

**INVESTIGATION REPORT INTO A COMPLAINT
BY MR MICKEY MOUSE
09 SEPTEMBER 2014**

PRESENTED TO MICKEY MOUSE

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EXECUTIVE SUMMARY

- 1 Mickey Mouse, Director of Digestive Diseases, raised a grievance in a letter dated 13th June 2014. In that grievance he raised a number of concerns about how the Trust has supported him in that position and whether the Trust failed to exercise a duty of care towards him.

- 2 Having carefully considered all of the evidence in this case I do not believe that there is a case to answer.

INTRODUCTION

- 1 Vista has been instructed by the Trust to conduct an independent investigation into a grievance raised by Mr Mickey Mouse, Director of Digestive Diseases and Clinical Chief of 3Ts.
- 2 I am required to establish the circumstances surrounding the complaints made. I therefore undertook an evidence based investigation into the facts of the case to determine whether any person, in the light of the findings of fact made, has a case to answer. In order for there to be a case to answer there needs to be sufficient evidence upon which to sustain a reasonable belief that the alleged conduct took place.
- 3 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.
- 4 Mickey Mouse submitted a letter dated 13th June 2014 **[Appendix 1]**. Having considered that letter the Trust then invited me to investigate the concerns raised by him.
- 5 In order to prepare this report I conducted a number of interviews. The record of each interview is appended to this report. The interviewees were:

Mr Mickey Mouse, Director of Digestive Diseases **[Appendix 2]**

Ms Minnie Mouse, Mickey Mouse's Spouse **[Appendix 3]**

Captain Hook **[Appendix 4]**

Mr Jiminy Cricket **[Appendix 5]**

Mr Daffy Duck **[Appendix 6]**

- 6 This report and the recommendations take account of the oral evidence given, the documents received and my experience/knowledge of matters such as these.

- 7 Mickey Mouse raised a number of concerns about his treatment since taking up his position as Director of Digestive Diseases in 2011. His formal grievance sets out his concerns in some detail. When I interviewed Mickey I sought further explanation from him about his concerns. The grievance and the evidence that he gave to me should be read together to understand the basis of his concerns.

MICKEY MOUSES' EVIDENCE

- 8 Mickey explained that he raised his grievance because of the way that the Trust has handled things. Mickey feels that he was placed in his role without any support to prepare him for the difficult challenges that he faced. In particular Mickey said that he was particularly concerned that the complainants went to the CQC to claim that he is somehow guilty of fraud in devising the rota for personal gain. Mickey said that suggestion is without foundation because there are simply too many checks and balances and scrutiny to allow such a thing to happen. Mickey said that he is suffering and has suffered massive reputational attack which he believes is grossly unfair. Brer Rabbit commented that it does not seem right that things have gone outside the Trust before internal processes have been completed.
- 9 I asked Mickey to explain the background to the MHPS investigation that he had concerns about. Mickey explained that he was concerned about Captain Hook's decision to put him through that investigation and make it formal. Mickey felt that Captain Hook did not really tell him why the matter had to be dealt with in that way. Mickey felt that even a cursory examination should have told Captain Hook that there was nothing in it. Mickey said that the case involved the powerful Shere Khan who had something of a downer on him and the Digestive Disease Department. Mickey explained that Shere Khan was a GP who also held a senior position in the CCG. The issue concerned a patient of Shere Khan's. It was claimed that Mickey had attempted to direct the patient towards private treatment.

- Mickey explained that once the investigation looked at what had happened he was exonerated.
- 10 Mickey says that in March 2013, a short time after the CCG investigation he was casually informed by the Chief Nurse that an external review of the department had been commissioned. Mickey says that he was disappointed at finding out in that way. Mickey believed that he had a better relationship with his senior colleagues than to find out in that way and to not have been engaged in the conversations that led to the external review being commissioned. Mickey said that he became so agitated when he found out about the external review that he suffered palpitations. Mickey believes that it was the stress of all that had happened that caused the palpitations. It was after this that Mickey's wife Minnie spoke to Jiminy Cricket. Mickey understands that Minnie told Jiminy Cricket that she was worried about the stress that Mickey was under. Mickey believes that this should have put Jiminy Cricket on notice that he was suffering and could fall ill. Mickey understood from Minnie that Jiminy Cricket would speak to him about his health but he never did.
- 11 Mickey said that things deteriorated from there. Mickey believes that his psychological condition caused his behaviour to deteriorate. Mickey believes that the outburst in theatre in August 2013 was as a result of his deteriorating health and the intense pressure that arose as a consequence of March Hare being taken ill with a stroke. Mickey explained that March Hare's absence significantly increased his workload. Mickey said that whilst he can be irascible, his mood worsened during this period. Mickey said that his wife noticed the change in him. However, Mickey acknowledges that his behaviour on that occasion was beyond how he generally reacted.
- 12 Mickey feels that it should have been obvious that he was suffering, but nobody came to him and asked him. Mickey says that nobody came along and asked what was wrong. Mickey says that when he met with Emelius Browne for that investigation he noticed that there were some behavioural issues. Mickey feels that a good Medical Director would have intervened at that stage. Instead, Mickey is concerned that the matter was put on hold pending the complainant's grievance and subsequent investigation. Mickey says that whilst he had these

- investigations hanging over him he had another outburst in February 2014, which was then followed by a further investigation. Mickey said that a letter just dropped through his door informing him of that whilst he was off sick with severe depression and suicidal ideation.
- 13 Mickey told me that he received a call from Jiminy Cricket saying that things were getting serious for him. Mickey said that on that occasion his wife spoke to Jiminy Cricket once again and made him aware of how the stress of the situation was affecting him. Mickey feels that all this could have been avoided had the Trust taken him out of the firing line much earlier.
- 14 Mickey believes that once the complainants raised their grievance he should have been taken out of the firing line then. Mickey says that when he was initially informed of the grievance (letter 10 December 2013) there was no mention of race. However, Mickey says that he then received a letter on 31st December 2013 which included a reference to race. Mickey said he is concerned as to how race became part of the complaint. Mickey believes that there was intervention from Eglatine Price. Mickey referred to a letter that Eglatine Price sent to the CEO on 5th December 2013 and to emails exchanged before the original Terms of Reference were issued on 10th December. Mickey is concerned that race appears to have been an issue before the original Terms of Reference were issued, but yet those Terms of Reference made no mention of that. Similarly, Mickey says that Jiminy Cricket should have told him about the race angle during a meeting they attended with Daffy Duck in early December about the complainants' contracts and job plans. Mickey says that Jiminy Cricket must have been aware of the race issue because he was copied in to the aforementioned email trail. Mickey is concerned that despite the complainant's grievance and the concerns that they had raised about job plans, Daffy Duck directed him to simply send them out by post.
- 15 Mickey says that nobody has explained to him why the Terms of Reference changed and why the arrangements for the investigation changed. Mickey feels that the Trust has not protected him from the risk of victimization. Mickey feels that he has been exposed. Mickey said that Captain Hook should have known that he was suffering because in his last appraisal Rock Titan recorded Mickey's

thoughts that it had been the worst year of his professional career. Rock Titan said that he would bring those comments to Captain Hook's attention.

MINNIE MOUSE'S EVIDENCE

- 16 I had a detailed conversation with Minnie during which she took me through the history of events leading up to the conversations that she had with Jiminy Cricket. That history was entirely consistent with that given to me by Mickey Mouse and helped me to understand the impact that those events had upon him. That is described in detail in her interview record.
- 17 In respect of the conversations she had with Jiminy Cricket, Minnie said that the first one would then have been somewhere between March and May 2013. Minnie called him to tell him how worried she was about Mickey; that he was under stress; she referenced the Shere Khan affair and his disappointment in how Captain Hook had dealt with it; she also referred to the way that Mickey was told about the external review; and that she wished that Mickey was not doing the job. Minnie said that she did not make contact with Jiminy Cricket lightly. Minnie was looking for him to acknowledge that Mickey had been put through the mill on the CCG fraud complaint. She wanted to hear that Jiminy Cricket had Mickey's back. Jiminy Cricket listened and did not say very much.
- 18 Minnie recalled that her second conversation with Jiminy Cricket was on 9th February 2014 (her son's birthday). In respect of the lead up to this second conversation Minnie referenced the history of March Hare's stroke and the subsequent increase in Mickey's workload; she referenced Mickey's outburst in theatre and explained the circumstance in which that had occurred (i.e. not being told that Bug Zapper's patient had the slot that Mickey had thought was free for his patient); that in the investigator's notes about that outburst case there was a reference to Mickey struggling and that something should be done (e.g. a referral to OH); the external report in October 2013 which made some criticism of Mickey's behaviour; about how Mickey had become more irascible at home after returning from work; and about how Mickey's appraisal in December 2013 commented on the difficulties that he was under. Minnie asserted that when all of

that is put together she believes that it should have acted as a big red flag for action to be taken by way of support or at least investigation.

CAPTAIN HOOK'S EVIDENCE

- 19 Captain Hook recalled the circumstances which led up to Mickey Mouse becoming Clinical Director of Digestive Diseases. He explained that Cobra Bubbles had created a tier of senior clinicians from the consultant rank who became known as chiefs. They were not all the same. Mickey Mouse held the position as Chief of 3Ts which is a strategic directorship. That is a long running project. Jumba Jookiba was the Chief of Digestive Diseases. He relinquished the role. That then left a gap which Mickey Mouse was the natural person to fill. He had performed the role in the past and he understood the challenges that the department faced and he felt that he was the right person for the job. From a senior management point of view his appointment was well received. Captain Hook commented that Mickey Mouse did not disavow anybody of the belief that he was the right man for the job and he at no stage suggested that there were any shortcomings in his ability to do it. Captain Hook said that Mickey Mouse's appointment coincided with the Chief of Surgery stepping down and there was some confusion as it became apparent that Mickey Mouse perceived that he was being asked to take up that role. However, Jiminy Cricket transitioned in to that role.
- 20 Captain Hook explained that when he commenced the role of Medical Director a couple of years ago there was significant disquiet about the performance of Digestive Diseases. That concern revolved around complication rates for laparoscopy and colo-rectal surgery, as identified by ITU doctors, radiologists and GPs. There were concerns from GPs about the patient experience, which included views about lack of consultant ownership of patients. The service was felt to be somewhat mechanistic and was seen to be overburdened. The commissioning group was not satisfied with the service and was reluctant to commission the level of service that they actually required. An external surgeon by the name of Stitch was brought in to carry out a review.

- 21 I asked Captain Hook about the CCG complaint that led to an investigation. Captain Hook recalled that two surgeons were involved, namely Mickey Mouse and Buck Cluck. Captain Hook said that Mickey Mouse's involvement was thought to be more peripheral. Buck Cluck recalled that he held a regular meeting with CCG. Shere Khan was one of the senior officers in that body. After one of those regular meetings Shere Khan told Captain Hook that there was a concern from patients about feeling under pressure to opt for private treatment. Shere Khan raised a particular concern about a patient who had been prepared to be named and come forward in writing. Shere Khan left it with Captain Hook to decide what to do next. Captain Hook stated that his position on such matters is that where a specific patient raises a specific concern on a matter that has conduct and probity implications then the best approach is to investigate it and put the matter to bed so that there is no cloud of suspicion or suggestion of cover up.
- 22 Captain Hook said that at that time the approach taken was for him to meet with any consultant who had such concerns raised against him/her to inform the consultant of the complaint and of the pending investigation. Captain Hook said that is the approach he followed with Mickey Mouse. Captain Hook met him and explained that he had to instigate an investigation in the interests of all concerned. Mickey Mouse did comment to Captain Hook along the lines that there had been a history of antagonism from Shere Khan towards him [Mickey Mouse]. However, Captain Hook did not see that as a reason not to continue with an investigation and if anything he felt that an investigation would put that to bed. Captain Hook said that it would have been open to Mickey to raise concerns about Shere Khan's motives during the investigation. Captain Hook commented that in raising her concern he does not recall Shere Khan specifically targeting Mickey Mouse.
- 23 I asked Captain Hook about the external report that was commissioned in to Digestive Diseases. Captain Hook said that there had been a meeting in 2011 with a GP Group called by Chief of Safety. There was frustration from commissioners and primary care bodies about the department. Then there was another meeting in or around the beginning of 2013 where the same frustrations

- continued to be expressed. There was some mud-slinging from all sides. It was apparent that there was a crisis of confidence from legitimate stakeholders. The decision was made as a result to commission the external review. Captain Hook said that the discussions about the department had taken place two tiers above Mickey's level (i.e. Medical Director level) and that was within his scope of authority. The decision was about finding a way to restore confidence in Mickey's department. Captain Hook feels that it was right to make the decision. Captain Hook said that he had many discussions with Mickey about the challenges that the department faced and whilst he appreciates Mickey's perspective on how the decision was taken, Captain Hook feels that he was right to take that step.
- 24 I asked Captain Hook whether he had developed any concerns at this stage about Mickey's health or well-being. Captain Hook said that he did not. Captain Hook said that there was nothing to indicate to him that Mickey may have been unwell. Mickey was a robust manager who seemed to be well enough to try and meet the challenges that he faced. Mickey had never given him any indication that he was suffering in such a way. Captain Hook said that he recognized that the sickness absence of March Hare, which came in the midst of these challenges, would have put additional pressure on Mickey and the department. However, Captain Hook said that he would have expected Mickey to engage with him if he personally was becoming overwhelmed or indeed if the department was at breaking point.
- 25 I asked Captain Hook how he saw Mickey's well-being in the light of the incident in August 2013 when there were complaints made about Mickey Mouse's behaviour towards theatre staff. Captain Hook said that the report was of a serious outburst by Mickey Mouse towards junior staff. Captain Hook said that in the circumstances it was a matter that had to be dealt with formally under the Trust investigation procedures. Steve explained that he was the Case Manager in the matter so he did not engage with Mickey directly about his perspective on the case. Captain Hook said that there was nothing on the face of it to alert him to any causal connection between the incident and Mickey's health. Captain Hook does not recall anything in the investigation report that alluded to psychological illness being a factor in the case.

26 Captain Hook said that he does recall that there were some comments in Mickey Mouse's appraisal which alluded to him experiencing difficulties. Captain Hook said that he may have seen the appraisal shortly before February when Mickey went off sick. Captain Hook spoke to Jiminy Cricket about whether Mickey Mouse should be at work.

JIMINY CRICKET'S EVIDENCE

27 I asked Jiminy about his recollection of conversations with Minnie Mouse. I took Jiminy through what Minnie had told me and he confirmed that her account was accurate. Jiminy said that what he understood from those conversations was that Minnie Mouse was naturally concerned for Mickey Mouse's well-being and that she was seeing the pressure that he was under affect him at home. Whilst Jiminy was concerned to hear that he did not get the impression that this was a forewarning of psychological illness. Jiminy said that he knew that Minnie Mouse herself is GP who would have had ample experience of dealing with patients who were sliding in to such conditions and he would have expected Minnie to say if Mickey Mouse was on the verge of or obviously on the way to that kind of illness.

28 Jiminy explained that he did not believe that it was foreseeable that Mickey Mouse would suffer psychological illness. Jiminy said that Mickey Mouse always appeared able and where necessary combative in relation to the challenges that faced him. Jiminy said that in relation to the behavioural issues, such as the outbursts in August 2013 and February 2014, he did not understand those episodes as a precursor to a psychological illness. Jiminy said that he had over the years known Mickey Mouse to be very combative and tough when needed and he saw these episodes as extreme examples of that side of his character, but they did not alert him to anything else.

29 Jiminy explained that he thought that Mickey Mouse was standing up to the challenges that he face in his role and saw him as making progress in that role. At no stage did Jiminy consider that Mickey Mouse did not have the ability to carry out his brief, which Mickey Mouse appeared to understand very well as he set the agenda for resolving the challenges that he faced.

FINDINGS

- 30 For ease of reference I have arranged the concerns that Mickey raised under various headings. However, I have tried to take care to address each of those concerns that he put to me.

CONCERNS ABOUT SUPPORT UPON & AFTER TAKING UP HIS POSITION

- 31 Mickey expressed some concerns about the extent to which he was ready to take on the responsibilities of managing the department and the extent to which the Trust should have recognized his state of readiness and prepared him for the job. He said in his grievance:

My limited instructions from Cobra Bubbles were to “fix the problem” but that there were no additional funds immediately available to assist with the process. My brief appeared wide and include all elements of the functioning of the department but did not come with a written job description or any subsequent specific training”.

- 32 Whilst in retrospect it is possible to see that more could have been done to in effect set out the terms of reference for the job and then look at the extent to which Mickey was ready for it, I do not conclude that as seen at the time, there was any failure on the part of management in that respect. Whatever level of detail was laid out to Mickey about the job and notwithstanding the issues that faced the Department, Mickey accepted the post and appears to have approached the challenges without expressing any concerns about his ability to do the job. To that extent he appears to have held himself out as somebody who could meet the challenges; he continued with the role as he became more familiar with what was required to address the issues facing the department. By all account and to his credit he made some considerable progress. I note the observation in the Royal College Report:

Mickey Mouse, clinical director, is to be congratulated on his work in turning the department around [page 192 @ para 6.10]

- 33 The report goes on to make observations about his behaviour (which I will discuss later in this report), but it seems to me that the observation here could reasonably be regarded as an indication that Mickey was meeting the challenges that were facing him.

CONCERNS THAT MANAGEMENT FAILED IN ITS DUTY OF CARE TO RECOGNISE THAT HE WOULD SUFFER PSYCHOLOGICAL ILLNESS AND TAKEN STEPS TO PREVENT THAT

- 34 Mickey also claims that management should have seen that he had slid or was sliding down towards psychological illness. He refers to various signals that he believes should have alerted Jiminy Cricket and Captain Hook to that reality: his irascible behaviour; his wife's conversations with Jiminy Cricket; his outbursts in [August] 2013 and February 2014; the observations in his appraisal about the difficulties that he was experiencing; the comments in the investigation report in to his August 2013 outburst; and the scale of the challenges that faced him in turning the department around.
- 35 Whilst I can see that there was some cause for his managers having an eye on his welfare, I do not believe that the factors that Mickey refers to whether taken together or individually were sufficient to alert his managers that he would suffer medical illness. Mickey was clearly under a lot of pressure. It can be seen from the history that there were many challenges facing him and that his behaviour had apparently deteriorated during that same period with outbursts. That said he remained in work and continued to respond to those challenges as best he could given the circumstances.
- 36 In respect of the behavioural pointers I do not believe that this behaviour provides sufficient evidence to show that Mickey's managers should have been aware that he would suffer psychological injury. Typically, the focus of a reasonable employer in respect of events such as these would be on the effect of the conduct on the victims of the outburst and on the seriousness of the conduct itself. The incidents were 6 months apart and I do not think that this provides reasonable evidence of such a deterioration in behaviour that it should have been obvious that the first one was anything more than a one off potentially serious incident. By the time of the second incident which preceded Mickey's sickness absence it seemed apparent that there was something wrong and Jiminy Cricket advised Mickey to take some time away from the Trust. It seems to me that insofar as Mickey's irascible behaviour is concerned its indication that

- there was something wrong was picked up when it reasonably could have been picked up (i.e. in February 2014).
- 37 Mickey did put high stress levels forward as a defense/mitigation in the investigation in to the August outburst. There is in that respect a case for saying that he should have been advised to seek help from Occupational Health as a welfare measure. However, on the face of it that would not have been a matter for Jiminy Cricket or Captain Hook as neither of them was privy to the notes of that investigation meeting.
- 38 Also, it could be reasonably concluded that the comments made in Mickey's appraisal about stress levels during the course of the year should have alerted the Trust that some form of Occupational Health intervention was required. However, the appraisal form came to the attention of Captain Hook at around the same time that Mickey went off sick in any event when he then fell under the care of his own doctor.
- 39 In respect of the Mickey's wife's conversations with Jiminy Cricket: the second conversation took place at a time when it was apparent to Jiminy Cricket that there was something wrong that justified Mickey taking some time out. In respect of the first conversation in March to May 2013, it seems to me that Minnie Mouse expressed some concerns about how Mickey was coping and talked in broad terms about how stressful things were for him. I can see that this could have alerted Jiminy Cricket to make some effort to keep an eye on Mickey and to engage with him to ensure that he was coping, but the fact is that at work Mickey was managing the challenges that he was faced with. To some extent it could be said that it was reasonable for Jiminy Cricket to expect that pressure came with the scale and nature of the challenges. There is evidence which supports that way of looking at things. The full quote from paragraph 6.5 of the Royal College Report reads:

Mickey Mouse, clinical director, is to be congratulated on his work in turning the department around but there was concern that some patterns of behaviour may have slipped below the standard of

professional courtesies expected and that his style could be confrontational. However this may merely be a reflection of the firm management style which was required to resolve the acknowledged shortcomings in the service.

- 40 These comments could reasonably be read to conclude that Mickey's style was a product of what was required to meet the challenges that existed in the department as opposed to a pointer towards psychological illness.

CONCERNS ABOUT THE INSTIGATION OF INVESTIGATIONS AGAINST HIM

- 41 Mickey raises concerns about the instigation of investigations in to him and his department. He expresses a sense of disappointment that matters such as the CCG patient complaint were not handled more informally. He also expressed a sense of disappointment that he was not part of the conversation that lead to the instigation of the Royal College external review.

- 42 In respect of the CCG investigation, it involved what was on the face of it a serious complaint by a patient that he had been encouraged to incur the cost of private care instead of being served by the NHS. Mickey says that the suggestion of impropriety on his part was obviously unfounded and that Captain Hook should have seen that and not initiated an investigation. Captain Hook says that he was faced with a specific allegation from a patient prepared to be named and who had put the concerns in writing and that he therefore made the correct call to instigate an investigation.

- 43 I have noted the Disciplinary Procedure for Medical Staff. The Procedure arises from the agreement with the Local Negotiating Committee representing medical staff. The first paragraph states that its purpose is to outline ***“the employer’s procedure for handling concerns about doctors’ and dentists’ conduct and capability”***. Then at page 1 para 1.3 it says:

Unfounded and malicious allegations can cause lasting damage to a doctor's reputation and career prospects. Therefore all allegations.....must be properly investigated to verify the facts so that the allegations can be shown to be true or false.

- 44 The benefit of conducting investigations in such circumstances is partly to protect the accused because it enables him/her to say, once exonerated, that due process was followed and he is entitled to be treated as innocent of all claims. Not conducting investigations in such circumstances could be seen as closing ranks. Insofar as Mickey had concerns that Shere Khan was pursuing some type of campaign against him then the investigation would have provided him the opportunity to put that to the investigator, accompanied by whatever corroborative evidence that he had in his possession. Therefore, Captain Hook's actions appear consistent with the Trust's Procedure on such matters and therefore the evidence could be taken to show that he acted reasonably in the circumstances.
- 45 In respect of the Royal College report, it is common ground that the Digestive Diseases Department was under intense scrutiny from its stakeholders. Those concerns were drawn directly to Captain Hook's attention. It seems that the concerns had been raised over a period of time and whatever dialogue had taken place did not put the concerns to rest. Captain Hook then commissioned the external review in order to try and lay matters to rest. It could be reasonably said that given Captain Hook's seniority and the authority of his office, he was entitled to make that call without any reference to or discussion with Mickey. Therefore, whilst Mickey would have preferred to hear the news from Captain Hook, I do not find that Captain Hook acted improperly in not being the first to inform him. In any event it appears that Mickey heard the news about the external review from a senior colleague, namely Pluto, Chief Nurse, albeit not in the context of a formal meeting.

CONCERNS ABOUT THE PROCEDURAL MANAGEMENT OF THE COLLECTIVE GRIEVANCE AGAINST HIM

- 46 Mickey raises a number of concerns about how the complaint brought by four colleagues have been dealt with and about the level of support and advice that he has received in relation to those matters.
- 47 Mickey says that he is concerned that the grievance letter was converted in to an investigation based around him. I have considered the letter raising this grievance. The letter talks about issues of **“harassment, intimidation, bullying and differential treatment”** [page 1 @ para 1]. The letter then in the same paragraph goes on to say **“These serious concerns also highlight the gross mismanagement of the DDC by Mr Mouse...”**. The letter goes on to explain the history of various incidents and matters which reference things that they claim Mickey did or did not do or should have done as well as things that he said. For example: threatened us with termination of contracts; sent intimidating and degrading email; intentionally prevented them from progressing; stopped them from doing independent work; reduced their clinical responsibilities; and excluded them from decision making responsibilities. There are other allegations made. However, it can be seen from this grievance that for the Complainants they regarded Mickey has having committed those acts. Therefore, it was not the HR Department that “converted” the case in to an investigation against Mickey, but the Complainants who put their case forward as a complaint against him and the investigation proceeded accordingly. The TOR appear to reflect the allegations that the complainants made.
- 48 Mickey says that he is also concerned about the Terms of Reference (‘TOR’) not initially containing a reference to race discrimination. Mickey expressed concern that he was not informed of the change in the TOR before taking receipt of them. Mickey said that the change appears to have occurred because of the intervention of the BME Lead. The question of what type of complaint is being or has been made is essentially one for the complainant to determine. It is not for an employer to say what the complaint is about. What the complainant says determines what the complaint is. Sometimes it may not be clear what reason the complainant is relying on for whatever treatment has been received.

- 49 In this case the complainants said that they felt that they had been bullied, harassed and exploited and used the term differential treatment in their complaint letter. On the face of it that is the language of discrimination. The question was then what type of harassment etc. were they alleging that they had faced at Mickey's hands. It seems that the intervention of the BME Lead answered that question. That the TOR was then amended to reflect that recognition does not seem unreasonable. It seems to me that the question would have or should have been clarified at some point.
- 50 I do not consider that Jiminy Cricket had any requirement to speak to Mickey if he knew that race was going to be a feature of amended TOR (and there is no evidence to suggest that he did). In any event, in matters such as these it is advisable for line managers to remain distant from the details relating to the investigation, unless they are personally conducting it.
- 51 Mickey also expressed concern about the change in the appointed external investigator in the case. Mindful that this concern to some extent relates to my appointment, I simply express a view on the overarching principles relating to the appointment of an investigator. In essence it is for the employer, in accordance with relevant procedures, to determine who should be appointed to investigate. The investigator should be competent and impartial. Short of those basic principles an employer can appoint and change investigators accordingly.
- 52 Mickey also expresses concern about not being warned of the risk of being accused of victimization, which he considers negligent and endangering. Over a period of 30 years, I have been involved in many grievances alleging discrimination and many Employment Tribunal cases where individuals have been accused of discrimination, and I am unaware of a single case where it has been stated that an accused should have been warned of the risk of an allegation of victimization. Accordingly, I do not consider that to be a step that an employer is reasonably required to take. Indeed the risk would be that if an employer did warn an accused that the person making the allegation may raise a claim of victimization in addition to the original complaint, then that of itself could be regarded as an act of victimization on the part of the person delivering that

- message on the part of the employer. It seems to me that the only legitimate advice that Mickey could have been given in these circumstances was that he should not treat the complainants unfavourably because they had brought a complaint of discrimination. I suspect that Mickey would have known that he should not do so in any event.
- 53 Mickey expresses concerns about the support and advice received from HR in relation to the matters which led to the grievance. It is apparent that the background to the grievance unfolded over a long period of time. The attempts to resolve the various contract issues were punctuated with delays. Mickey refers to Daffy Duck effectively having put a hold on the contract offer from about December 2012. Daffy Duck said that he understood that for some of the period he was waiting for Mickey to complete a job plan in order for the complainants to sign off the contract offer. It seems that the process was also punctuated with a lack of clarity as to who was responsible for doing what in order to move the matter to a conclusion.
- 54 Mickey raises a specific concern about the advice received from Daffy Duck to send the contract offers and job plans to the complainants in November 2013. Mickey described that as ***“poor if not deliberately misleading advice in the light of subsequent events”***. I have had the benefit of hearing how the complainants put their case against Mickey and of seeing all of the evidence in relation to that case. Whilst the complainants make many and wide ranging allegations against Mickey, there is nothing of significance that arose from the sending of the documents, as opposed to having a meeting to hand them over. I do not believe that anything of significance has turned on the manner of delivery and I do not see that it would have been reasonable for Daffy Duck to believe that it would. If anything the history of the case appears to show that the complainants raised concerns about meetings that did take place, as opposed to complaining that meetings such as the one suggested by Mickey, should have taken place.
- 55 Mickey also raised a concern about being badly advised as to the existence of pay protection in respect of the complainant’s banding which the Trust attempted

- to reduce in February 2012. Mickey said that he asked Tinker Bell whether it applied but she did not get back to him. It subsequently transpired that it did apply and this is something that the complainant's raised as a concern as part of their case. However, the question that Mickey actually asked in his email of 21st November 2011 was not put in the form of a question as to whether pay protection applied. He said "***I just wanted to clear up with you whether the pay protection in place for these staff is currently applicable and is justifiable in the current climate***" [page 38 Main Pack]. Therefore, this suggests that Mickey knew that pay protection was in place and he was asking whether that pay protection could be circumvented. Tinker Bell then answered that question.
- 56 Mickey expresses concerns about comments made by the Complainants during the meeting of 13th December 2013. He says that some of those comments were abusive and threatening and that the Trust should have then acted upon them by investigating them under appropriate terms of reference.
- 57 In essence, Mickey questions whether the comments by Fred Flintstone and Barney Rubble about slavery are discriminatory and whether the Trust should have treated them as such. Mickey's case is that the comments are racially offensive and that the Trust should have initiated investigations against those two individuals in the same way that the Trust initiated an investigation against him after the covert recording was disclosed. I do not consider that a reference to slavery is inherently a reference to race. Slavery is an evil that people of several races have perpetrated in one form or another. Whilst the comments may be regarded as entirely inappropriate given the context in which they were made I can see why they were not regarded by the Trust as being overtly discriminatory, whereas some of the comments that Mickey was seen to make during the meeting of 13th December 2013 were overtly about race because there was reference to the ethnicity of the complainants when describing what he regarded as their unreasonable behaviour (e.g. "South Asians").
- 58 Mickey also expressed a concern about receiving a letter on 20th March 2014 despite having informed Mary Poppins that all communication should be sent via

Brer Rabbit. The letter was signed by a member of the HR Department. In respect of this matter it does appear that there was a breakdown in systems because there were other letters received by Brer Rabbit from HR pursuant to Mickey's instruction.

59 That concludes my findings in this matter.