's confidentiality by disclosure the information of the incidents involving my name to Mr Blue to create personal attack on me inside and outside the Trust.

I raised my concern with Mr Yellow about the assault involved removal of an organ without consent either verbal or written as Mr Blue had removed the ovaries of 42 years woman without her consent. Mr Yellow abused his position as gynaecology risk lead and tried to cover up instead of putting the patient as his priority.

26 Mr Green's complaint on this matter against Miss Scarlett is set out in the document entitled "Claim of Discrimination on the basis of my religion against Miss Scarlett". The core of Mr Green's complaint appears at page 2 paragraph 3. Mr Green alleged that Miss Scarlett was "quite dismissive to serious genuine clinical allegations which were submitted by me against Mr Blue in August

2012....she insisted to cover up on him (No wonder, he is non-Muslim)
[Appendix 4, page 2, para 3]

- 27 Connected with his allegations about the absence of consent for removal of the ovaries is Mr Green's concern that Mr Yellow unfairly raised one of his cases at a monthly departmental meeting and that Miss Scarlett did not take the ovaries case to the departmental meeting. In his 23rd May 2013 document he says **[Appendix 4 page 2/3 and page 4 final para]:**

Mr Yellow has taken previously a case I have done with second opinion from Dr White (the most senior consultant at the Trust) to the monthly department meeting without investigating the case and without approaching either me or Dr White. His malicious aim was to take a consensus that this case was done without consent.

This was quite upsetting to Dr White who contacted the Royal College Obstetricians & Gynaecologists and received a letter from the College explaining that they feel that she has done the right thing for the patient as she has not removed an organ without consent but it was only repair of different vaginal compartment posterior and vault instead of anterior.

Miss Scarlett and Mr Yellow were very welcoming and encouraging everyone to discuss such cases in this forum?? This was despite her completely different opinion in the previous paragraph about the physical assault on the patient by removing her ovaries without consent. This was simply because she was covering on Mr Blue.

THE ACCUSED'S ORAL EVIDENCE

MR BLUE

- 28 Mr Blue gave me a history of the removal of ovaries case referred to in Mr Green's complaint. Mr Blue recalled that the patient had been under his care for 8 years. Mr Blue and the patient had a good relationship, with a strong bond and good understanding. She had a large fibroid uterus. The patient had not wanted surgery. The patient had been treated with such methods as alcohol coated

- pellets to shrink the uterus. The patient at some point went to see Dr Purple, a recognised expert in the field. The patient then came back to Mr Blue. Because she had not gained any relief she asked for the uterus to be removed. The patient also asked Mr Blue to take everything out (i.e. her ovaries included) so that she could get everything over with in one go. Mr Blue advised her that as she was only 42 years old there was no need to remove the ovaries.
- 29 On Friday 30th March 2012 Mr Blue carried out the surgery to remove the uterus. Once in theatre he discovered a huge mass and removed it. Mr Blue also discovered a large ovarian tumor with exposed blood vessels. He feared that this was cancerous. Mr Blue had to decide which way to proceed. Mr Blue explained that it was difficult to obtain an image of the tumor because it was concealed by the fibroid. Mr Blue's judgment was that the ovaries should be removed. He knew that the patient had wanted the ovaries removed in any event. That is what the patient had told him. The consent form signed by the patient gave consent for him to do what was necessary to protect her safety and to prevent serious harm. There was a 12cm solid tumor on a 3 cm ovary. Mr Blue explained that with ovarian tumor there is a 15% chance of bilateral cancer so the normal practice is to remove both ovaries. After the procedure Mr Blue completed the surgical notes and was open and transparent about what he had done and why. Mr Blue operated in front of a full theatre and there was something of a consensus as to how to proceed given the circumstances. Nobody involved in the theatre raised any concerns about the procedure that had taken place.
- 30 On Saturday 31st March 2012 Mr Blue saw the patient. He explained to her how the surgery had gone and he informed her of the removal of the ovaries and the reasons for it. Upon learning what Mr Blue had done and how he had handled the situation that he had faced the patient was full of praise for him. The patient hugged him. The patient told him that she was pleased that he had made the decision to remove the ovaries. The patient subsequently sent Mr Blue a greetings card and family photo (which Mr Blue showed to me during our meeting). The surgery was successful and after 8 long years of misery the patient is now off Mr Blue's list.

- 31 Mr Blue said that he understands that Mr Green also saw and spoke to the patient during a ward round on Saturday 31st March. Mr Blue understands that the patient communicated that she was satisfied with the outcome of the surgery and that she had asked for the ovaries to be removed before the operation had taken place. Therefore, Mr Blue believed that at that stage Mr Green must have been satisfied that consent had been given. At that time Mr Green did not raise any concerns whatsoever about the surgery and the issue of consent. Mr Blue explained that the normal process if such concerns exist would be to speak to the surgeon directly or to fill in a DATIX form. Mr Blue said that this can be done on any Trust computer. All that the person completing the form needs to do is go to the safe code section, complete it and then click to send. The process is designed to be quick and easy. Mr Blue explained that once sent the DATIX would be investigated under the auspices of the Safety and Quality Directorate. Mr Green did not complete a DATIX at that time or indeed at any time subsequently.
- 32 It was not until the end of August that Mr Blue learned that Mr Green had written to Mr Yellow who was then the lead consultant. Mr Green had raised concerns about the ovarian removal claiming that Mr Blue was guilty of sub-standard care and assault because he claimed that the patient had not consented to the removal of the ovaries. Mr Yellow then reviewed the case and did not uphold those concerns. Once Mr Yellow prepared his written report he then disclosed it to Mr Blue and Mr Green.
- 33 Mr Blue said that once Mr Yellow had rejected Mr Green's complaint he then by passed Mr Yellow and reported the matter to Mr Pink (Mr Blue stated he had brought a race claim against Mr Pink which had been upheld). Mr Blue believed that Mr Pink then conspired with Mr Green to ask for Mr Yellow's report to be reviewed. They did that without reference to Mr Yellow. Further, having not obtained the answer that he wanted from Mr Yellow, Mr Blue then launched an attack on him accusing him of discrimination and lack of probity.
- 34 Mr Blue said that Mr Pink and Mr Green then took the case to Miss Scarlett requesting that she look at it again. Miss Scarlett then reviewed the case for a

- second time and she concluded that Mr Blue had appropriately managed it. Mr Blue said that once Mr Green learned of her conclusions he then launched in to an attack on her, accusing her of discrimination and uncovering historical issues that he had raised no complaints about at the time the events occurred. Mr Blue believes that Mr Green goes around collecting cases against colleagues in a little black book. Junior doctors say that they have seen him collecting cases which he has then used to do colleagues down.
- 35 Mr Blue believes that Mr Green will not stop asking the same questions until he gets the answer he wants. Mr Blue believes that Mr Green is trying to find cases against him in pursuit of a witch hunt against him. Mr Blue complained that his clinical practice had been examined at all levels of governance and passed the test. Nonetheless, Mr Green seems to be using every institution in the Trust to try to smear his name. Given that at each stage he has been cleared Mr Blue believes that Mr Green's complaints are no longer valid. Mr Blue believes that this complaint should never have got off the ground and questioned whether Mr Green would have left a tumour in a patient that he believed to be cancerous.
- 36 I asked Mr Blue why he believed that Mr Green would pursue a witch hunt against him. Mr Blue said that he believed that Mr Green was imbued with bitterness because of a perceived slight during a monthly safety meeting which took place sometime around June 2012. In that meeting an anonymised discussion took place about a possible adverse incident. Mr Green was present at the meeting. The incident involved the question of patient consent. The incident concerned a patient who was taken to theatre for bladder repair. Once in theatre the surgeon operated on the bowel. The patient had not given any consent for that procedure. It was because of that wrong site surgery that Mr Yellow as lead consultant brought the case to the meeting for a "lessons learned discussion". The surgeon's name was not disclosed. Mr Blue said that he expressed his views about the case. Mr Green expressed his opposing views. There was something of a heated debate between them. It became apparent to Mr Blue during that debate because of Mr Green's comments that he was the surgeon responsible. Mr Blue suspects that this is when Mr Green developed a grudge against him. Mr Blue believes that Mr Green then went back to his black

book and chose to start a campaign against him based on the ovaries case. Mr Blue can see no other reason for Mr Green having waited so long (i.e. from March to August) before raising a concern about the ovaries case in respect of which the notes would already have been archived. Mr Blue questions how else could Mr Green have retained details of the ovarian case and other cases. Mr Blue says that the attacks that Mr Green has launched on him, Mr Yellow and Miss Scarlett show that Mr Green takes offence easily which caused him to launch a raft of grievances.

MR YELLOW

- 37 I invited Mr Yellow to comment on Mr Green's allegation that he was guilty of a cover up. Mr Yellow replied that he struggles to understand this allegation. Mr Yellow says that it is clear on the face of it that he has been open and transparent and not covered up anything. He said that Mr Green had asked him for his opinion and that he then investigated and then gave it. Mr Yellow said that he does not understand why Mr Green alleges that his opinion is anything other than genuine. Mr Yellow pointed out that he shared his opinion openly with his superior, Miss Scarlett, as well as with Mr Green himself.
- 38 Mr Yellow stated that he believes that Mr Green is acting in bad faith here. In support of that statement Mr Yellow referenced Mr Green's failure to even raise the consent issue until some four months after it occurred. Mr Yellow questioned why Mr Green would leave it four months if his genuine concern was patient safety. Mr Yellow also referenced the fact that the patient notes indicate that consent was actually given. Mr Yellow said that having seen the patient on 31st March 2012, the day after the procedure, then Mr Green would have been privy to the same information as he had when preparing his report. Mr Yellow can see no reason why Mr Green could not have immediately completed a DATIX, or immediately approached senior managers or indeed just spoken to Mr Blue directly.
- 39 I asked Mr Yellow why he believed that Mr Green would make these allegations in bad faith. Mr Yellow said that he could only assume that Mr Green somehow saw him as being aligned to Mr Blue. It seemed to Mr Yellow that Mr Green had

- attacked him and Miss Scarlett because they had appeared to side with Mr Blue in their opinions on the ovaries case. Mr Yellow could only assume that Mr Green was somehow seeking retribution because of their different views expressed in the monthly meeting on the other consent issue.
- 40 We discussed Mr Green's allegation that Mr Yellow had acted maliciously in taking the case to the monthly departmental meeting without first investigating it in order to prevent him from applying for the College Tutor role. Mr Yellow recalled that a DATIX form was completed. As Lead Consultant, Mr Yellow was responsible for addressing DATIX forms. Mr Yellow was unaware of who completed the DATIX. The DATIX raised an issue of consent. The case involved surgery on the anterior vaginal repair. However, instead of an anterior repair a posterior repair was carried out. Therefore, because of the change in the site of the surgery consent became an issue.
- 41 Mr Yellow decided to raise the question at a monthly team meeting. He said that the meeting provides the opportunity to learn lessons for future practice and to remind colleagues of the importance of consent. Mr Yellow stated that he has followed the same approach in other cases. He raised the matter anonymously. He made no reference to Mr Green or to the patient. Mr Yellow recalled that an open discussion took place about the matter. There were a range of views expressed about the case. Mr Blue and Mr Green strongly expressed different views. Notwithstanding the strength of views expressed Mr Yellow felt that the discussion provided the opportunity to learn lessons and he did not feel that it took place in such a way as to undermine anybody.

MISS SCARLETT

- 42 Miss Scarlett explained that Mr Green's complaint about Mr Blue's removal of the ovaries came after a monthly departmental meeting of team members where the question of consent came up as a result of an anonymised case raised by Mr Yellow. The case was discussed under the standing agenda item of quality and safety. Miss Scarlett thinks that the meeting in question took place not too long before Mr Green had raised concerns about Mr Blue. Miss Scarlett recalls that during the meeting in question there was a heated discussion about whether a

- procedure had been carried out with the patient's consent. Miss Scarlett recalls that Mr Blue had a different view to Mr Green during that discussion and that there were heated exchanges between them about whether the patient should have been woken up or not before the procedure took place. It became apparent from Mr Green's comments during the exchange that the case under discussion was his. Mr Green had commented to Miss Scarlett during a discussion in the canteen after she had issued her report that he expected the Mr Blue case to be discussed in a monthly meeting in the same way as the other consent case which had been the subject of the heated discussion.
- 43 Mr Green had also commented to Miss Scarlett that he felt that the ovaries case should have been sent for external review. Miss Scarlett commented in response that she did not believe that was appropriate and made a comment that if she sent the ovaries case for external review then she would have to do that with other cases. The purpose of those comments was for Miss Scarlett to explain to Mr Green that not every incident needed to be sent for external review. She was not attempting to blackmail him. Miss Scarlett also felt that the focus on this case was becoming disproportionate in comparison to other cases.
- 44 I asked Miss Scarlett to comment on Mr Green's comparison as to how Mr Pink had presented a case of mortality of a patient under his care to the monthly meeting [p4 penultimate para of Mr Green's complaint]. She replied that she did not see any valid comparison. Mr Pink on that occasion chose to raise one of his own cases for discussion at the monthly meeting. That was Mr Pink's right and his choice and was in relation to a recent case which he had dealt with and wanted to open it up to debate for learning purposes. Miss Scarlett played no part in Mr Pink's decision to raise the matter at the monthly meeting. All of that contrasted with the circumstances relating to the ovarian removal case where Mr Blue had not sought to raise the matter himself and which had already been the subject of two reviews which Miss Scarlett was satisfied showed evidence of consent.
- 45 Miss Scarlett explained that she had tried to understand from Mr Green what his concerns were in pursuing the case against Mr Blue. Miss Scarlett said that she

could not understand why Mr Green had used such emotive language (i.e. describing the removal of the ovaries as “an assault”). Miss Scarlett also found it difficult to understand why Mr Green had then escalated the matter to the Chief of Safety and to the Chief Executive. Miss Scarlett noted that the removal of the ovaries had occurred in March 2012, the day after which Mr Green had seen the patient, but Mr Green had not raised concerns until August 2012. Miss Scarlett explained that the usual procedure is for an issue of this nature to be discussed between colleagues directly or raised via a DATIX. If raised on a DATIX then that would usually be reviewed by the Patient Safety Lead. Miss Scarlett explained that there are multiple computer stations in the hospital which provides an opportunity for a DATIX incident to be raised.

- 46 Miss Scarlett cannot understand why Mr Green accuses her of acting in bad faith and covering up in relation to this matter. She has no particular allegiance to Mr Blue or Mr Yellow and she had absolutely nothing to hide. Indeed Miss Scarlett feels that she was completely open in dealing with the matter. In comparison she did feel a sense of allegiance towards Mr Green. She explained that she used to regard Mr Green as a friend who she met socially and that they knew each other’s families. Hence when Mr Blue first raised concerns about Mr Green’s clinical conduct she told the Medical Director (Mr Black) that she should not be involved in the investigation of Mr Blue’s concerns as there was a conflict of interests as she was friends with Mr Green.

FINDINGS ON CONSENT

- 47 I requested that Mr Brown give his opinion on the issue of consent in the ovaries removal case. Mr Brown prepared a report on 23rd June 2014 [**Appendix 15**] (the report appears in a redacted form as it contains matters that are not relevant to this part of Mr Green’s various complaints). The appendix also includes an exchange of emails between me and Mr Brown in which I provided him with additional information which he did not have available to him when he prepared his report on 23rd June. The information in question was Mr Yellow’s report of 6th August 2012. That report contains anonymised extracts from AS’ notes, which Mr Brown could not access due to patient confidentiality. I took the precaution of

requesting that Ms Turquoise, Head of HR Practice, instruct a colleague to check AS' notes to ensure that Mr Yellow's references to them were accurate. Mr Silver, Chief of Safety and Quality, carried out that exercise. Mr Brown then gave the following opinion in his email to me of 3rd July 2014:

Thank you for the additional information about the lady who had her ovaries removed at hysterectomy.

It appears that she did not give written consent for removal of her ovaries but there seems to have been a verbal agreement and since she has not complained presumably she is happy with what was done.

Nevertheless Mr Blue acted in a way that many other gynaecologists would have acted, and therefore this was not Bolam negligent

FINDINGS ON MR YELLOW PROBITY CONCERN

48 There is no evidence to sustain a reasonable belief that Mr Yellow is guilty of a lack of probity by having covered up for Mr Blue (probity connotes honesty, integrity and uprightness). Mr Green asked Mr Yellow to express his opinion on the ovaries case. Mr Yellow then wrote back to Mr Green expressing his opinion. Mr Yellow did as Mr Green had asked. Mr Yellow also copied his opinion to his senior risk manager Miss Scarlett. Mr Yellow acted with openness and was not covering up the opinion that Mr Green had asked for him to express. Therefore, in that respect it is difficult to see on what basis Mr Green claims that Mr Yellow was covering anything up.

49 However, it may be that Mr Green is suggesting that Mr Yellow was covering up the absence of consent and his true knowledge of that and that this is the improper behaviour on his part. For that to be a logical suggestion then that would necessarily mean that Mr Yellow was really of the opinion that there was

no consent but despite holding that opinion he said that there was consent in order to prevent Mr Blue's actions being exposed. That essentially would require evidence to show that Mr Yellow acted dishonestly in that respect. However, there is no such evidence. Mr Green does not lay any foundation for such a belief in his complaint letter. If I had been given the opportunity to interview Mr Green then I would have sought to understand on what basis he claimed that Mr Yellow was making dishonest representations about his opinion on the removal of the ovaries in his report of 6th August 2012. Mr Yellow's opinion in that report was formed after reviewing the case notes; extracting relevant parts of the notes which appeared to touch upon the question of consent; analysing the extent to which those parts of the notes showed consent; and discussing the matter with Mr Blue as the clinician involved. They are the steps that Mr Yellow stated that he took in order to form his opinion and there is nothing to suggest that he was being anything other than genuine and honest and open in expressing that opinion.

50 There is also not sufficient evidence to sustain a reasonable belief that Mr Yellow acted improperly by disclosing Mr Green's name to Mr Blue in order to create a personal attack on him. On the face of the request that Mr Green made to Mr Yellow it appeared to be based on a desire to understand when consent did and did not apply. The request did not make a direct accusation against Mr Blue, although it could be said that it was implicit that Mr Green was questioning his judgment. The point here is that there did not appear to be any obvious reason as to why Mr Yellow should not inform Mr Blue that he had received a request to review the ovaries case. Mr Green did not specifically request anonymity; the nature of Mr Green's request did not imply that anonymity was required; and it seems reasonable for Mr Yellow to have discussed the ovaries case with Mr Blue in order for him to form an opinion on the matter.

51 Further, Mr Green stated in the 23rd May 2013 document that:

Few days after the above operation, in a very professional way I approached Mr Blue and I asked him about the removal the ovaries without consent

52 Therefore, Mr Green himself claims that he disclosed to Mr Blue that he questioned consent in the ovaries case. This would appear to show that Mr Green does not object to Mr Blue knowing that he questioned consent. On that basis I have to seriously question why Mr Green has put forward a complaint against Mr Yellow for disclosing his name to Mr Blue. On the face of it Mr Green would know that there is no foundation to that complaint because he knew that he himself had already disclosed his interest in the ovaries case to Mr Blue.

FINDINGS ON MISS SCARLETT COVER UP ALLEGATIONS

53 There is not sufficient evidence to sustain a reasonable belief that Miss Scarlett was dismissive of Mr Green's concerns about the removal of the ovaries or that she covered up for Mr Blue. Mr Green does not explain in his complaint document on what basis he makes this allegation and I have not had the opportunity to ask him. Had I had the opportunity then I would have sought to understand whether he had any evidence to substantiate this very serious allegation. However, based on the evidence available at this stage there is nothing to suggest that Miss Scarlett was dismissive of Mr Green's concerns.

54 Miss Scarlett was asked by Mr Pink to review the ovaries case. She did so notwithstanding that Mr Yellow, an experienced consultant and Lead for Gynaecology Risk, had himself produced a report having been asked to do so by Mr Green. If Miss Scarlett was not taking the matter seriously then she could simply have stated that that Mr Yellow had already done a report and found that the ovaries had been removed with the patient's consent. However, Miss Scarlett called for the patient notes; reviewed them; reached her own conclusions; and reported on her conclusions to her line manager; then when Mr Green requested a further review she wrote back to him to explain her reasons for not doing so; the reasons that she gave for not doing so appeared to be reasonable and based on recent negative experience of a case being reviewed in open forum; Miss Scarlett was entitled to take that view having balanced what appeared to be the relevant factors.

- 55 There is no evidence to sustain a belief that Miss Scarlett covered up for Mr Blue. Having been asked by Mr Pink to review and report on the ovaries case that is what she did. Miss Scarlett addressed a report back to Mr Pink. Miss Scarlett did not cover up in that respect. It may be that Mr Green is suggesting that Miss Scarlett covered up what he regards as the absence of consent. However, as stated above her conclusions and Mr Yellow's conclusions on the absence of consent appeared to be based upon reasonable factors and they appear to have expressed their genuine clinical opinion on the matter. There is no evidence to suggest that Miss Scarlett had any other opinion than that which she expressed and that she knowingly withheld that from her report addressed to Mr Pink. Other than the fact that it is clear from Mr Green's written comments on this matter that he personally takes a different view on the question of consent in this case there does not appear to be any evidential basis for his statement that Miss Scarlett covered up.
- 56 Therefore, because there is no evidence to sustain a reasonable belief that Miss Scarlett covered up for Mr Blue, then the allegation that the fact that he is not a Muslim being factor in the alleged cover up has no foundation.
- 57 Mr Green also said in his complaint that Miss Scarlett launched a personal attack on him. This relates to comments that she made in the letter to Mr Green of 18th December 2012. Miss Scarlett said in that letter *"whilst I appreciate that you have the right to raise any concerns regarding the above through the organisations current HR policies, I consider your approach has not been helpful in terms of patient safety nor has it been conducive to harmonious working relationships within the department"*. I note that the organisation has a Policy and Procedure for the Internal and External Reporting of Incidents and Managing Serious Incidents. This policy provides a detailed framework as to how to raise matters such as questions of consent. The policy focuses on learning lessons as opposed to seeking to attribute blame, in that context I do not find that there is evidence to sustain a reasonable belief that Miss Scarlett's comments here amounted to a personal attack as claimed.

FINDINGS ON THE RAISING OF CASE AT MONTHLY MEETING

- 58 The essence of Mr Green's complaint here appears to be that he was treated less favourably than Mr Blue because his vaginal compartment repair case was raised at a monthly meeting, whereas Mr Blue's ovarian removal consent case was not. Mr Green says that the difference in treatment is because he is a Muslim whereas Mr Blue is not.
- 59 The investigations into the vaginal compartment case and the ovarian removal followed different routes and have materially different features that in my view show that there are material differences which means that they are not comparable. The vaginal compartment case was raised via an anonymous DATIX record. Mr Yellow received that record and decided to anonymously open up the question of consent to discussion at the monthly meeting. That is different from the ovarian removal case in which Mr Green requested that Mr Yellow give him an opinion and then Mr Yellow accordingly sent him a report. The ovarian removal case was then the subject of a second report by Miss Scarlett. In respect of both reports the conclusion was that there was recorded evidence of consent. It is apparent from the conclusion in these reports and from what Mr Yellow said in his oral evidence that he did not really believe that there was a debate to be had on consent in the ovarian removal case.
- 60 Also there is in my view evidence upon which to sustain a reasonable belief that the reason for not referring the ovarian removal case was based on considerations other than religion. There is something of a consensus that the discussion about vaginal compartment consent case did not go well. Of particular note is Mr Pink's comment in his letter to Miss Scarlett on 29th August 2012 in which he states that there was a "backlash" over a recent consent issue which was a reference to this matter **[Appendix 12]**. It is also inherent from Mr Green's complaint that he did not welcome the matter being raised in that way. In her letter to Mr Green of 18th December 2012 Miss Scarlett also stated "*The last time*

that a case was discussed at the Departmental meeting this proved an unhelpful and negative forum for learning and hence not one that I am willing to repeat in this instance". Therefore I am satisfied that the evidence available is not sufficient to sustain a reasonable belief that Mr Green's religion was the reason or part of the reason for the vaginal compartment removal case being raised at the monthly meeting and for the Mr Blue ovarian removal case not being raised at such a meeting.

EVIDENCE & FINDINGS

REMOVAL FROM ROLE AS COLLEGE TUTOR

- 61 Mr Green holds the position of College Tutor. In that position Mr Green reports to the Director for Medical Education, who is currently Mr Orange. Mr Orange has held the position since 1st April 2012. Mr Green has been College Tutor throughout that period.
- 62 Mr Orange informed me that the principle responsibilities of the College Tutor are to ensure delivery of the required curriculum, to ensure effective supervision is provided for students and to provide pastoral support. According to Mr Orange the College Tutor is required to ensure that teaching happens as opposed to having primary responsibility to teach. There are two College Tutors for Obstetrics and Gynaecology, one for Site A and the other for the Site B.
- 63 Mr Green alleges that the accused all played some part in attempting to have him removed as College Tutor. In his 23rd May 2013 document he alleges **[Appendix 4]**:

Miss Scarlett has also attempted to remove me from my role as College Tutor behind my back and she has been asking other Consultants at Site A Mr Gold and Mr Maroon. Mr Gold declined and Mr Maroon accepted my role while I am still in the job and Mr Blue told him I will support you to get it.

I asked to transfer my obstetric on call to Site B and drop the every other week Site A to avoid any direct contact with these two consultants until the end of the investigation and the grievance I submitted against them of bullying, harassment and victimisation. We reached that agreement which minimally affecting my presence at Site A.

Mr Blue and Mr Maroon approached the director of medical education claiming that I left Site A and I should quie my role as College Tutor at Site A. The director of medical education approached Miss Scarlett and she confirmed their malicious claim.

- 64 Mr Green also referred to this matter in his letter of 6th March 2013 **[Appendix 3]** in which he alleged:

I requested to move my obstetric on calls and antenatal clinic from Site A to Site B to avoid direct contact with Mr Blue and Mr Maroon which is only minor amendment in my time table to avoid further victimisation by Mr Blue and Mr Maroon which has also recommended by the occupational health. Mr Blue contacted the director of medical education claiming that I left Site A which is affecting the quality of the teaching programme at Site A.

This is again another malicious allegation to undermine and demoralise me as the College Tutor at Site A which still continuing attack of bullying & harassment and victimisation.

- 65 Miss Scarlett denies attempting to remove Mr Green from the role of College Tutor. Miss Scarlett recalls that Mr Green told her that he was moving from Site A to Site B, following Occupational Health advice. Then sometime later she was on a lunch table with Mr Yellow and Mr Gold. Those two were talking about the logistics of carrying out the College Tutor role for Site A from Site B. Mr Yellow questioned whether it could be done and expressed a view that he wished to take the role over. Miss Scarlett made no comment on the subject and did not

- discuss removing Mr Green from the role. Miss Scarlett does recall that the DME spoke to her about the matter at some point to ask for her view. Miss Scarlett believes that she would have given her view. Miss Scarlett says that the continuation or otherwise of Mr Green as College Tutor was not a decision for her.
- 66 Mr Yellow explained to me that the organisation has 2 College Tutors because of the 2 sites (i.e. there is one each at Site A and Site B). Mr Yellow said that it has been that way ever since he can remember and it has been recognized that it is important to have the College Tutor on site for the benefit of the students. However, from about March 2013 when Mr Green was College Tutor for Site A and spent most of his practice at Site B there was effectively no longer a College Tutor at Site A. Mr Yellow says that 14 doctors were left without anybody on site to act as their tutor. In March 2013 Mr Yellow was asked to sign a study leave form and in October he became aware that some trainees questioned the lack of teaching support. He expressed to me his interest for the proper development of trainees.
- 67 Mr Yellow explained that in view of those concerns he did raise questions about the viability of Mr Green carrying out the role of College Tutor remotely. He says that he would have raised the same questions no matter who was the College Tutor in those circumstances. He says that he did not conspire with anybody and that he had his own independent views on the subject which he believes that he was entitled to express. Mr Yellow says that his views are consistent with the way in which the College Tutor arrangements have always been structured. Mr Yellow sent an email to the Education Director on 7 March 2013 about the matter. Mr Yellow says that it is a matter for the Deanery as to what to do. He said that he is aware that Mr Green himself has questioned the viability of managing as College Tutor from a remote site following the trainee concerns raised in October.
- 68 Mr Blue raised concerns about whether Mr Green was best placed to remain as College Tutor because of changes in his job plan and the fact that he would not be carrying out his practice at Site A. The concerns that Mr Blue held are set out in an email to Mr Orange of 22nd October 2013 [**Appendix 16**]. The email reads

As you are aware, I raised concerns about the deteriorating standard of teaching and supervision at Site A with you several months ago. I believe that you liaised with the Deanery and confirmed that a College Tutor can discharge his/her duties even when based primarily at another hospital site. You also cited the fact that the last trainee questionnaire survey in Obs/Gynae had identified no concerns – but this questionnaire is effectively out of date having completed by our trainees a year ago.

Despite your position on the matter, it is evident that the standard of teaching has continued to plummet. The questionnaire survey upon which you relied is as I have said, out of date. At the LFG Meeting, none other than Mr Green the College Tutor confirmed that the teaching arrangements are not working but it is his primary responsibility to make sure that trainees' educational needs are met.

Despite his protestations, the fact remains that he cannot be a College Tutor 'at large'. The Tutor must be on-site/on the ground to coordinate teaching and provide pastoral care. It will simply not do to pop into the department fleetingly to spend time in your office. As the previous Tutor at a time we were commended for exceptional standards of teaching, I know what is required to maintain high standards of junior teaching and it is certainly not playing at College Tutorship from a distance.

To compound matters, we had the anachronism of Mr Green arguing during last Friday's meeting that as College Tutor, he is not obliged to teach. This is wholly unsatisfactory. He claimed that the College Tutor job description makes no reference to an obligation to teach. I am not sure how far you intend to sustain this absurdity but it needs to be sorted out as soon as possible.

The failure to deal with the College Tutor situation at Site A has continued to undermine trainee education. We simply can't have two Tutors at Site B whilst Site A is left practically uncovered. The business of Site A trainees' education and supervision are too important to be left to a 'non-teaching Tutor at large'.

69 Mr Orange recalled that Mr Green was in post as College Tutor when he commenced his role as DME. Mr Orange said that at some point he had a conversation with Miss Scarlett about the College Tutor role. Miss Scarlett commented that she was aware that Mr Green's job plan had changed and that

- the revised plan meant that he would not be spending as much time at Site A. That raised the question of whether there would be any impact on the ability to deliver the role of College Tutor. Mr Orange stated that he did not know what Mr Green's job plan was at Site A when he arrived. Mr Orange recalled that this was followed by Mr Blue informing him of the changes made to Mr Green's job plan which Mr Blue also thought raised concerns about delivery of the role. Mr Orange said that Mr Blue's concern was as to whether Mr Green spent enough time at Site A to deliver the role.
- 70 Mr Orange decided to look in to the issue because he was not sure how much time the College Tutor needed to spend on site. Mr Orange liaised with the Head of School for Obstetrics and Gynaecology who expressed a view that Mr Green was spending enough time on site to deliver his role notwithstanding the change in job plan. Mr Orange then informed Mr Blue that the Head of School was happy.
- 71 Mr Orange said that in October 2013 the issue raised its head again. Mr Blue and Mr Yellow raised concerns that the required teaching for students was not happening. Mr Orange received an email from Mr Blue on the subject. In response to the questions raised Mr Blue instituted a review by the Deanery, known as an Exception Visit.
- 72 The Exception Visit took place on 25th March 2014. The review concluded that notwithstanding that there were some issues, with teaching at Site A, it was acceptable for Mr Green to continue as College Tutor even though he was practicing at Site B. Mr Orange is required to provide some further information about teaching at Site A by the end of July 2014 in order to satisfy the Deanery that proper teaching is taking place.
- 73 I asked Mr Orange whether he was satisfied that the concerns raised about Mr Green continuing as College Tutor had merit. Mr Orange explained that because there is no specific time specified by the Deanery in respect of amount of presence that the College Tutor needs to have on site the questions raised were legitimate. If he did not think so then Mr Orange said that he would not have called for a review. Mr Orange also pointed out that despite the Deanery clearing

Mr Green to continue there were some questions about the arrangements for teaching at Site A.

- 73.1 The evidence shows that the accused did question whether Mr Green should be allowed to continue as College Tutor. They made representations to the Director for Medical Education. The issue here is whether the accused did so because of Mr Green's religion or because he had raised complaints about them discriminating against him (i.e. victimization).
- 73.2 The reason that the accused give for making representations about whether Mr Green should remain as College Tutor was the fact that his job plan changed which meant that he would be practising from Site B and not from Site A. They raised concerns as to whether effective Mr Green would be able to deliver effectively from Site B. It is a fact that there are two College Tutors, one for Site A and one for Site B. It does seem reasonable for the accused to believe that there is some expectation that each College Tutor will have some material presence at the site for which he/she is responsible given that the practice has been to appoint a College Tutor who is resident at the site for which he/she is responsible. Mr Orange in his evidence explained that he could see some legitimacy in the questions raised about the change in Mr Green's job plan such as to justify bringing in the Deanery to carry out an Exception Visit. Whilst the Deanery has confirmed that Mr Green can remain in post they have raised some questions and it is clear that they did not suggest that the concerns were unmerited such as not to justify the visit.
- 73.3 Therefore, taking those factors into account I am satisfied that there is insufficient evidence to sustain a reasonable belief that the questions raised about Mr Green continuing as College Tutor were because of his religion or complaint of discrimination. The evidence supports a conclusion that it was the change in job plan that caused the question about as to whether Mr Green could deliver in the role. The question coincided with the change and there is evidence to suggest that the

question would have been raised had it not been for the change in job plan.

CONCLUSION

- 74 For the reasons explained above I do not believe that there is sufficient evidence to sustain a reasonable belief in the allegations made. I therefore do not believe that any of the accused has a case to answer.
- 75 There are some allegations where there does not appear to be any factual basis for them and where that appears to be the case I have made such an observation accordingly.