

DERBY TEACHING HOSPITALS NHS FOUNDATION TRUST

“FIT AND PROPER PERSON” INVESTIGATION AS TO MRS SUSAN JAMES

Reg. 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

INVESTIGATING OFFICERS’ REPORT

FINAL REPORT

Investigating Officers

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A. INTRODUCTION

1. This is the report of an investigation undertaken at the request of the Derby Teaching Hospitals NHS Foundation Trust (“the Derby Trust”), pursuant to Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
2. That Regulation imposes upon NHS Trusts obligations, among others, to ensure that each of its directors (or anyone performing an equivalent function) is a Fit and Proper Person (“FPP”) to hold office. This investigation is into the question of whether Mrs Susan James, the Derby Trust’s current Chief Executive, is a Fit and Proper Person to hold that office. It arises essentially because of allegations made by a Dr Drew, a paediatric consultant, as to Mrs James’s conduct when she was Chief Executive of the Walsall Hospitals NHS Trust (“the Walsall Trust”) (and where Dr Drew worked until his dismissal in 2010), initially in a book, and subsequently in correspondence with the Care Quality Commission (“CQC”). His allegations are of very serious misconduct and mismanagement in office. They include, for example, an allegation that Mrs James had sought to cover up failings at the Walsall Trust which had led to the death of a child (below “KK”). The background is set out in more detail at Section C below.
3. The writers of this Report are Charles Cory-Wright QC and Katharine Scott. We are two barristers in independent practice. The Derby Trust has appointed us as Investigating Officers for these purposes, in order to ensure that the investigation is independent, objective, comprehensive, robust and fair to all concerned. We understand that the Derby Trust also wishes to ensure that the process is transparent, and that it intends to publish our findings and recommendations, at least in summary form in due course.
4. We have undertaken the Investigation, and the writing of this Report, pursuant to (i) Terms of Reference, (ii) an Investigation Remit taken therefrom; and (iii) an Investigation Protocol, all of which were prepared by ourselves for the purpose, in consultation with the Derby Trust. Copies of each of these three documents (in their latest form) are attached as **Annexes 1, 2 and 3** respectively.
5. Each of these has had to develop over the course of the Investigation, for reasons described below. (It is necessary for us to explain in particular the way in which the Investigation Remit has developed over the five months or so that we have been performing our task; this we do at Section D below.)

B. “FIT AND PROPER PERSON”: THE REGULATION 5 REQUIREMENT

B.1. The Provisions of Regulation 5

6. The Fit and Proper Person test is set out in Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. This provides as follows.

“5.—

1. *This regulation applies where a service provider is a body other than a partnership.*
2. *Unless the individual satisfies all the requirements set out in paragraph (3), a service provider must not appoint or have in place an individual—*
 - a. *as a director of the service provider, or*
 - b. *performing the functions of, or functions equivalent or similar to the functions of a director.*
3. *The requirements referred to in paragraph (2) are that—*
 - a. *the individual is of good character,*
 - b. *the individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed,*
 - c. *the individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed,*
 - d. *the individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity, and*
 - e. *none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.*
4. *In assessing an individual's character for the purposes of paragraph (3)(a), the matters considered must include those listed in Part 2 of Schedule 4.*
5. *The following information must be available to be supplied to the Commission in relation to each individual who holds an office or position referred to in paragraph (2)(a) or —*
 - a. *the information specified in Schedule 3, and*
 - b. *such other information as is required to be kept by the service provider under any enactment which is relevant to that individual.*
6. *Where an individual who holds an office or position referred to in paragraph (2)(a) or (b) no longer meets the requirements in paragraph (3), the service provider must—*
 - a. *take such action as is necessary and proportionate to ensure that the office or position in question is held by an individual who meets such requirements, and*
 - b. *if the individual is a health care professional, social worker or other professional registered with a health care or social care regulator, inform the regulator in question.”*

7. This Regulation came into force on 27 November 2014.

B.2 Summary of the Requirements

8. To summarise the relevant principles, therefore: in order to be appointed, or to remain in place as a director (or someone performing the equivalent services) of a service provider, that service provider must be satisfied that he or she:
 - (a) is of good character (paragraph 3(a));
 - (b) has the qualifications, competence, skills and experience which are necessary for the relevant office or position for which they are employed (paragraph 3(b));
 - (c) is able by reason of health of properly performing tasks for which they are employed (paragraph 3(c));
 - (d) has not have been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity (paragraph 3(d)).
9. The requirement that appears to be most relevant to the allegations made by Dr Drew here is that at paragraph 3(d), relating to serious misconduct or mismanagement. However it seems sensible to us to deal also with the other salient questions as well. (There is no suggestion of any health issue, and we therefore ignore for this purpose that relating to paragraph 3(c).)

B.3. CQC Guidance as to the FPP Test

10. The CQC has issued guidance for service providers as to how they should approach the application of the FPP Test. We set out the relevant passages below.

Good Character

11. In assessing good character the matters listed in Part 2 of Schedule 4 must be considered. These are whether the individual has been convicted of an offence or erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals.
12. The relevant CQC Guidance is as follows:

“5(3)(a) the individual is of good character:

- *When assessing whether a person is of good character, providers must follow robust processes to make sure that they gather all available information to confirm that the person is of good character, and they must have regard to the matters outlined in Schedule 4, Part 2 of the regulations. It is not possible to outline every character trait that a person should have, but we would expect to see that the processes followed take account of a person's honesty, trustworthiness, reliability and respectfulness.*
- *If a provider discovers information that suggests a person is not of good character after they have been appointed to a role, the provider must take appropriate and timely action to investigate and rectify the matter.*
- *Where a provider considers the individual to be suitable, despite existence of information relevant to issues identified in Schedule 4, Part 2, the provider's reasons should be recorded for future reference and made available”.*

Competence and skill

13. There are four elements to consider: qualification, competence, experience and skill.
14. The relevant CQC Guidance is as follows

“5(3)(b) the individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed,

- *Where providers consider that a role requires specific qualifications, they must make this clear and should only appoint those candidates who meet the required specification, including any requirements to be registered with a professional regulator.*
- *Providers must have appropriate processes for assessing and checking that the candidate holds the required qualifications and has the competence, skills and experience required, (which may include appropriate communication and leadership skills and a caring and compassionate nature) to undertake the role. These must be followed in all cases and relevant records kept.*
- *We expect all providers to be aware of, and follow, the various guidelines that cover value-based recruitment, appraisal and development, and disciplinary action, including dismissal for chief executives, chairs and directors, and to have implemented procedures in line with the best practice. This includes the seven principles of public life (Nolan principles).”*

Misconduct and Mismanagement

15. The question is whether the individual has been involved in any serious misconduct or mismanagement in the course of carrying out a regulated activity. As we say, this is on the face of it the requirement of most relevance to the allegations made by Dr Drew.
16. The relevant CQC Guidance is as follows

“5(3)(d) the individual has not been responsible for, been privy to, contributed to or facilitated, any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity

- *Providers must have processes in place to assure themselves that a person has not been responsible for, privy to, contributed to, or facilitated any serious misconduct or mismanagement in the carrying on of a regulated activity. This includes investigating any allegation of such and making independent enquiries.*
- *Providers must not appoint any person who has been responsible for, privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether lawful or not) in the carrying on of a regulated activity.*
- *A director may be implicated in a breach of a health and safety requirement or another statutory duty or contractual responsibility because of how the entire management team organised and managed its organisation's activities. In this case, providers must establish what role the director played in the breach so that they can judge whether it means they are unfit. If the evidence shows that the breach is attributable to the director's conduct, CQC would expect the provider to find that they are unfit.*

- *Although providers have information on when convictions, bankruptcies or similar matters are to be considered 'spent' there is no time limit for considering serious misconduct or responsibility for failure in a previous role”.*

B.4 The Nolan Principles

17. As will have been seen, the CQC Guidance relating to paragraph 3(b) (qualifications, competence, skills and experience) makes specific reference to the familiar “Nolan Principles”: the seven principles of public life. Furthermore Dr Drew has himself made reference to these principles in his complaints to the CQC. For these reasons, and in any event because it seems right to us to do so, we bear them in mind, and we set them out below.

18. The Nolan Principles are as follows:-

1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs

C. THE CIRCUMSTANCES GIVING RISE TO THIS REPORT

19. As will be seen, the background to the commencement of the Investigation is of itself of significance, and we believe it is appropriate to explain it at the outset.

C.1. The Anonymous Letter of January 2015

20. On 5 January 2015, an anonymous letter, simply dated December 2014, was received by the Derby Trust (“the anonymous letter”). A copy of this is attached as **Annexe 4**. This letter made a number of serious allegations against Mrs James, in relation to her conduct when Chief Executive at the Walsall Trust, a post she held from 2003 until December 2010, immediately prior to joining the Derby Trust in January 2011.
21. These allegations included the following: that she covered up “catastrophic failures” at Walsall which had led to the death of a child (“KK”); that she wrote a false press statement about KK’s death; that she covered up heating failures in the paediatric wards; that she suppressed a Royal College report which was allegedly critical of her leadership; that she obstructed rectification of the weaknesses in the child protection regime; along with a number of other allegations of mismanagement and bullying, including that she bullied Dr David Drew (see immediately below) out of his job.
22. For these purposes the author incorporated by reference - although he or she did not purport to have any direct knowledge of the same – allegations made in a book written by Dr Drew, a Consultant Paediatrician who had worked for the Walsall Trust, and enclosed a copy of a press release relating to the same.
23. The anonymous nature of the letter was explained on the basis, put shortly, that the author was a whistle-blower who might suffer if his or her name were disclosed. It is at least implicit in this that the author is, or might be, a member of the clinical staff at Derby (or possibly at the Walsall Trust), past or present. Whether that is so is presently unclear.
24. The author copied that letter to the CQC.

C.2. The Initial Correspondence between the CQC and the Derby Trust

25. Upon receipt of this, the CQC wrote to the Trust’s Chair, Mr John Rivers, by letter dated 26 January 2015 (itself written after some earlier email correspondence), in order to explore the question of what action the Trust had taken, or proposed to take, in relation to these allegations.
26. This letter appears to have been written particularly in the light of the new duties imposed by the new FPP requirements provided by Regulation 5, set out in full at Section B above. As there stated, these, put shortly, require a Trust not to appoint anyone who is not a Fit and Proper Person to the position of Director, and to take such action as is necessary to ensure that any Director already in post is and remains a Fit and Proper Person. As will have been seen, the obligation under the Regulation to investigate is that of the employing Trust, not the CQC.

27. Mr Rivers duly undertook an investigation of these matters himself. He had, and indeed expressed to the CQC, some concerns about both the propriety and the practicalities of one NHS Trust conducting an investigation into the conduct of, or conduct that occurred at another NHS Trust. (We observe that these concerns are, frankly, equally applicable when such an investigation is undertaken by independent Investigating Officers such as us.) By letter dated 18 February 2015, Mr Rivers explained that he had duly undertaken the relevant investigation and had concluded *“that Sue James was a fit and proper person to be and to remain a Director of our Trust.”* He attached a 6 page Note setting out the evidence that he had considered during this investigation, upon which this conclusion was based. This referred both to enquiries made (with positive feedback) with Directors of the Walsall Trust, and to the Derby Trust Board’s own (positive) experience of her since 2011 while she has been in post in Derby. Copies of his letter and his Note appear at **Annexe 5**.
28. The CQC responded by letter from Professor Sir Mike Richards, Chief Inspector of Hospitals, dated 9 April 2015. That letter stated, among other things, that the CQC was not satisfied on the basis of the letter from Mr Rivers that a sufficiently robust and independent investigation into Mrs James and Dr Drew’s allegations against her had been undertaken. One of the reasons it gave for this was the fact that Dr Drew himself had not been consulted. It suggested (without requiring, since it made it clear that this was a matter for the Trust under the terms of the Regulations) the possibility of the appointment of a barrister as independent investigator. Specifically, it stated as follows *“We have received a range of responses to the cases we have so far considered and hesitate to recommend one particular approach. You may find it useful to know, however, that one Trust employed a barrister to work through the detail required”*. A copy of this letter too appears at Annexe 5.

C.3. Our Appointment

29. Our appointment in April 2015 was made in consequence of the terms of that letter.
30. We duly commenced our Investigation in late April 2015. At Section E below we describe our approach to the Investigation and the methodology that we have adopted.

C.4. Subsequent Developments

31. In late June 2015, some two months after the inception of our Investigation - and after we had interviewed nearly all of the witnesses from whom we had initially proposed to seek evidence - we, and through us the Derby Trust, became aware (in both cases for the first time) that between January 2015 and March 2015 Dr Drew had himself lodged a number of complaints with the CQC relating to matters linked to our Investigation. These included allegations made by him personally (in addition to those in the anonymous letter based on his book) that Mrs James did not satisfy the FPP requirements under Regulation 5.
32. This information came to our attention fortuitously, as a result of various email communications between (i) us, (ii) Dr Drew himself, and (iii) the CQC, in the course of our trying to make contact with Dr Drew in order to seek to persuade him to cooperate with our Investigation.

33. We refer in particular to the following documents sent by Dr Drew to the CQC in the period January to March 2015 (before, we should make clear, the correspondence between the Derby Trust and the CQC as a result of which we were appointed):-
- A document headed "FPPR: case brought by Dr David Drew / relating to Mrs Sue James", dated January 2015;
 - A document headed "Fit and Proper Persons Requirement for NHS Directors", also dated January 2015;
 - A document headed "My report concerning Mrs Sue James and Derby Hospitals NHS Trust under regulation 5, FPPR", dated 2 March 2015.
34. These documents are attached as **Annexe 6**.
35. Since these documents emanate from Dr Drew himself, and relate to allegations he makes against Mrs James, we regarded it as necessary for us to expand the Terms of Reference and the Remit of our Investigation to ensure that they covered these new allegations, as well as those covered by the original Terms of Reference and Remit. We therefore revised those documents accordingly, and it is those revised versions which appear at Annexes 1 and 2 respectively.

The Consequences of Late Disclosure of Dr Drew's Correspondence with the CQC

36. As we have made clear already, this correspondence was disclosed to us in late June 2015, at a stage when our Investigation into the matters raised in the anonymous letter (which, so far as we were concerned up to that point, was what had prompted the need for the Investigation) was already almost complete. It had not been sent to the Derby Trust, or to us, by Dr Drew (who had been contacted by the Trust in an attempt to get him to assist with the Investigation, but who at that stage regarded the Investigation with suspicion and had not responded). It had not been sent by the CQC either to the Derby Trust or to us. It is only right that, having given the explanations as to the development of the Terms of Reference and the Remit above, we should also record the following in relation to this.
37. As stated above,
- a. the CQC wrote to the Derby Trust in order to explore the question of what action that Trust had taken, or proposed to take, in relation to these allegations.
 - b. an investigation was initially undertaken by the Derby Trust's Chair, Mr Rivers, who duly reported to the CQC;
 - c. the CQC responded that it was not satisfied that that initial investigation was sufficiently rigorous, given (in particular) the failure to consult Dr Drew, and suggested the possibility of barrister involvement,
 - d. as a result we were appointed to investigate
 - e. our Investigation was into the matters raised by the anonymous letter, the allegations in which were based on those made by Dr Drew in his book.
38. However it subsequently became clear that the CQC had also, in January 2015, received by way of formal complaints, directly from Dr Drew, at least the first two documents listed at paragraph 33 above and appearing at Annexe 6. This was before the CQC had raised the question of any FPP investigation by the Derby Trust, and, it follows, before it had prompted our involvement as investigators.

39. The CQC has since explained the position as follows

“On receipt of a copy of the anonymous letter sent to the Trust, CQC’s regional team contacted the Trust to ask them to investigate. At the same time they referred the matter to the newly convened FPPR Panel for further advice. This triggered CQC’s process for requesting that the Trust investigate. The Panel had separately received documents from Dr Drew about the same issues raised by the anonymous letter. As the regional team had already asked the Trust to investigate, the Panel simply formalized that request. [The CQC wrote subsequently on 26th January stating] that “the role of reaching a decision about the truth or relevance of any information which is relevant to the FPPR lies with the NHS body and not CQC.” This role includes locating and interrogating all relevant evidence. Despite this, the Trust, as we noted in our letter of 9 April 2015, did not meet or make contact with Dr Drew before forming their conclusions dated 18 February 2015.”

40. Unfortunately, the CQC did not pass on Dr Drew’s own complaints either (i) to the Derby Trust, when it was charging that Trust with investigating the position, or, failing that, thereafter (ii) to us, either when we were appointed (pursuant to the CQC’s own suggestion), or, failing that, at least when the original Terms of Reference were copied to the CQC. As Dr Drew has himself pointed out in correspondence since, it took enquiries from us of the CQC (copied by us to him), and his own further prompting, to secure the transmission by the CQC of those complaints to us. We recognise that the CQC’s position is that it was aware that we were already investigating these matters, but we have to say that we do not see that as a reason not to send us Dr Drew’s complaints to them; indeed in the circumstances rather the opposite is true.
41. We should make it clear that we make no suggestion that there was any intentional non-disclosure, or other obstruction of our Investigation by the CQC. These matters have nonetheless had significant consequences for the Investigation. We had (i) to suspend our evidence gathering pending revision of the subject matter of the Investigation, (ii) significantly to recast the Terms of Reference and the Investigation Remit, and (iii) substantially to delay completion of the Investigation to allow for the re-interviewing of witnesses. As a result the Investigation has been both substantially delayed and extended in terms of work - by a number of months – and will end up being very significantly more expensive. (We believe the costs will have doubled from their original estimate).
42. All that said, we should also stress that we are satisfied that the Investigation will not ultimately be prejudiced by this.

D. THE DEVELOPMENT OF THE INVESTIGATION REMIT: THE ISSUES

D.1. Introductory

43. The fact that we have received Dr Drew's allegations and complaints somewhat piecemeal, as described above, means that both the history and the ultimate form of the Investigation Remit have of necessity been rather more complicated than would be ideal. It is necessary to explain why this is so in order to assist navigation of the Remit, of the related List of Issues in their final form, and (thus) of this Report itself.

D.2. The Scope of the Investigation

44. As we have already stated, the proposed Investigation is one pursuant to Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 as to whether Mrs James, its current Chief Executive Officer, is a Fit and Proper Person to hold that office.
45. While the CQC did, by its letter of 9 April 2015, refer to certain specific matters raised in the anonymous letter which required investigation (and which are included within the Remit described below), it did not identify which specific basis for consideration under Regulation 5 it regarded as potentially being engaged.
46. We made it clear in the Terms of Reference that we prepared that we understood the CQC to be expecting the Investigation conducted on behalf of the Derby Trust to be concerned primarily with paragraph (d) of Regulation 5, namely "*(d) the individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity ...*". However as we have already made clear we have operated on the basis that we should consider the whole of paragraph 5 when undertaking our Investigation.

D.3. The Original Investigation Remit

47. The original remit for our Investigation was based on the terms of the anonymous letter. It was set out formally at paragraph 22 of the Terms of Reference, and also in a separate document, entitled Investigation Remit, which (unlike the Terms of Reference) was to be provided to the witnesses in order to identify the relevant issues.
48. Given that this Investigation Remit was revised in the light of the subsequent developments (see below) there is no need to set it out separately here: its contents are essentially as ultimately appear in the Revised Remit, below, save that it did not include the words which are underlined (which were inserted by revision, in the circumstances there described).

D.4. The Revised Investigation Remit

49. The intention behind the revised Investigation Remit was that it should maintain as much as possible the form of the original Investigation Remit but should also cover any additional relevant matters raised by Dr Drew in the complaints made by him to the CQC (i.e. anything beyond what had been raised in the anonymous letter).

50. It identified the issues to be investigated in the following terms.

(1) *Generally, the allegations that between 2006 and 2010 the Walsall Trust's executive team mismanaged issues in the Paediatric Department, and specifically as to Mrs James's role and responsibility for these alleged failings.*

(2) *As to the following specific allegations made either against Mrs James or against the Walsall Trust generally, and in relation to the latter as to her role and responsibility therein:*

a. *As to the death of "KK" in 2006 and associated matters; these include:*

- (i) The extent and nature of Mrs James's involvement in matters relating to this death;*
- (ii) The subsequent (allegedly inadequate) investigations into the death;*
- (iii) The alleged failure to ensure performance management and censure of the responsible Consultant;*
- (iv) The allegation that she wrote a false press statement;*
- (v) The allegation that she helped cover up the failings of the Walsall Trust that led to the preventable death of a child;*
- (vi) The allegation that she obstructed the improvement of child protection processes;*

b. *Allegations against the Walsall Trust:*

- (i) That its executive team made inappropriate appointments to divisional and departmental leadership roles;*
- (ii) Of an 'aggressive management style' of divisional management;*
- (iii) Of mismanagement of personnel grievances; and*
- (iv) Of a lack of insight by the Trust Board.*

c. *Allegations against Mrs James personally*

- (i) That she suppressed (and in particular (i) prevented the Walsall Trust Board from seeing, and (ii) falsified its instructions as to dissemination) an independent Royal College Report dealing with the allegations at b. above, because it was allegedly critical of her leadership, when she had recently escaped a vote of no confidence by the consultant body.*
- (ii) That she inappropriately supported and refused to deal with bullying managers*
- (iii) That she covered up serious heating failures in the paediatric wards.*

d. *Allegations against her specifically relating to the dismissal of Dr Drew,*

- (i) That she suspended Dr Drew for what turned out to be groundless allegations by one of the bullying managers*
- (ii) That she asked Dr Drew to resign for challenging her decision about how the IPR should be disseminated.*
- (iii) That she "sacked" Dr Drew by means of "a sham disciplinary process"; and*

- (iv) *That she wrongfully offered Dr Drew a compromise agreement to terminate his employment or else face disciplinary action leading to dismissal.*
- (v) *That she lied to Dr Drew about SHA and/or Board knowledge of the offer and the Board's view of his continued employment.*

(3) *Generally as to her record in post since appointment in 2011 to the Derby Trust.*

- a. *That she failed to inform the Derby Trust of the allegations made against her in Dr Drew's book when she was informed of its existence in June 2014.*
- b. *That she has failed to present any challenge to Dr Drew's account of her actions, because she knows that that account is true*

- 51. As stated above, the underlined passages are those which were new: i.e. those added as a result of the receipt of Dr Drew's complaints to the CQC.
- 52. This wording was incorporated into a Revised Terms of Reference as well as set out in a free-standing Revised Investigation Remit. These are the documents that appear, respectively, at Annexe 1 and Annexe 2.

Explanatory Note: "(2)b: Allegations against the Walsall Trust"

- 53. There is one specific observation, echoing what we have already said about the nature of our Investigation, that we would wish straight away to emphasise about the terms of this Remit. The reference in paragraph (2)(b) quoted immediately above to "Allegations against the Walsall Trust" (which appears in both the Original and Revised Remits), was the consequence of the terms of the anonymous letter (in which these allegations were made) on which the Original Remit was based. What we wish to emphasise is that it should not be taken to mean that we are investigating the Walsall Trust itself. We are not. We come back to this point further and in more detail at paragraph 69 below; but it is sufficient for present purposes to make it clear that our Investigation is neither into the conduct of the Walsall Trust nor that of any its employees, past or present, apart from Mrs James. Anything said in this Report about the conduct of any others is simply to put our Investigation into her conduct in context.

D.5. Dr Drew's January 2015 Regulation 5 Complaint

- 54. At this stage it is sensible to set out the relevant terms of Dr Drew's January 2015 Regulation 5 complaint to the CQC itself. This consisted of four headline allegations in relation to Mrs James's conduct at the Walsall Trust, each of which was then expanded upon by a short narrative. We set these out below, with the headline allegations in bold, and the narrative in each case below that. (For ease of reference we categorise these four headline allegations (both here and below) as DD.1-4.)

DD.1 “Mrs James supported and participated in a cover up of failings of care by Walsall Healthcare that led to the preventable death of a Walsall child.”

DD Supporting Narrative:

“Mrs James was CEO in June 2006 when the child [(KK)] died of non-accidental head injury. This resulted from what are now acknowledged by the Trust (Cordis Bright report June 2014) as catastrophic mistakes and failure of the most basic safeguarding. This was covered up for more than eight years. Mrs James had overall responsibility as CEO for the clinical governance failures that allowed this cover-up. The K family were told nothing of these failures by Walsall Healthcare until an independent investigation, commissioned after a complaint, reported in June 2014. In particular Mrs James signed a press release in April 2009 which was untrue and obscured the failings of her hospital until we forced the independent investigation 5 years later. In addition Mrs James obstructed the remedy of failings related to [(KK)]’s death. This delayed the development of the safeguarding service. This cover up has resulted, on Walsall Healthcare’s own admission, in an 8 to 9 year delay in the lessons of [(KK)]’s death being learned and used for the protection of vulnerable Walsall children.”

DD.2 Mrs James suppressed a Royal College of Paediatrics report which was critical of her leadership at a time when she had recently escaped a vote of no confidence by the consultant body.”

DD Supporting Narrative:

“In 2010 Walsall Healthcare commissioned an Independent Review Panel (IRP), recommended by the Royal College of Paediatrics, to review my concerns about child protection and other issues at Walsall Healthcare. In addition it was asked to investigate my own mistreatment as a result of whistle-blowing. The IRP produced a report in March 2010. The report was highly critical of Mrs James and senior management. Mrs James vigorously suppressed this report to limit its readership within the trust. This involved Mrs James falsifying the IRP report’s instruction for disseminating the report within the trust. Even the trust board was not allowed to see the report but instead was given a sanitised version which prevented the board seeing the original instruction for dissemination and prevented senior clinical managers (CDs) from seeing the report at all. I challenged the instruction on dissemination which would have effectively gagged me from speaking about the report. As a direct result Mrs James asked me to resign. Mrs James was politically vulnerable at this time as she had recently escaped a vote of no confidence by the hospital consultant committee and was known to be looking for CEO posts elsewhere. The IRP chair was then appointed by Mrs James to a position in the trust to help further his managerial aspirations. The IRP chair was fully complicit with Mrs James in suppressing the report and was aware that she had altered the instruction for dissemination.”

DD.3 “Mrs James attempted to pay me a settlement (accompanied by demonstrably dishonest statements) to induce me to leave quietly and sign a gag, specifically contrary to Department of Health directions.”

DD Supporting Narrative

“On 25 June 2010 I met Mrs Sue James with her HR director and my BMA representative in a digitally recorded meeting. Mrs James told us that the board had decided my position in the organisation was untenable. This was untrue. My departure and settlement was never discussed at any board meeting. I was offered an extraordinary financial settlement (outside the terms of my contract) to leave immediately with a good reference on the proviso that I signed a confidentiality agreement.

Mrs James claimed the confidentiality agreement was required as a result of SHA Involvement in the offer. This was untrue. BMA inquiries at the SHA showed that they had no knowledge of me or the offer I was being made.

The offer was made contrary to the requirements for settlement laid down in Maintaining Higher Professional Standards (MHPS). In particular MHPS specifies that settlement with a compromise agreement should not be used in any case that warrants disciplinary action. I had already been sent an appointment by Mrs James to attend a disciplinary hearing in April 2010. At this recorded meeting my BMA rep. asked what would happen if I refused the offer. Mrs James answered that I would be entered into a disciplinary procedure with a view to dismissing me.

The reason for this MHPS restriction on settlements is clear. It would otherwise allow the swift departure of bad doctors who warrant disciplinary action, allowing them to leave with a settlement and gag in order to avoid a drawn out process including employment tribunals. This allows the bad doctor to move on and work elsewhere, leaving future employers blind to this. Alternatively pay and gag is a well-recognised way of getting rid of whistle-blowers. As the House of Commons Health Committee has endlessly recognised this effectively conceals patient safety concerns as in my case. Signing a gag would have effectively prevented me exposing, over the next 4 years, the Trust’s failings in the [KK] case. It is also doubtful that I would have got my book past the lawyers for publication.

It would have been wrong in these circumstances for me to accept this offer. I declined in writing calling it a bribe; which it was.”

DD.4 Mrs James refused to deal with a bullying management culture.

DD Supporting Narrative

“In November 2014¹ I took the senior nursing staff and consultants to meet Mrs James to report very serious managerial bullying in the department. There were two meetings (20 November 2009 and 4 December 2009), both minuted. Despite the Trust harassment and bullying policy mandating a full investigation of these serious reports Mrs James as minuted took no action. The two managers responsible for most of the bullying were removed from all contact with the paediatric department on the instruction of the RCPCH review in June 2010. Nursing staff suffered 6 months of unnecessary bullying as a result of this. No proper investigation of this bullying ever took place.”

¹ sic – presumably this should be 2009.

55. These 4 headline allegations themselves provide the structure for – and are included within – a Combined List of Issues consisting of 24 Issues in all (see immediately below for further explanation), which appears at Section F below. At that juncture the 4 headline allegations appear without Dr Drew’s supporting narrative quoted above. However that supporting narrative is then included at Section I of the Report (where we set out our Findings of Fact on each of the said 24 Issues), after each of the headline allegations, at the beginning of each relevant sub-section within Section I.

D.6. The Production of the Combined List of Issues

56. The Revised Remit remains the basis for our Investigation. However once we had examined Dr Drew’s January 2015 correspondence with the CQC (and in particular the passages quoted above), we realised that it would be more satisfactory (not least for the purpose of ensuring that all the matters raised by Dr Drew in his complaints were properly covered) to reorganise the issues identified in the Revised Remit within a simple template that reflected the allegations made by Dr Drew in his said complaints, rather than for the approach to remain, somewhat artificially in the circumstances, determined by the format of the anonymous letter (particularly given that that letter had been based, it seems, on his book).
57. We did however defer the decision as to whether to do this until we had interviewed Dr Drew himself and had the opportunity to discuss with him whether this is what he would wish. He does: hence the final reformulation that appears in the Combined List of Issues.
58. As stated above, the Combined List of Issues appears at Section F below.

E. THE NATURE AND METHODOLOGY OF THE INVESTIGATION

E.1 The Purpose of Independent Investigation

59. It is perhaps obvious (even leaving aside the circumstances described above as to our instruction) that from the Derby Trust's point of view the purpose of engaging us as independent Investigating Officers was to ensure the requisite level of independence, robustness, thoroughness and transparency that the situation required. It was with these ends in mind that the Investigation's Terms of Reference, Remit and Protocol were drafted, and we trust that these documents, and indeed this Report itself, demonstrate the same.

E.2 The Nature of the Investigation

Not a Judicial Investigation or Inquiry

60. First, we repeat that our Investigation is not a court case or a judicial inquiry. Even in litigation, and with the availability of judicial sanctions, the courts often have to make decisions on the basis of incomplete information. (Indeed, strictly speaking, this is invariably the case, at least to some extent.) However we are at a significant further disadvantage. We cannot compel evidence, either documentary or by witness.

Proportionality

61. Secondly, we must operate within the constraints of proportionality in terms of time and of expense, and the cost to the public purse. While we are independent of the Derby Trust in terms of our role as Investigators, we are bound to discharge on its behalf the responsibility to act reasonably in terms of the time taken by and the extent of this Investigation. We cannot interview all those who might be prepared to make themselves available, or review every possibly relevant document that might be available to us if we pressed for it. We have sought to strike the right balance here, and we hope we have achieved it. We say that against the backdrop referred to above, and the fact that we believe that the time spent (and cost of) this Investigation has already broadly speaking doubled from its original estimate, given the way the scope of and work involved in the Investigation have developed.

Not Litigation

62. Thirdly, we wish to make the point (which should perhaps be obvious) that this is not litigation. We say this because there have been times, both in the documentation and in discussions, when Dr Drew has given the impression that he considers this Investigation – engendered as it was by the complaints in his book and to the CQC, effectively to be a procedure between parties, in which he is one party and Mrs James (or the Walsall Trust) is the other.
63. This is of course incorrect. Dr Drew obviously plays a very significant part both in the events covered by this Investigation and also in the generation and development of the Investigation itself. However it is important to stress that the Investigation is not into him, it is into the conduct of Mrs James; and also that he is not in any sense a “party” to this Investigation. He is a witness whose evidence we have available to us in a number of forms.

Our Role, Our Credentials, and the Limitations upon them

64. Fourthly, we should deal with the question of our own credentials, the limitations upon them, and whether (against the backdrop of the said requirements of proportionality), other resources such as expert assistance might have been brought to bear.
65. We are both barristers in independent practice. We both have a significant amount of professional experience of healthcare issues as they arise in the context of litigation of various sorts. We have a decent, if limited, working knowledge of the way in which health care is delivered by the NHS. However neither of us is a clinician, or an expert in healthcare in any proper sense. We are aware of these limitations, and have had an eye to whether they would cause problems for us, or would require us to commission expert evidence. (This would inevitably have been at a significant additional cost, but if proportionate it could have been obtained.)
66. Our strong view is that this has not been a problem, and that there has therefore been no need for it. We say this bearing in mind that the scrutiny required by the Derby Trust and the CQC is not medical or clinical in nature, but rather to provide a detailed overview of the qualities and conduct of a Chief Executive. It was in that context, and precisely to that end, no doubt, that the CQC suggested barrister involvement.
67. Furthermore, much of the material which we have had to consider has already been commented on by experts of one sort or another, for the most part in ways that we would not wish to, and in any event could not properly, second guess. We mean here, in particular, the 2010 Independent Panel Review of the paediatric department at Walsall ("the IPR"), the 2014 Cordis Bright Report into the death of KK (albeit that we have to be cautious about that, for reasons which we explore below at paragraphs 83-88), and - qualitatively different of course - the Employment Tribunal and Employment Appeal Tribunal ("EAT") decisions relating to Dr Drew. We deal further with the use of these reports and others like them below.
68. Ultimately we are satisfied that we have been in a position to reach clear and proper conclusions on the issues raised (which are, we would stress, not pure medical issues) without expert assistance, whether clinical or otherwise.

The Difficulties of Investigating the Walsall Trust

69. We have referred to this briefly already and do so again now, if only to put it on record as part of our description of the process. We, like Mr Rivers when he performed a similar exercise, (and indeed like the Walsall Trust itself, who have expressed their own concerns on the topic) find the idea of investigating, on behalf of the Derby Trust, events that occurred between 10 and 5 years ago at a different hospital Trust both conceptually problematic and practically very difficult. That is not to say that the Walsall Trust has been obstructive – it has not; but there are obvious conceptual and practical problems with this, the latter not least in terms of disclosure of information and confidentiality. However neither we nor the Derby Trust have any choice, given the terms of the Regulations and what the CQC have said in the light thereof.

E.3 Methodology

70. The Methodology for this Investigation was in large part dictated by the Protocol attached at Annexe 3.

71. In summary, we duly undertook the Investigation in the following manner.

(a) Reading a very significant amount of documentary material, provided to us by, variously, the Derby Trust, the Walsall Trust, Mrs James, Dr Drew, and other witnesses. This included, as well as the various specific reports (internal and independent) referred to above, the entirety of the documents bundles used in the Employment and EAT proceedings between Dr Drew and the Walsall Trust. These bundles themselves included much (although not all) of the relevant contemporaneous correspondence. We also had significant further written material from each of the Walsall Trust, the Derby Trust, Mrs James and Dr Drew. That included, of course, Dr Drew's book, which gives his account of relevant events.

A full list of the material that we have read appears as **Annexe 7**.

(b) Interviews in person (by both of us) of the following witnesses:

- (i) Dr Nadeem Moghal - Member of the IRP and, thereafter, Interim Clinical Director at Walsall
- (ii) Ben Reid - Current Chair of Walsall Trust
- (iii) Richard Kirby - Current CE of Walsall Trust
- (iv) John Rivers – Chair of Derby Trust (on two occasions)
- (v) Sir Stephen Moss – Non Executive Director and Senior Independent Director, Derby Trust
- (vi) Cathy Winfield – Director of Patient Experience and Chief Nurse, Derby Trust
- (vii) Dr Nigel Sturrock – Medical Director, Derby Trust
- (viii) Dr David Drew (on two occasions)
- (ix) Mrs James (on two occasions).

A summary of the relevant evidence from each witness appears at Annexe 8.

(c) Considering our views (separately and together); and

(d) Drafting this Report.

72. We have, in accordance with the Protocol, provided (subject to constraints of confidentiality) to the various witnesses transcripts of their interviews for correction. The witnesses have considered and approved the transcripts. Salient passages of the interviews are set out in this report, and as already made clear, in the Summary of Evidence at Annexe 8.

E.4 Our Approach to Evidence

Choice of Witnesses

73. We have interviewed a range of witnesses from both the Derby and the Walsall Trusts. The choice of witnesses was ours, but was in practice dictated by, in combination, availability (in relation to those Walsall Trust witnesses who were no longer employed by that Trust), and, in particular, proportionality. We are very grateful to all concerned, who obviously supplied their input voluntarily. We are satisfied that the combination of witnesses from whom we have heard (together with the very significant amount of documentary material) has provided a comprehensive picture for us and enabled us to form an accurate and sufficiently full account of events, as they relate to Mrs James and her conduct.
74. The one witness (apart from Mrs James) whom we regarded as very important to interview if we could was Dr Drew himself. We are glad that ultimately we managed to make contact with him, and that once we did he overcame his apparent misgivings about the process and agreed to speak to us. We are particularly grateful to him for the assistance he has given us, which included two days of interviews.
75. It became clear to us as our interviews proceeded that Dr Drew was, as we put it to him in interview, something of a lone voice in his criticisms of Mrs James. We said this to him, as we made clear, not in order to undermine him but rather to emphasise that we understood the importance of hearing his evidence in full.
76. This was against the backdrop that we had in fact earlier on in the process invited Dr Drew to suggest other witnesses for us to contact. The only suggestions that he had made were Ian McKivett, his BMA representative, and Mr Martin Bromiley, who we understand from Dr Drew to be a campaigner in relation to patient safety.
77. We attempted to contact Mr McKivett, but he was unable to contribute to the Investigation due to his ill health. It struck us that he would not, in any event, be able to give any first hand evidence of Mrs James's management style, as he had never been an employee of either Trust. We repeat in this context what we state in the final sentence of paragraph 73 above.
78. We considered the position about Mr Bromiley, and examined materials provided by Dr Drew in relation to him. We accept that Mr Bromiley is an acknowledged expert on patient safety. However – as we made clear to Dr Drew – we found it hard to understand how he might have relevant evidence for us to consider, given that he has no knowledge of either Trust. In any event, ultimately we did not consider that we needed further evidence (whether of opinion or of fact) on patient safety issues.
79. When we put it to Dr Drew that he was indeed somewhat of a lone voice when it came to Mrs James, he denied this was so, citing how he had managed to get 7 people to 'stand with him' at his Employment Tribunal hearing, and that he could have had 30 or 40 witnesses who would have supported him in his account. It was, he said, Mrs James, at the Employment Tribunal who was giving the disparate account of events.
80. We have considered carefully both the written statements of these witnesses to the Employment Tribunal and also (where applicable) the note taken of their oral evidence at the hearing. It seems to us that the only witnesses who in fact made any comment about Mrs James personally are Louise and David Cremonesini. Louise Cremonesini made some criticism of Mrs James's response to the allegations of bullying being brought to her attention. David Cremonesini made some complaints about Mrs James,

namely that although she promised to sit down with the consultants in the department, she never did (although he accepted that there were meetings with Mrs James after this to discuss problems in the department), and as to her response in the November and December 2009 meetings to allegations of bullying, namely that she did not react quickly enough. We deal with the substance with these allegations in Section I below.

Our Use of and Approach to Earlier Reports and Rulings

81. We should also make some comments about the reports that we have read:

The IPR Report

82. We give significant weight to the Independent Panel Review Report and the findings and recommendations made within it. We do so because it was a review undertaken on the ground and contemporaneously by expert clinicians. Further, it followed a process that the Employment Tribunal found to be fair. We have also been able to discuss the findings and the report more generally with Dr Moghal (the Chair of the Panel – see further below). We bear in mind however that the evidence upon which the findings were based is not set out in the report and was destroyed, much to the chagrin of Dr Drew.

The Cordis Bright Report

83. We have considerable reservations about adopting the conclusions set out in the Cordis Bright report as to the death of KK and the Walsall Trust's response to it. We have two types of concern about doing so: the first general, the second specific.
84. The general concerns relate to the context in which (and therefore the purpose for which) the Cordis Bright report was commissioned. It was a review that took place some years after the events in question, expressly for the purpose of bringing appropriate "closure", in particular for the family. The brief for those reporting was to prepare a paper review or "desktop" report. Thus the authors did not have the benefit of oral evidence (or even written evidence) from any of those involved in the incident at the time, with the exception of Dr Drew, and KK's natural father. This inevitably leads to dangers for anyone in treating the Report as either a comprehensive or a reliable fact finding exercise.
85. Furthermore, the "desktop" nature of the Cordis Bright report had additional ramifications here. Its focus was, in the circumstances, inevitably on the documents available (or, where there were documents that were obviously not available, that that was so, and why). In the absence of other direct evidence or sources of information as to events, the lines of enquiry (and the conclusions drawn) therefore inevitably became something of a systems analysis, rather than a free-standing investigation with conclusions as to precisely what happened.
86. All of this of course means that the Cordis Bright report, while no doubt valid in its own terms, has shortcomings as a tool to be used by us as the basis for identifying the true factual context for our Investigation. These shortcomings were frankly acknowledged by both Dr Drew and Richard Kirby when we put them to them. (Both regarded its purpose as largely to be a means of providing closure to all concerned, as we have said above – and in particular to the father of KK. This may explain why it has these shortcomings: however shortcomings, at least for our purposes, they emphatically remain).

87. As to the specific concern: we note the criticisms made in the Cordis Bright report of the Root Cause Analysis report (“RCA”). The main criticism is in the following terms “*Weak documentation, incomplete, unsigned, glaring errors e.g. final date of admission given as 26.6.06 instead of 29.9.06.*”, Two points arise out of this.
- (a) First, the version of the RCA that we have obtained from Dr Drew, which he himself states he obtained as a result of the Cordis Bright report, and which seems to us likely to be the final version, contains the correct date for KK’s final admission to Manor Hospital. Thus it seems likely in the circumstances (i) that there was a number of versions of the RCA prepared (we ourselves have seen another one, although this does not contain the alleged rogue date of admission either), and (ii) that the version given to us by Dr Drew was not the same as the (on this hypothesis, earlier) version analysed by Cordis Bright. If that were so, then that would emphasise the dangers of relying, for our different purposes, on the factual basis upon which the Cordis Bright report was prepared, or (therefore) on its analysis..
 - (b) Secondly, we note that the Cordis Bright report itself makes a separate error about these dates, even as it identifies this criticism. The true “final date of admission” was of course 29.6.06 (as the later, we believe final, version of the RCA report correctly recorded). It was not 29.9.06, as the quotation from the Cordis Bright report in the main body of this paragraph above recites. It may well be that this was simply a typographical error on the part of the authors of the Cordis Bright report; but in the circumstances, and given the particular subject matter of the sentence, it seems at the very least ironic.
88. For these reasons – which we should stress are, largely at least, due to the circumstances in which the Cordis Bright report was generated, and the inevitably limited brief that the authors were given – we have come to the conclusion that we should not treat that report as a reliable basis for establishing facts for our own purposes.

E.5 The Basis and Nature of any Findings

89. We should make it clear that, for the reasons mentioned above (and in particular the fact that our Investigation does not constitute any sort of judicial investigation) our conclusions should not be treated in any sense as equivalent to, or with the effect of, judicial findings made by a court. Rather they are more in the nature of conclusions and recommendations, made on the basis of a clear but (necessarily) incomplete picture, itself based on the clear but incomplete information provided to us.
90. That said, we do regard it as proper to characterise them as findings for present purposes, in so far as they relate to Mrs James herself. As to this distinction, see further immediately below.

Analysis of Conduct of those apart from Mrs James

91. We emphasise once again, for sake of caution and for the avoidance of doubt, that our Remit is confined to consideration of Mrs James, and the specific questions raised about her conduct. However the ramifications of our Remit (whether arising from the anonymous complaint and/or the allegations made by Dr Drew) inevitably extend rather more widely than Mrs James’s own conduct, and involve some consideration of the roles of others. A somewhat artificial line has therefore to be drawn: there has to be a distinction between (i) our conclusions about Mrs James herself and (of necessity

in the circumstances) Dr Drew's accounts of her conduct, and (ii) our conclusions that relate to other individuals. Thus, most particularly, and as we have already intimated, we cannot and do not make any findings about, for example, others employed at the Walsall Trust. We have no remit or authority to do so, and in any event it would be inappropriate. It would be particularly inappropriate where the additional factor also applies of us not having interviewed the individual concerned or otherwise given him or her the opportunity to provide his or her own account.

92. In summary:
- (a) We do not consider it either safe or fair for us to make adverse findings about the way in which other people involved in these events behaved. This is because we have neither put these allegations to them and asked for their response, nor met them.
 - (b) In so far as our findings below relate to other individuals, or institutions, or the conduct of either, what we say is intended to do no more than provide the context for our findings about Mrs James.
93. We have made this clear to all concerned, including Mrs James and Dr Drew. We also do so in the body of the findings sections themselves.
94. Where we do need to establish a factual basis upon which we judge Mrs James's conduct involving consideration of the conduct of individuals whom we have not met we have taken the following approach:
- (a) Generally, we make a working assumption for the purposes of this report alone about the way in which that individual has behaved based on the evidence that we have seen. This will not amount to a finding about the conduct of that individual.
 - (b) More specifically, if and when the relevant conduct of that individual has already been the subject of consideration as part of another review or investigative or adversarial process (for example the Independent Panel Review of the paediatric department commissioned by the Walsall Trust, or the Employment Tribunal), and where the fact finder has – unlike us - had access to the relevant people, we will assume that the findings made in that process are correct. Again, this will not amount to a finding about the conduct of that individual.
95. It may help to give an example. Part of our remit is to consider what Mrs James's responsibility was for the allegation concerning Dr Drew's suspension in March 2009. This requires consideration of the allegations made by a manager (originally trained as a midwife) (below "CD"), which gave rise to the suspension, and the conduct of a Medical Director (below "Dr BC") who took the decision to suspend Dr Drew. As we have not met with either of them, nor heard their side of the story, we cannot make findings about them. We assume, without making any findings ourselves, (i) that the findings of Dr Rashid, who investigated CD's grievance that Dr Drew had no disciplinary case to answer and had not acted with malicious intent, are correct; and (ii) that the finding in the IPR that Dr BC mishandled the suspension of Dr Drew is correct.
96. We should also make it clear that we are obliged to make findings about the truth or otherwise of the allegations made against Mrs James. This necessarily involves us making findings as to whether the accounts given by the person making the allegations about Mrs James's conduct (all of which derive ultimately from Dr Drew), are true.

Anonymity

97. We have, as will already have been seen, taken the precaution of anonymising in this Report (and in its Annexes) all references to certain individuals. In relation to KK we have done this out of sensitivity to the family. We have also done this, in the interests of simple fairness, in relation to anyone to whom each of the following applies: (a) his or her conduct might reasonably be thought to have been the subject of either express or implicit criticism, valid or not, in the Report itself, whether by us or in any documents from which we quote; and (b) we have not met, spoken to or corresponded with that individual, and therefore he or she has not had any opportunity to give any account of the relevant facts. (In these circumstances, it should be obvious that anonymisation should not be taken as a sign of criticism by us.) It also follows that we have not anonymised anyone whom we have met; indeed, while the Investigation Protocol allowed for this possibility, none has requested it.

The Effect of the Passage of Time

98. In coming to our findings we have given weight to the oral evidence that we have heard ourselves. However we need to express one further caveat. We are conscious that many of the events that we are here concerned with took place many years ago. Memories fade. In addition, witnesses' recollection of an event can change with multiple retellings. For this reason we have given particular weight to statements and interviews that were conducted closer in time to the events as they happened where these contradict what we are now being told. In particular we have given particular weight to the evidence that was given in the Employment Tribunal proceedings.

F. THE COMBINED LIST OF ISSUES

F.1. Introductory

99. The purpose of this Combined List is to set out all the questions which we have to answer in this Investigation. We have explained the background to this at Section D.6 above. It is based on the issues in the Revised Investigation Remit, reordered and (slightly) reformulated in order to fit within the template provided by the formulation of Dr Drew's four headline allegations in his Regulation 5 complaints to the CQC.
100. The following should be noted.
101. First, there is not a perfect match between the separate formulations provided by the format of the Revised Remit and Dr Drew's four headline allegations.
- (a) Some of the Remit allegations are not exact "fits" within the headline allegation below which they appear; these have been included at that point because they relate to others which do "fit"
- (b) Equally some are "left over" – i.e. outside all of the four headline allegations, because they arise from our Original Remit and not from Dr Drew's allegations. (The most obvious example of these are those that relate to Mrs James's conduct at the Derby Trust, which it was of course incumbent on us to explore, but which do not form any part of Dr Drew's own complaint.)
102. Secondly, we have included at the end of each the relevant paragraph number from the Revised Remit for ease of reference, should anyone wish to cross-refer.
103. Finally, as we have explained already at Section D.6, while this List obviously includes each of Dr Drew's headline allegations, it does not include his supporting narrative for each as set out above; this supporting narrative is however included for ease of reference at the appropriate places in Section I, where we make our Findings of Fact.

F.2 The Combined List of Issues

104. This is therefore as follows.

(A) ALLEGATIONS RE CONDUCT AT WALSALL TRUST

DD.1 "Mrs James supported and participated in a cover up of failings of care by Walsall Healthcare that led to the death of a Walsall child."

- (1) Whether Mrs James had any involvement in [KK]'s death. (2) a i
- (2) Whether the subsequent investigation into [KK]'s death was inadequate, and if so what Mrs James's responsibility for this was. (2) a ii
- (3) Whether there was a failure to ensure the performance management and censure Dr [AB] following [KK]'s death, and if so, Mrs James's responsibility for this. (2) a iii
- (4) Whether the press statement issued by the Walsall Trust on 23 April 2009 was false. If so, what Mrs James's responsibility for this was. (2) a iv
- (5) Whether Mrs James helped cover up the failings of the Walsall Trust that led to the preventable death of a child. (2) a v
- (6) Whether Mrs James obstructed the improvement of child protection processes at the Walsall Trust. (2) a vi

DD.2 “Mrs James suppressed a Royal College of Paediatrics report which was critical of her leadership at a time when she had recently escaped a vote of no confidence by the consultant body.”

- (7) Whether Mrs James narrowly escaped a vote of no confidence from the Consultant Body in or around March 2010. (2) c i
- (8) Whether Mrs James prevented the Walsall Trust Board from seeing the Independent Panel Review Report and falsified its instructions as to dissemination. (2) c i

DD.3 “Mrs James attempted to pay me a settlement (accompanied by demonstrably dishonest statements) inducing me to leave quietly and sign a gag contrary to Department of Health directions.”

- (9) Whether Mrs James suspended Dr Drew for what turned out to be groundless allegations by one of the bullying managers. (2) d i
- (10) Whether Mrs James asked Dr Drew to resign for challenging her decision about how the IPR should be disseminated. (2) d ii
- (11) Whether Mrs James “sacked” Dr Drew by means of “a sham disciplinary process”. (2) d iii
- (12) Whether Mrs James wrongfully offered Dr Drew a compromise agreement to terminate his employment or else face disciplinary action leading to dismissal. (2) d iv
- (13) Whether Mrs James lied to Dr Drew about SHA and/or Board knowledge of the offer and the Board’s view of his continued employment. (2) d v
- (14) Whether Mrs James mismanaged personnel grievances. (2) b iii.

DD (4) “Mrs James refused to deal with a bullying management culture.”

- (15) Whether the executive team at the Walsall Trust (with particular emphasis on Mrs James’s part), mismanaged the paediatric team between 2006 and 2010. (1)
- (16) Whether the executive team at the Walsall Trust made inappropriate appointments to divisional and departmental leadership roles, and if so, Mrs James’s responsibility for this. (2) b i
- (17) Whether there was an ‘aggressive management style’ of divisional management and if so Mrs James’s responsibility for this. (2) b ii
- (18) Whether there were bullying managers at the Walsall Trust, and if so, whether Mrs James inappropriately supported them and refused to deal with them. (2) c ii
- (19) Whether there was a lack of insight by the Walsall Trust Board and if so, Mrs James’s responsibility for this. (2) b iv

(B) REVISED REMIT ONLY: OTHER ALLEGATIONS AS TO CONDUCT AT THE WALSALL TRUST (which did not appear in Dr Drew’s submissions to the CQC)

- (20) Whether Mrs James covered up serious heating failures in the paediatric wards. (2) c iii

(C) REVISED REMIT ONLY: ALLEGATIONS RE CONDUCT AT DERBY TRUST

Generally as to her record in post since appointment in 2011

- (21) As to Mrs James's management style at Derby Trust. (3)
- (22) Whether there have ever been any complaints made about Mrs James while at the Derby Trust. (3)

Specifically

- (23) Whether Mrs James failed to inform the Derby Trust of the allegations made against her in Dr Drew's book when she was informed of its existence in June 2014. (3) a
- (24) Whether Mrs James has failed to present any challenge to Dr Drew's account of her actions and if so whether that is because she knows that that account is true. (3) b

105. We have ordered our analysis of the facts and our findings in Section I below by reference to this list of issues.

G: ANALYSIS AND FINDINGS (1): FACTUAL BACKGROUND

G.1 Introductory

106. The purpose of this section is to set out in sufficient detail for the reader to understand them, the context in which the allegations made against Mrs James – essentially by Dr Drew - come to be made. The analysis and findings that appear in the two sections below: Section H, which deals with those two as the main protagonists; and Section I, which deals one by one with the 24 Issues identified in the Combined List of Issues, are therefore to be considered against the framework here identified. This section effectively sets out both the element of historical common ground, and also identifies the most significant disputes, which are then resolved – where that is a task for us to perform – in Section I.
107. At Annexe 8 to this Report appears a summary of the relevant evidence, witness by witness, with which we were provided. Important features of that evidence appear in this and/or the following sections of the Report.
108. We need to stress again what we have already made clear in more detail at Section E.5 above. Our Remit is confined to consideration of Mrs James, and the specific questions raised about her conduct. The consequence of this is that the only findings properly so described that we can make relate to her and (of necessity in the circumstances) to Dr Drew's accounts of her conduct and more generally. We cannot and do not make any findings about, for example, others employed at the Walsall Trust. We have no remit or authority to do so, and in any event it would be inappropriate. (That is obviously particularly so where the additional factor applies of us not having interviewed the individual concerned or otherwise given him or her the opportunity to provide his or her own account.) We have made this clear to all concerned, including Mrs James and Dr Drew.
109. We deal first with the events at the Walsall Trust, and thereafter (and much more briefly) with those at the Derby Trust

G.2 Events at the Walsall Trust

Preliminary

110. We are here primarily concerned with the period 2003 – 2010, i.e. the period while Mrs James was Chief Executive at the Walsall Trust. Any references to 'the period' or 'the relevant period' are to those years. However some consideration of the period prior to this is necessary.

The Period Prior to 2003

111. The Manor Hospital was accommodated in the centre of Walsall in an old building built in the 1850s. The accommodation was wholly unsuitable for a modern hospital and has been described by more than one witness to the Investigation as 'workhouse' accommodation. The hospital served a significantly deprived population from a wide mix of ethnicities and religions.
112. Dr David Drew started work for the Walsall Trust as a Paediatric Consultant in 1993. In 2001 he was appointed the clinical director for the paediatric department at the Manor Hospital.

2003-2006: Mrs James's Appointment and Early Years

113. Mrs James was appointed the Chief Executive of the Walsall Trust in 2003. She had come from the South Warwickshire General Hospital NHS Trust where she had been the Client Manager for Performance Development Team, Modernisation Agency, and done a stint as the interim Chief Executive. Prior to that she had held a number of senior management roles, including Chief Executive of the Barnsley District General Hospital NHS Trust, a post which she held for four years.

The Manor Hospital and the Black Country Review

114. At the point that Mrs James was appointed Chief Executive, plans for Manor Hospital to apply for funding for a new building had been put on hold as a result of the Black Country Review which was looking at hospital provision across the wider area. She told us that on being appointed, she was informed that the Walsall Trust was unlikely to get a new building as other Trusts across the Midlands needed the capital; but that she made a case to the Black Country Review Group that a new hospital in Walsall would regenerate the whole area; that she and Ben Reid (Chair of the Walsall Trust and of the Further Education College in Walsall) put forward a plan which involved the local population building the hospital through a mixture of training programmes with the Further Education College and using the local workforce; and that the funding for a new hospital was then obtained via a PFI initiative. She told us that the hospital was indeed built as part of the Urban Regeneration Programme.

115. It is common ground that when Mrs James arrived in 2003, the Manor Hospital was not a "fashionable" place to work. (Dr Drew told us that this was the very kind of environment in which he wished to work, and we take him to have meant that, for him, some of the challenges of such an environment were rewarding; we can quite see why that might be so.) Mrs James's perspective, shared by Ben Reid, was that there were many contributory factors; the hospital was in urgent need of modernisation; the staff population was non-aspirational; and there were very few consultants who wanted to innovate and develop services. She estimated that of the 130 consultants at the Walsall Trust when she arrived, about 30 of them understood her vision to modernise and innovate, although that number did grow.

The Paediatric Department

116. Dr Drew had been the clinical director of the paediatric department since April 2001. He remained the clinical director until April 2008.
117. It was also common ground that in 2003 there was a shortage of paediatric consultants across the Birmingham area. Mrs James told the Investigation that the Strategic Health Authority ("SHA") was considering which of the paediatric departments would have to close, and that she personally had been told on a number of occasions that it was likely to be the Manor Hospital unit. Dr Drew told the Investigation that he had represented the Walsall Trust at a number of Black Country review meetings, and there was never any serious threat to the paediatric department at the Walsall Trust. There is thus a dispute as to this. We do not need to resolve it.
118. Mrs James recalls that Dr Drew's view during the early years of her time at the Walsall Trust was that the Manor Hospital Unit should be closed and re-located to Wolverhampton. Dr Drew denies this. We do not need to resolve this dispute either.

119. Mrs James recalled that the threat to the paediatric department caused a tension between the paediatric department and the maternity department.
120. Mrs James told the Investigation that she was determined to keep the paediatric unit open for two reasons: first because she was of the view that the population of Walsall, which is a deprived one, needed a paediatric unit; and secondly because the maternity department at Manor Hospital, which was one of the best in the area, needed a neonatal and paediatric department in order to be able to take on the really difficult cases.
121. It is common ground that the paediatric department between 2003 and 2010 was not functioning as it should. Consultant posts could not be filled. Those that applied for posts often had questionable histories. For a number of years there were no job plans in place for the consultants. There were reports of consultants arguing about patient care at the foot of beds. There is a dispute between Mrs James and Dr Drew as to the extent of the difficulties in the paediatric department, and also whether those difficulties were greater than those in other departments. Dr Drew denied that the consultant body was dysfunctional and told us that they had a good professional working relationship during this time. His view is that senior management's description of the paediatric department over this period was exaggerated. We deal with this dispute of fact in Section I.
122. It is common ground that in 2005 the West Midlands Deanery gave the paediatric department a very bad report.
123. It is also common ground that during this period paediatric services were going through a period of change. Dr Drew's view is that the paediatric department was a test case for the change programme in the Walsall Trust. Mrs James agrees that they were in the vanguard of change, but does not recall the department being a test case. Her evidence to the Investigation was that the bed occupancy figures in the paediatric department were low even in the busier winter months. This is denied by Dr Drew who told us that they were regularly having to turn both ambulances and patients away. Once again, this is not an issue that we need to resolve.
124. Mrs James told us that the low occupancy rates, together with the fact that following the strategic Black Country Review the SHA had stipulated that the number of paediatric beds in the new hospital must be reduced to 21, led to a programme to reduce the number of beds in the three warded paediatric department from 38 to 26 and to reduce the wards from three to one.
125. Of course, the reduction in beds meant a need to reduce the number of nursing staff. The Walsall Trust had to inform all the nursing staff that their jobs were at risk. This in Mrs James's view led to the good nursing staff leaving the Walsall Trust for more secure employment elsewhere, in turn leaving a group of the remaining more non-aspirational nursing staff working in a non-aspirational department.

Divisional Management

126. A few years into her appointment, Mrs James started to look at the management structures at the Manor Hospital. There was no operational or divisional management in place at all at this stage. She believes that it was in 2006 that she introduced a divisional management structure across the whole hospital. Dr Drew told us that this was put in place when he was on sick leave in April 2008. There is therefore a dispute as to this. We have concluded that Mrs James is right about this, because we can see from contemporaneous documentation that a manager, Gareth Robinson, was in place

as divisional director in 2006. We understand however that there was a refinement of the divisional structure in 2008, when the number of divisions was reduced from four to three. It seems likely to us that it was this change took place while Dr Drew was on sick leave in or after April 2008.

127. The divisional department into which paediatrics fell was 'Women's, Children and Sexual Health'. This encompassed obstetrics and gynaecology, maternity and paediatrics. Mrs James appointed a triumvirate management structure for the division made up of managers and clinicians:
- (a) A consultant obstetrician (below "Dr DE"), was appointed associate medical director. (Dr Drew told us that Dr DE was also appointed clinical lead for the paediatric department for a time; however we do not believe this can be so: see below at Section I paragraph 476.)
 - (b) Gareth Robinson and then in 2008 IJ were appointed as the divisional directors (non-clinical); and
 - (c) CD, a midwife, was appointed the head of nursing and midwifery for the division.
128. It is common ground that none of these individuals had any paediatric expertise.
129. Both Mrs James and Dr Moghal (who, as already stated, conducted the Independent Panel Review ("IPR"), and from whom we had evidence – see further below) were clear that having a divisional management structure in place was best practice at the time and similar management structures were in place in most good Trusts.
130. One of the tasks Mrs James gave to the new divisional managers was to engage the consultant and staff body in modernising the service in readiness for the move to the new building. Mrs James saw this move as an opportunity to re-think how services were provided. She told the Investigation that some of the departments started to engage with this process, but some did not. One of those departments that did not engage was paediatrics. She described the difficulties that Gareth Robinson complained about with the paediatric department during his stint as divisional director, and how he simply left it alone and concentrated instead on developing the maternity department. We infer from this that by the time IJ was appointed as divisional director in 2008 engaging the paediatric department in the planned modernisation was high on the agenda. It also goes some way to explain why, as we accept at section I, the paediatric department was in a worse position than others, and why both the commissioning of the IPR and its recommendations were timely.

The Death of KK in 2006

131. We set out in this section the facts as they appear likely to us to have occurred. These should not however be treated as part of our findings on the facts, for the reasons we have explained at Section E.5 and summarised at Section G.1 immediately above.

Summary of Events leading to the Death

132. On 21 June 2006 KK was admitted to the Manor Hospital with gastro-enteritis. While no bruising was noted in A&E on admission, bruises were noted later by a nurse and a Specialist Registrar. The Consultant who carried out the ward round on 22 June 2006 is referred to below as Dr AB. He took the view that the bruising was due to either sepsis or handling. We have seen both put forward as a potential cause.

133. On 23 June 2006 there was a discussion between a staff nurse and Specialist Registrar as to whether the bruising was in fact caused by a non-accidental injury and if so whether a safeguarding referral should be made. Dr AB is said to have overruled the suggestion that a referral should have been made to social services. Dr AB then discharged KK home on the 25 June 2006.
134. We are told by Dr Drew that the Specialist Registrar was so concerned about discharging KK without having made a safeguarding referral that he approached Dr AB on 24 June 2006 and asked Dr AB again to make a safeguarding referral. We are told that Dr AB agreed to do this, but in fact never did.
135. KK was re-admitted to A&E at Manor Hospital on 29 June 2006 having had a fit at home. Dr Drew was the consultant on call when KK was admitted. KK was subsequently transferred to a specialist unit in Stoke. Tragically, KK died on 30 June 2006. The step-father was subsequently charged and pleaded guilty to manslaughter. The mother was convicted of child neglect.

Subsequent Steps in relation to Dr AB

136. Immediately following KK's death, Dr AB was suspended from child protection work (which we understand to mean removal from the general paediatric on-call rota). Dr Drew told us that he as Clinical Director he had the power to effect this suspension and did so in consultation with Gareth Robinson.
137. Dr Drew says that he wanted Dr AB suspended from practice altogether, but was overruled by Dr BC. Mrs James informed us that Dr AB's response to the incident was immediately defensive, namely to inform the Walsall Trust that lawyers had been instructed.
138. Dr Drew alleges that Dr AB was put back on child protection duties within a matter of days without having undertaken any further training. Both Mrs James in her written statement for the Investigation and Sue Hartley the Director of Nursing (in response to a freedom of information request) stated that Dr AB did undertake safeguarding training. Mrs James was unable to say when this training took place, and in particular whether this was before or after Dr AB was put back on the safeguarding rota. We deal with this dispute in the next section.

The Root Cause Analysis

139. The Walsall Trust carried out a RCA and prepared a report of their investigation. We have seen two different versions of the RCA report. One was provided to us by the Walsall Trust, on terms that we should not disclose it to anyone else. This version had been redacted to remove all names in it save for Dr Drew's. It is clear from the document that Dr Drew was in the 'RCA team'. We were subsequently provided with another version of the RCA report by Dr Drew. It was clear to us that this was a later version of the RCA report. It contained significantly more information than the earlier draft, but was still heavily redacted so as to make the meaning at times obscure. We deal in more detail with the contents of this document in Section I paragraphs 300 – 307 below.
140. We understand that an Adverse Incident / Near Miss report form was completed on 17.7.06. We have not seen that document.

141. We were told by Dr Drew that there was a RCA meeting chaired by Pat Kennerley. We do not know when this took place. We have seen no minutes taken during that meeting. We have seen an action plan within the later version of the RCA report which we understand would have come out of that meeting. This makes the following recommendations for remedial/preventative action:
- (a) *Policy to be revised to include action to take where there is a disagreement in the team.*
 - (b) *A&E staff to be reminded of the need to note any bruising.*
 - (c) *Nursing and medical staff to be reminded to discriminate between bruising which is related to disease and bruising related to injury.*
 - (d) *Nursing staff to ensure they document conversations with parents and other staff and any bruising.*
 - (e) *Names of all adult family members living at the child's address to be recorded in the nursing documentation. The response from Social Services to be raised at the multi-agency meeting.*
 - (f) *All staff to be reminded of their duty to report concerns as per policy, particularly where there is disagreement and it may not be reported by someone else.*
142. We were told by Mrs James that she did not see the RCA report. She has never seen a RCA report (her current Trust generates hundreds of these each year). As Chief Executive, she does not consider that she could add any value to a RCA and does not regard it as a necessary part of her role to read the reports. She told us that the RCA was a process operated by, and for the benefit of clinical staff. Rather, she delegates the operational responsibility for RCAs and safeguarding to appropriate members of the senior executive team; in this case to someone to whom we will refer as "EF". Mrs James saw her own role in the response to the death of KK as ensuring that all the recommendations and action points identified in the RCA and the Serious Case Review ("SCR") undertaken by the Walsall Local Safeguarding Children Board) were completed and that the lessons learnt from the RCA were applied and where appropriate, changes made to ensure that similar problems did not arise in future.
143. We were told by Dr Drew that he was tasked with implementing at least one action point arising from the RCA, and that was to address the failure on the part of A&E to have noted KK's bruising on admission. He recalls that he ensured that this action point was implemented.
144. The Walsall Trust Board received an update in February 2007 on the response to KK's death. They were told that the RCA was completed and an action plan agreed. The investigation was closed in so far as the Walsall Trust were concerned, although the case remained open. A further report was made to the Walsall Trust board on 6 September 2007 in which the steps taken by the Walsall Trust in response to the incident are listed.
145. Dr Drew has stated in his evidence to the CQC, in respect of a separate matter he has raised with them about the Walsall Trust, that he refused to sign the RCA report, and that he emailed Dr BC (the medical director) to that effect. He repeated this assertion in interview. Mrs James expressed some surprise about this, she did not think that there was a procedure for signing RCA reports. So far as we can see, this is the first time that Dr Drew had made this allegation. We find this somewhat surprising. We would have expected Dr Drew to have raised what seems to us to be an important point, previously in the circumstances, either at the time or during the various subsequent investigations referred to immediately below.

The Serious Case Review

146. Following KK's death, the Walsall Local Safeguarding Children Board (a body comprised of representatives of all relevant agencies, including both social services and the Walsall Trust) carried out a Serious Case Review (SCR). This document was delayed, both in terms of the date by which it could be finalised and that by which it could be published, by the criminal prosecution of KK's step-father and mother. The document is undated; Dr Drew told us it was completed in February 2008.

147. The SCR's conclusion is as follows:

'Medical and nursing staff failed to comply with Walsall's Child Protection Procedures and refer unexplained bruising on a 16 month old child to the Police or Social Care Children's Services. This bruising remains unexplained but just five days after discharge [KK] was admitted to hospital with further injuries consistent with non-accidental injury. [KK] later died of the injuries,[KK's] mother's partner has been charged with [KK's] murder.'

148. The SCR made a number of recommendations:

'Hospital Walsall Trusts Child Protection Policy to be revised and staff reminded of the requirements.

A & E staff to be reminded to note any bruising/marks on the A & E record.

Nursing and medical staff to be reminded of the importance of discriminating bruising which may be caused by injury and bruising which is disease related and record accordingly.

Nursing staff to ensure that they document conversations concerning children/parents and any bruising/marks.

Hospital Walsall Trust Child Protection Lead to be advised and lead on any suspicion of deliberate harm.

The response from Social Services to be raised at the multi-agency meeting. Details of significant carers, including step-parents, should be routinely collected on hospital admission.

Hospital staff to be reminded of their duty to complete a CIN referral form and send to Childrens (sic) Services themselves if there is a doubt it may not be reported by someone else.'

149. There is an addendum to the report, also undated, which was added at the instigation of the Walsall Trust representative on the Safeguarding Board, Gareth Robinson. This is significant. It provides:

"This addendum has been added following the review of individual organisation reports into the circumstances relating to [KK].

The review concluded that an addendum was required to the report prepared by Walsall Hospital in relation to recommendations 1 and 3.

In particular it was noted that while the body of the report acknowledges the significant role that the Paediatric Consultant played within the patient's care,

the recommendations provide a generic response for 'all nursing and medical staff'.

The report is correct to identify the role that all staff involved play within the care of the patient and the need for improved training and awareness of all staff. However, it is important to note that the report does not correctly demonstrate the focus that the Walsall Trust has placed on ensuring the Paediatric Consultant involved has reviewed the case and taken the appropriate action relation to personal training and awareness."

150. Dr Drew asserts that the only Walsall Trust employee who saw the SCR was Gareth Robinson. This view is to some extent supported by Richard Kirby who told us that when he arrived at the Walsall Trust, there was no copy of the SCR in existence. It is however denied by Mrs James who told us that the Walsall Trust certainly had a copy of the SCR and she is fairly certain that she saw it at the time. She told the Investigation that there had been several changes of office accommodation at the Walsall Trust since that time and that may be an explanation as to why by the time Richard Kirby arrived, there was no copy available. We address this issue below in Section I paragraphs 355 - 357.

The Paediatric Department post KK's death, and Dr Drew's part in it

Relationships within the Department

151. It is common ground that there were serious problems within the paediatric department by 2008. For example:
- (a) The relationships between some consultants was problematic. Dr Drew had raised concerns about Dr AB's performance with the medical director. Dr AB had made an allegation of bullying against Dr Drew. There is it seems to us a dispute as to how fractured the relationships were within the consultant body which we deal with in more detail below in Section I paragraphs 446 – 448 and 463.
 - (b) Other staff members were also making complaints about colleagues, including consultants.
 - (c) Dr Drew told us that the Deanery had identified two consultants who had issues with bullying junior staff and not giving appropriate support/guidance (there is no suggestion that this was Dr Drew). We have seen some of the documentation in support of this.
 - (d) Posts remained unfilled.
 - (e) Consultants remained without a job plan.
 - (f) The Deanery had given the paediatric department a very bad review in 2005.
152. All this was of course taking place in the context of what was happening at the Manor Hospital generally as set out at the beginning of this section.
153. In addition it appears that the relationship between the paediatric department and the divisional management team was under significant strain.

154. In her statement to the Employment Tribunal and indeed in her evidence to this Investigation, Mrs James made it clear that by 2008 she and the executive were aware of these problems. IJ was appointed Divisional Director in the place of Gareth Robinson at some point in 2008 and a decision was taken to recruit 3 or 4 new consultants at one time to try and change the culture of the department. Arrangements were also made for a psychologist to work within the department.
155. In April 2008 Dr BC and Dr Drew met to discuss Dr Drew's leadership of the department. There is a conflict of evidence as to what took place at that meeting. Dr BC asserts that Dr Drew resigned as clinical lead. Dr Drew says that he was dismissed as clinical lead for raising concerns about Dr AB's practice. We do not consider it necessary for us to resolve this dispute. We have however seen the letter written by Dr Drew to Dr BC dated 22 May 2008 in which Dr Drew sets out all the concerns that he has about Dr AB's practice and makes it clear that he believes that he was dismissed as clinical lead because he had raised these issues.
156. What is evident is that there was no one in the department suitable to take on this leadership role in Dr Drew's place. Mrs James told us that department remained without a clinical lead until Dr Sinha was appointed in December 2009 (according to Dr Drew). Dr Drew told us that in fact Dr DE, consultant obstetrician, was appointed clinical lead for the department. We deal with this dispute of fact in Section I at paragraph 476 below. It is common ground that in any event during this period Dr Drew continued as *de facto* clinical lead.
157. Funding had become available for a designated nurse for safeguarding. It is unclear when the post was filled but it certainly had been by 16 October 2008. On 7 October 2008 Dr Drew wrote a letter to CD complaining about the way in which CD had gone about recruiting the designated nurse for safeguarding. That letter states:
- 'The need for this post within the hospital was highlighted in the last Serious Case Review undertaken by Walsall Safeguarding Children Board.'*
158. On the same day Elaine Hurry, the PCT lead for safeguarding wrote to CD raising her concerns about the way in which the post was filled. She states:
- The need for this post within the hospital was highlighted in the last Serious Case Review undertaken by Walsall Safeguarding Children Board. Catastrophic mistakes were made and the review concluded that if hospital staff had followed basic Safeguarding procedures the child concerned would have survived.*
159. On 16 October 2008 Dr Drew wrote to Mrs James raising his concerns about the way in which the safeguarding children nursing post had been filled.
160. There is evidence that during 2008 there were significant tensions between Dr Drew and the divisional managers; they viewed Dr Drew as a troublemaker. We have seen some minutes of a meeting that took place on 14 November 2008 between the divisional managers Dr DE and IJ and Dr Drew (to discuss a complaint that Dr Drew had raised about Dr DE's communication with him). While Dr Drew disputes that those minutes are an accurate record of what was said, he was prepared to accept that they are evidence of a very difficult situation.

161. In those minutes the following comments are made about Dr Drew:
- (a) That while Dr Drew was away from the department on sick leave (following the incident in April 2008), the department had run smoothly, but when he returned he quickly destabilised it (Dr DE).
 - (b) The amount of correspondence emanating from Dr Drew was a disruptive influence (IJ).
 - (c) Dr Drew was a negative influence.
162. The minutes further record Dr Drew as saying that he did not trust Dr DE and would not want to have an informal conversation with either Dr DE or Dr BC. Dr Drew told us that by this point his relationship with Dr DE had broken down.
163. At the end of 2008 Simon Longford, the modern matron for the paediatric department, left his post to take up another post in a different hospital. Dr Drew alleges that he left as a direct result of bullying from the divisional management team. Mrs James told the investigation that she was not made aware of this by Simon Longford and had understood him to be leaving because he had been promoted. Mrs James was however aware that CD and Simon Longford had had a difficult relationship.
164. Both in his book and in his evidence to us Dr Drew stated that at the end of 2008 Mrs James narrowly escaped a vote of no confidence. When we asked him about this it became clear that he did not mean that there was such a vote, and that it was narrowly defeated (which seems to us the natural meaning of what he says), but rather that she narrowly escaped the matter being put to a vote. He sought for this purpose to rely upon the terms of a letter from Dr Holland, Chair of the Senior Medical Staff Committee to Ben Reid from December 2008 in which concerns are expressed about senior managers, although Mrs James is not directly referred to. We deal with our conclusions of fact on this matter below in Section I paragraphs 359 - 364.

Specific Issues

165. At the end of January 2008 and the beginning of 2009 Dr Drew wrote first to Simon Longford and then to the divisional director IJ about a drop in temperatures on the ward. We have not seen these letters. There appears to have been an investigation into this incident, with which Dr Drew in a letter dated 3 March 2009 expressed dissatisfaction. We have not seen this letter or the exchange of correspondence with the divisional director following on from this.
166. In February 2009 four new paediatric consultants started in the department.
167. On 9 March 2009 Dr Drew wrote to the Senior Support Services Manager and the Divisional Director, Head of Nursing and Ward Manager regarding a failure to provide an adequate diet to a patient which was affecting the medical treatment given. We have not seen this letter.
168. On 31 March 2009 Dr Drew wrote to CD, copying in the Director of nursing and the divisional director about the lack of qualified nurses on the ward and the impact this was having on patient care. We have not seen this letter.
169. On 1 April 2009 Dr Drew wrote to the divisional director regarding placing adult patients on the paediatric ward given two previous incidents of serious sexual assaults having taken place.

170. On 16 April 2009 Dr Drew sent an email to the paediatric consultants and IJ containing a Christian prayer. This was forwarded to others by Dr BC, in appreciation of its content.
171. On 22 April 2009 Dr Drew emailed Dr BC complaining about an email sent to him from CD. He asked for the allegation that he was wasting Walsall Trust time and not doing his job properly to be investigated, and for an unreserved apology.

Dr Drew's Suspension, Dr Rashid's Investigation, and Subsequent Related Matters

172. On 23 April 2009 CD lodged a verbal complaint with Dr BC against Dr Drew. This complaint, according to Mrs James, should have been made to her line manager EF (Chief Operating Officer and Director of Nursing), and not to Dr BC. The complaint from CD was that Dr Drew undermined CD by going over CD's head with issues for which CD had responsibility, had accessed CD's personal email, made assumptions about CD's level of expertise, increased CD's workload unnecessarily by inciting staff to collude with his unfounded personal views over staffing levels and misquoting conversations, making inappropriate comments, upsetting the newly appointed matron over her capability, causing conflict with the nursing staff and using the nursing team in politics between management/medical disagreements.
173. After apparently taking advice from the National Patient Safety Agency (NPSA), Dr BC suspended Dr Drew on 23 April 2009. The suspension lasted for 6 weeks although Dr Drew was away from work with ill health for 5 months in total.
174. Mrs James told the investigation that she was not aware either before or at the time that Dr BC had suspended Dr Drew. She described how, when she was informed of this, she had been horrified, as she suspected that Dr Drew had been badly treated. She therefore instructed Dr BC to hand the case over to Human Resources to ensure that due process was followed.
175. On the 23 April 2009 the Walsall Trust issued a press release which appears to have been prompted by the publication of the SCR in relation to KK's death. The press release provides as follows:

"[Dr BC] Medical Director/Sue James, Chief Executive said 'All staff involved with [KK] were deeply saddened by his tragic death on 30th June 2006.

'Following [KK's] death a series of investigations were conducted in line with Department of Health guidance overseen by the Walsall Children's Safeguarding Board (WCSB).

A range of interagency partners were involved in the Serious Case Review and the recommendations relating to Walsall Manor Hospital are contained in the WCSB case review executive summary.

Walsall Manor Hospital complied with all of the recommendations as reported to the Walsall Children's Safeguarding Board via the Serious Case Review panel in August 2007.

We also conducted an internal investigation into the case and, based on the facts gathered at the time, there seemed to be no direct evidence of abuse, however in light of the subsequent events it is clear that an opportunity to detect abuse had been missed. The investigation that we conducted led us to believe that no individual member of staff warranted disciplinary action....."

176. On 31 July 2009 Dr Rashid concluded his investigation into CD's complaint against Dr Drew. His conclusions can be summarised as follows:
- (a) That Dr Drew had excluded CD from a number of incidents relating to nursing and some of his comments could be perceived as being judgmental about CD's abilities.
 - (b) There is little or no evidence to support the other allegations made, however Dr Drew does not acknowledge that his communication style is not always appropriate or with the right level/discipline of staff at the right time. He does not acknowledge the need to build relationships with other disciplines of staff in the interests of a modern paediatric service which falls within a larger division and management with a wider remit than paediatrics.
 - (c) Dr Drew is passionate about paediatrics, and has concerns over huge service changes and new management roles. This coupled with his limited involvement in the changes has led to him raising concerns through correspondence. While this is inappropriate and his style is direct and unforgiving, often the content is factually correct.
 - (d) Dr Drew's actions are inappropriate but do not appear to be malicious against CD personally. There is no case to answer with regard to misconduct issues.
177. Dr Rashid made a number of recommendations including clarification of roles and reporting lines and a personality profiling assessment of Dr Drew to help him develop self-awareness and improve his style. He also makes a suggestion of employing an external independent body to consider the wider departmental communication issues which need to be addressed. The report concluded as follows:

"Dr Drew does not feel that he has done any wrong-doing and has provided the Walsall Trust with honest feedback when he has concerns. Dr Drew must understand that his style of communication is unacceptable and can on occasions upset the department and his colleagues when he does not follow a known Walsall Trust procedure for raising concerns.

Dr Drew must also accept that his own general wider personal views and religious beliefs should be kept to himself and should not be imposed on others. All staff will be treated with dignity and respect whatever their personal beliefs or views but all staff also have a responsibility not to force these on staff or to use them in a professional capacity where this could be deemed inappropriate or irrelevant."

178. On 11 September 2009 Dr Drew wrote to Mrs James asking her to investigate his treatment by Dr BC in suspending him, which he stated amounted to bullying and harassment.

Other Related Matters

179. On 26 September 2009 Louise Cremonesini resigned from her post as the safeguarding nurse, telling Dr Drew that this was as a result of IJ swearing at her. Mrs James has a different perspective. She told the Investigation that Ms Cremonesini had asked CD for a substantial raise in salary, which had been refused.

180. Mrs James conducted an exit interview with Louise Cremonesini who informed her what an awful environment the paediatric department was and what a terrible manager CD was. Mrs James's view was that the tone of this interview was not recriminatory, rather Ms Cremonesini wanted to impart this information to her as the Chief Executive.
181. On the 5 October 2009 the two matrons who were job sharing the role in the paediatric department delivered a list of incidents to Mrs James in which they said that they had been bullied by management. We have not seen this list.
182. On 7 October 2009 Mrs James and a non-executive director Stuart Gray carried out a Board to Ward visit. They were told stories by the staff of long working hours, inappropriate practices and poor morale.
183. At some point prior to 26 October 2009 Dr Satish Bangalore, Consultant Paediatrician, resigned. Dr Drew alleges that this was as a direct result of the way in which the department was managed. Mrs James informed the investigation that she offered Dr Bangalore an exit interview, which he declined.

Dr Drew's Grievance against Mrs James

184. On 26 October 2009 Dr Drew submitted a grievance against Mrs James, copied to the chair of the Board, one of the non-executive directors, his own BMA representative and legal advisor and all the paediatric consultants. The letter, setting out the basis of the grievance, runs to more than 13 pages of closely typed script so can only be summarised in the most general terms. He demanded a response from the Chairman of the Walsall Trust to the issues raised, in the absence of which he threatened to seek a hearing 'in the Court of Public Opinion'. The letter goes on to raise a wide range of issues including:
 - (a) Institutionalised bullying in the paediatric department.
 - (b) The resignation of Louise Cremonesini.
 - (c) The issues raised with Mrs James by the board to ward visit.
 - (d) The resignation of Dr Bangalore.
 - (e) The redundancy of Dr Mittal which is said to have been engineered by the managers without input from the consultants.
 - (f) The redundancy of Simon Longford, allegedly due to bullying.
 - (g) The fact that there is no agreed consultant job plan in place.
 - (h) His own suspension which he linked to the concerns he was raising about patient safety, in particular the ward temperatures, the lack of qualified nurses in outpatients and the flawed process for appointing a safeguarding nurse.
 - (i) The allegations made against him by Dr BC to the NCAS in the telephone call on 23 April 2009, namely that he was obstructive and unmanageable, that he sent a barrage of defamatory and derogatory letters, that he was mentally ill and that he had leaked matters to the press.
 - (j) The recommendation made by Dr Rashid that he (Dr Drew) imposes his religious and other views on others was unjustified.

185. We note that no reference to Dr Drew raising concerns about KK's treatment is made in this grievance.

Jackie Taylor's Report

186. In response to the concerns referred to above being brought to Mrs James's attention, Mrs James commissioned an independent review of the paediatric department from Jackie Taylor, a matron from Harrogate and District NHS Walsall Trust. She had been instructed by 20 October 2009.
187. On 5 November 2009 Jackie Taylor reported her findings to the Board. She presented her findings to the paediatric department itself the following week. She found:
- (a) That the matrons were in need of support and guidance before being in a state of readiness to move to the new building.
 - (b) Relationships within the department needed repair and leadership needed to be developed.
 - (c) Staffing levels were adequate to provide a safe service and compared favourably with other Trusts.
 - (d) She did not think that the safety of patients was at risk.
188. Dr Drew expressed misgivings about this report when speaking to us, calling it 'window dressing'. We have not seen any contemporaneous correspondence from him making this point.

Subsequent Events

189. On 5 November 2009 Dr Drew met with Ben Reid and Mrs James. This interview was recorded and a transcript is in existence. It was suggested in that meeting that Dr Drew's grievances about both Mrs James and Dr BC would be investigated independently and that this would be in the place of the usual grievance procedure.
190. The discussion deals with a number of issues including:
- (a) Dr Drew keeping his religious opinions to himself.
 - (b) His suspension and treatment by Dr BC in March 2009.
 - (c) His dismissal as clinical lead in April 2008.
 - (d) The heating failure on the ward.
 - (e) The poor performance of Dr AB both generally and with reference to the KK incident.
 - (f) Bullying in the department.
191. Dr Drew, Mrs James and Ben Reid agreed that not only would there be an independent review of Dr Drew's grievances (at his request) but that there would be a root and branch review of the whole department. On 16 November 2009 Mrs James wrote to Dr Drew agreeing to an independent investigation into his grievances to be conducted by the Royal College of Paediatrics ("the Independent Panel Review / IPR").

192. On 20 November 2009 a number of consultants and the two matrons met with Mrs James and EF and made allegations of bullying by CD and other managers. A further meeting was promised by Mrs James once an investigation had been carried out.
193. We were told by Mrs James that following this meeting she arranged for Dr BC to speak to Dr DE about the latter's communication style and also to arrange for Dr DE to have some coaching to improve leadership skills.
194. The department received a positive report from the Deanery in respect of the junior doctor's training programme on 23 November 2009. The report concludes with the following:
- "There has been an amazing change in Paediatric training at Walsall summarised by trainee quotes such as a "better place to work than it has been for years", "it is an exciting place to work" and "amazing what you see"."*
195. On 3 December 2009 Mrs James reported to the Walsall Trust Board on the paediatric department, raising a number of very serious concerns including the breakdown of the relationship between the staff and the divisional management team and that staff do not feel involved in planning for the future. The plan was to source an experienced external candidate as clinical director in the anticipated event of Dr Sinha, the current clinical director, giving up his post; appointing a children's services matron to provide nine months of leadership to the matrons (which we understand to have been one of the recommendations made by Jackie Taylor), and holding a workshop for clinical and medical staff with outside assistance to identify the key challenges for the department.
196. On 4 December 2009 Mrs James met again with staff to discuss their concerns about bullying. The minutes taken by Louise Cremonesini (while she was working out her notice) show that the following matters were discussed:
- (a) Staff were informed of the up and coming workshop for the department and of the employment of a clinical psychologist to work one to one with staff and managers.
 - (b) The employment of a professional paediatric lead nurse to work with the matrons, to provide experience and leadership and to protect the matrons from bullying.
 - (c) Mentorship to be provided to the matrons.
 - (d) CD was to be kept in post.
197. In December 2009 Kathryn Halford started as Paediatric Professional Lead Nurse, to support the matrons and work as a buffer between them and CD. Mrs James's view was that she in effect took over (nurse) managerial responsibility for the paediatric department from CD, although CD remained in post.

Further Heating Problems

198. On or about the 17 December 2009 there was another occasion when the heating dropped on the ward. Dr Drew was the consultant on the rota at the time. Dr Drew in his book states that he reported this to the Divisional Director threatening to whistle blow if there was no response. We have not seen this correspondence. On or about the 20 December 2009 Dr Drew reported this drop in temperature to the Walsall Children Safeguarding board. We have not seen this correspondence.

199. Mrs James told us that Dr Drew brought the drop in temperatures on the ward to her attention, and so she instructed Dr BC to carry an investigation in to the heating failure (which we have not seen). This investigation (apparently) concluded that nursing staff had not put in place the emergency measures, such as plugging in the heaters on the ward and ensuring that the children were warmly dressed.
200. Dr Drew was not satisfied with this investigation as he had not been interviewed, and alleges that no one that was on the ward at the time of the incident had been interviewed by Dr BC. He went so far as to allege that the report submitted by Dr BC was false. We deal with our findings in respect of this in the next section at paragraphs 502-5147.
201. Mrs James told the investigation that following this incident she asked for a temperature check to be taken three times a night.
202. Dr Drew appeared on television to talk about the heating failures on the ward. Mrs James also appeared on television. Dr Drew alleges that Mrs James, in reliance presumably on Dr BC's investigation, minimised the incident. We have not seen either interview.

The Independent Panel Review

203. On 7 January 2010 Dr Drew lodged a grievance against CD (re-lodged on 2 February 2010). The substance of the grievance was that in raising a grievance against him, CD had made untrue allegations intended to damage his reputation. He asked for CD to be suspended. On 2 March 2010 Mrs James agreed that these grievances should be considered by the Independent Panel Review.
204. On 16 February 2010 Mrs James sent the terms of reference for the independent investigation into Dr Drew's grievances to him. The letter makes it clear that while the College had identified suitable consultant paediatricians to carry out the investigation, it was not a review carried out by the College. The Framework of engagement for the review provided as follows:

"The Boundary of analysis:

- (i). We will assess the functioning of the paediatric service*
- (ii) We will assess the relationship between the paediatric service and the management team responsible for the service*
- (iii) We will assess the issues specific to Dr David Drew."*

205. The section dealing with Confidentiality states 'All interview data will not be attributable'.
206. The IPR panel was made up of two Consultant Paediatricians, Dr Moghal and Dr Heinz and Sarah Faulkner a human resources consultant. They spent two days at Manor Hospital, and interviewed Mrs James, Ben Reid, Sue Wakeman, Julie Mitchell, Keri Christie, EF, Dr Drew (twice), Stuart Grey, Dr Rashid, Louise Dougmore, IJ, Dr BC, Dr DE, CD, Dr Sinha, Kathryn Halford, Elaine Hurry and Dr AB.
207. They delivered their report on 5 March 2010 at the conclusion of the two days. They destroyed all notes of interviews so as to ensure the confidentiality of the process.

208. As to this, Mrs James told us that the panel had designed its own methodology. It was the panel who decided to destroy all notes and records of interviews. She described being rather surprised that they had taken what seemed to her to be an unusual step. Dr Drew shares this surprise, and regards this destruction as at the very least lacking in transparency, and suspects the motivation for it.

209. The introduction to the report provides that

“Unless the recommendations are carefully implemented to the full there is considerable risk to the paediatric service as well as the Walsall Trust consequent on unrepaired relationships, outdated service structures and a stressed leadership talent pool.”

210. The panel reached a unanimous consensus on all the issues investigated.

211. The summary provides as follows:

“The independent panel recognises that over the years the Walsall Trust has been aware of the risk to the viability of the paediatric service and has been attempting to work towards securing its long term value to the Walsall population. The response to these external threats over the years within the department was passive and reactive. The coming together of poor decisions, poor management of good decisions, a disengaged paediatric consultant body, a service outdated in structures and working relationships, an aggressive delivery focused divisional management team with no experience of paediatric services, and the behaviour, communication style and personalisation of issues by David Drew have all resulted in a toxic environment. This will have limited the potential of the quality of the service delivered and now risks permanent damage to individuals, the paediatric service and the Walsall Trust.

This review, by the nature of its panel membership and its independence from any organisational ties provides an unbiased assessment of the issues interrogated. The review has revealed a great deal that is troubling in a healthcare organisation that has an ethical and statutory responsibility to meet the health needs of a demanding and significantly deprived population. The quality of care delivered to the children and families of Walsall is at risk unless the recommendations in this report are carefully implemented and with some considerable urgency. The independent panel believes that there is a very real risk of the paediatric service being irrevocably damaged by the outcomes experienced as a consequence of damaged relationships across the service and the Walsall Trust. The independent panel recognises that the successful outcome of this review is predicated on the individuals named in this report accepting and acting on the recommendations. The independent panel also recognises that these will be difficult decisions for all concerned.

The independent panel believes that David Drew has received a fair and balanced hearing through this process. As a clinician David Drew has a great deal he can contribute to improve and secure the clinical reputation of the service. The independent panel believes that if David Drew does not accept this review as a final resolution and continues to unreasonably pursue through grievance procedures, tribunals or even courts of law any or all of his grievances, he will gain a reputation undeserving of his highly recognised professional clinical value, will unfairly continue to damage individuals, including his fellow clinical colleagues, the paediatric service and the Walsall Trust. “

212. The report comes to 31 conclusions. It is sensible to state them in full.

- (1) *The paediatric department was poorly led from within*
- (2) *Paediatric consultants have not worked as a team over a long period of time.*
- (3) *There was a vacuum in paediatric medical leadership following the removal of David Drew from his role as Clinical Director.*
- (4) *The executive made inappropriate appointments to divisional and departmental leadership roles.*
- (5) *The divisional leadership lacked the necessary paediatric domain knowledge to effectively manage the changes and relationships.*
- (6) *There was a breakdown in Walsall Trust resulting in poor relationships between the paediatric department and the divisional management.*
- (7) *The department service model did not reflect the 21st century.*
- (8) *The threat to the paediatric service as a result of the Black Country Review set a context of fear and conspiracy.*
- (9) *The change programme to reduce bed capacity was necessary but not focused on improvement.*
- (10) *The paediatric department was not receptive to change and the strategic context not understood.*
- (11) *The consultation processes were perceived by some in the department to be implemented poorly.*
- (12) *The divisional team had good ideas for innovation in the paediatric department but they did not have the desired effect.*
- (13) *The divisional management style was contributory to the outcome of the changes executed.*
- (14) *The executive was reactive rather than proactive in managing the issues including those related to David Drew.*
- (15) *The Board was late to understand the impact of the change issues.*
- (16) *The Board, once aware, become responsive, including engaging with David Drew.*
- (17) *David Drew was and remains a respected and effective clinician.*
- (18) *The decision to remove David Drew from the Clinical Director role was the right decision.*
- (19) *[Dr BC] did not manage the removal of Clinical Director appropriately.*
- (20) *The exclusion of David Drew as a result of the grievance from [CD] was the wrong decision.*

- (21) *[Dr BC] mismanaged the [CD] grievance.*
 - (22) *The post suspension process and communication failures intensified the breakdown of trust between [Dr BC] and David Drew.*
 - (23) *The use of religious language by David Drew is not appropriate in a professional business setting.*
 - (24) *The issues raised by David Drew have become overcome by their personalisation.*
 - (25) *David Drew's lack of trust and communication style is continuing to have an impact on individuals, relationships, and the functioning of the department and the Trust.*
 - (26) *David Drew, by his style of communication, is actively contributing to the demise of the paediatric service.*
 - (27) *There remains a vacuum of paediatric medical leadership within the paediatric department.*
 - (28) *There remains lack of trust and poor relationships between the paediatric department (medical and nursing staff) and both executive and divisional management.*
 - (29) *The sense of bullying and harassment and the use of the term are over stated.*
 - (30) *Moving to the new build will not resolve the current relationship issues.*
 - (31) *The current paediatric staff (largely represented by the nursing staff) is remarkably positive and forward looking.*
213. The panel made 34 recommendations for individuals, including Dr Drew. These recommendations included the following:
- (a) That Dr Drew stop communicating in the way that he does, including refraining from using religious references in his communication, verbal or written.
 - (b) That Dr Drew not use the report's recommendations to persecute individuals or the organisation, allow the Walsall Trust to share the report as advised by the panel, accept restricted access to the report and not disseminate its contents or his interpretation of it to third parties, and accept the findings as final.
 - (c) That Dr BC should acknowledge mishandling of the process of removing Dr Drew as Clinical Director and his exclusion, and work to rebuild the relationship with Dr Drew.
 - (d) CD should not retain nursing responsibility for the paediatric department.
 - (e) Dr DE should not retain responsibility for the paediatric department.
 - (f) Develop a lead/head of paediatric nursing and bring in paediatric medical leadership from outside.

- (g) Remove the clinical director of the paediatric department from post.
 - (h) Paediatric staff and management team to understand the key findings of the report: the executive team to ensure that the key findings are communicated to the staff in the department and the wider hospital community within two weeks.
214. A full copy of the report was provided to Mrs James and Ben Reid. Dr Drew is the only other person who saw a full copy of the report at that time.

Developments after the IPR

215. Mrs James told the investigation that she had a series of meetings with those named in the report and in respect of whom recommendations were made. She described this process as difficult - one of those named in the report threatened at one point to resign and claim constructive dismissal. She did however manage to work with all of those named in the report to secure their acceptance of the conclusions and recommendations with the exception of Dr Drew.
216. On 29 March 2010 Mrs James wrote to Dr Drew informing him that she and Ben Reid had agreed to accept the findings of the report, and asking him to a meeting to discuss whether he could also accept the findings.
217. On 30 March 2010 Dr Drew wrote to Mrs James stating that the Review was *'independent, fair and has produced a good report'* and that he unreservedly accepted some of the recommendations. However, he qualified his acceptance of many of the recommendations as they related to him and in particular refused to accept the recommendation about his use of religious language.
218. Mrs James responded by an email dated 31 March 2010 asking Dr Drew to accept the recommendations in full or to consider his position within the Walsall Trust as

'we will be unable to rebuild the Walsall Trust and mutual confidence that is enjoyed between managers and clinicians throughout the rest of the organisation, and is an essential pre-requisite for a successful conclusion to the difficulties and distresses that have been caused within the Paediatric Department over the past two years.'

219. On 15 April 2010 Mrs James wrote to Dr Drew inviting him to a disciplinary hearing for his failure to accept the recommendations of the IPR without demur following correspondence from Dr Drew's BMA representative. She subsequently recognised that this was a mistake as no investigation had been carried out and so took no action in respect of this letter.
220. Dr Drew responded substantively on 26 April 2010 in a 6 page closely typed letter. In short he accepted all of the recommendations save for:
- (a) The recommendation that he refrain from using religious language in his communication, but did state that he would agree to 'any reasonably well defined version of this recommendation for the sake of a peaceful life if nothing else'.
 - (b) The recommendation that he accept restricted access to the report. He asked for clarification of this.

221. Mrs James responded in a letter dated 7 May 2010 in which she states that
- 'Your response, which seeks to break down each issue into its component parts, suggests to me that you have not yet fully grasped that the changes the Panel want you to make are not specific, but are much more general in nature.'*
- She declined to discuss the points raised by Dr Drew on the basis that this has in the past led to protracted correspondence. Dr Drew was asked to draw up a personal plan of objectives focusing on his behaviour to provide evidence of a plan to behave differently in the future.
222. Following receipt of another lengthy letter from Dr Drew dated 20 May 2010 in which the focus is entirely on the executive's responsibility for the problems in the paediatric department, without apparently any acceptance of his own responsibility for it, Mrs James sought a meeting with Dr Drew to discuss the future.
223. Meanwhile on 13 April 2010 Mrs James wrote to the paediatric consultants, and the divisional managers attaching the conclusions and recommendations of the Independent Panel Review. She asserts that she copied this letter to the Walsall Trust Board, the director of the PCT, the social services department, the chair of the Senior Medical Staff Committee and the Associate Medical Directors. This is not agreed by Dr Drew. We deal with this in Section I paragraphs 376 - 377 below.
224. A less detailed summary of the report was sent to all members of staff in the paediatric department.
225. At about this time the paediatric Department moved to the new building and Dr Moghal was employed by the Walsall Trust as the new Clinical Director for the Department. Both Dr Moghal and Mrs James made absolutely clear to us that the idea of Dr Moghal taking up the position that he himself had recommended in the IPR as clinical lead for the department did not come about until sometime after the IPR had reported and unsuccessful attempts had been made by Mrs James to find a candidate to fill the post. Dr Drew has expressed deep cynicism about this in his book and has suggested that Dr Moghal had his eye on the post while carrying out the review.
226. One of the first matters Dr Moghal was tasked with by Mrs James, was working with Dr Drew to help him accept the recommendations in the report. The two met on 8 June 2010 and drew up a list of objectives with a time line for Dr Drew, including a requirement for him to provide in writing an acceptance the recommendations of the report without reservation or caveats. These objectives were set out in an email of the same date.
227. On 10 June 2010 Dr Drew confirmed in an email to Dr Moghal that he was unable to meet the objectives.
228. On 25 June 2010 Dr Drew met with Mrs James and Sue Wakeman (Director of Human Resources) to discuss next steps. This interview was recorded and a transcript exists. In that interview Mrs James made it clear that the time had come for Dr Drew and the Walsall Trust to part company. She offered him early retirement in the interests of the service along with a compromise agreement which would have required him to give up the right to further redress at a tribunal. The meeting ended with Dr Drew agreeing to consider the offer. He subsequently refused that offer.
229. On 16 August 2010 Dr Drew wrote to the chair of the Walsall Trust quoting from the IPR report and copying in a group of twelve consultants.

230. On 20 August 2010 Dr Drew apologised to medical and nursing colleagues at a departmental meeting for his part in causing the trouble in the paediatric department. He said as follows:

I apologise genuinely and from the heart to any of you my medical and nursing colleagues who I have hurt, offended or upset in any way over this period. If there are any specific ways in which I have injured any of you personally please talk to me and I will make that apology personal.

This apology did not extend to the Board, the executive team or the divisional management team.

Dr Drew's Position: Disciplinary Proceedings

231. The Walsall Trust commissioned a report from an independent Human Resources Consultant (Julia Hollywood) to investigate whether Dr Drew has a case to answer in terms of disciplinary action. This investigation took place during September 2010. On 26 September 2010 Ms Hollywood concluded that Dr Drew had a case to answer on four issues and that the Walsall Trust should convene a formal disciplinary hearing to consider the allegations. They were:
- (a) By refusing to confirm his acceptance of the independent panel's recommendations he was in breach of contract in that he failed to co-operate with the Walsall Trust in implementing its procedures and failed to obey a lawful and reasonable instruction.
 - (b) His refusal to accept the independent panel's recommendations was a lack of willingness to work as part of a cohesive team.
 - (c) His failure to confirm his acceptance of the independent panel's recommendations showed a disregard for the Walsall Trust, its staff and patients and represented a complete breakdown in trust and confidence between Dr Drew and the Walsall Trust as his employer.
 - (d) That on 16 August 2010 Dr Drew disclosed confidential information to a group of colleagues by copying them a letter and enclosures addressed to the Chairman of the Board containing information that he had been asked not to disseminate and in so doing had committed an act of serious insubordination and/or serious breach of confidentiality and potentially an act of gross misconduct.
232. Dr Drew's disciplinary hearing took place at the Walsall Trust on 15, 16 and 21 December 2010. The panel was chaired by Sue Hartley, Executive Director of Nursing and Governance. The other members of the panel were Colin Holden, retired NHS Director and Nigel Summers, Vice Chairmen of the Walsall Trust and non-executive director. Dr Drew was accompanied by Ian McKivett, his BMA representative. The management statement of case for the Walsall Trust was presented by a solicitor from Mills & Reeve. Evidence was heard from Dr Drew and in support from Nick Turner, ENT consultant and associate medical director and acting medical director, Tim Muscroft, consultant in general surgery and Mr A Hartland, consultant chemical pathologist.

233. On 22 December 2010 the Walsall Trust wrote to Dr Drew confirming the outcome of the disciplinary hearing. All four allegations were found proved. Dr Drew was dismissed.
234. In January 2011 Mrs James took up her appointment as Chief Executive of the Derby Trust.
235. On 9 January 2011 Dr Drew appealed against his dismissal. His appeal was heard on 8 April 2011 by Michael Scott (Panel Chair) supported by David Holmes, Human Resources Director Workforce from the Strategic Health Authority and Phil Ashmore non-executive Director of the Walsall Trust. Mrs Hartley, Director of Nursing presented the statement of case.
236. On 12 April 2011 Michael Scott informed Dr Drew by letter that his appeal had been dismissed.

Employment Tribunal and EAT Proceedings

237. On 18 March 2011 Dr Drew lodged a claim in the Employment Tribunal for unfair dismissal. He alleged both that there was no fair reason for his dismissal and that the procedure was unfair. He further claimed discrimination and victimisation on the basis of his religion and a breach of the Equality Act 2010.
238. On 21 March 2011 Ian McKivett, BMA representative wrote to the Tribunal office stating that the incorrect additional information had been provided with the ET1. The correct additional information was provided. This alleged that Dr Drew was a whistleblower for raising issues about the heating on the ward. On 29 June 2011 Dr Drew submitted further and better particulars of his religious discrimination and victimisation claims.
239. On 27 October 2011 Dr Drew made an application to the Employment Tribunal to amend his claim to include a claim for automatic unfair dismissal contrary to section 103A of the Employment Rights Act 1996 on the basis that he had made qualifying disclosures which had caused him to suffer detriment including being dismissed. The qualifying disclosures were said to be:
- (a) Raising serious concerns about the loss of paediatric nursing staff and the effect on the provision of care.
 - (b) Raising concerns about the appointment of the designated nurse for safeguarding children.
 - (c) The disclosure of bullying and harassment by management of consultants and nurses and the failure to complete clinical incident reports.
 - (d) Raising concerns about heating on the paediatric department.
 - (e) Raising concerns about the provision of dietary services to a particular patient.
 - (f) Raising concerns about the loss of qualified nurses on the ward and the impact on patient care.
 - (g) Raising concerns about the placement of adult patients on the paediatric ward.

240. The Employment Tribunal considered this application at a hearing on 21 December 2011 and refused permission to amend the claim form to include this claim stating:

I find it difficult to understand why, if public interest disclosure played such a significant role in the claimant's mind in the alleged detriments and his subsequent dismissal, that through a process of years and multiple opportunities no attempts was made at an earlier stage to apply to amend the claim.

241. The Employment Tribunal sat over eight days in March and April 2012. It was chaired by Judge Kearsley sitting with Mr Davis and Mr Tew. They heard evidence from Dr Drew, David Cremonesini, Louise Cremonesini, Ian McKivett, Iain Darwood, Sue Hartley, Michael Scott, Mrs James and Julia Hollywood. They also took into account the written statements of Dr Muhammed, Dr Holland and the Reverend Alison Coles.

242. The Employment Tribunal dismissed Dr Drew's claim. It delivered a closely typed 43 page judgment running to 134 paragraphs. It made a number of findings, the most significant of which can be summarised as follows:

- (a) There was sufficient evidence presented to Dr Rashid during his investigation of CD's grievance to justify the recommendation that Dr Drew moderate his communication style because others found it inappropriate (paragraph 103).
- (b) Dr Drew consented to there being an independent review of his particular grievance and of his wider concerns in relation to the Paediatric Department (paragraph 104). He agreed the terms of reference (paragraph 120) and to move outside the grievance process (paragraph 121).
- (c) The Tribunal accepted that the review panel was genuinely independent and carried out a full investigation into the serious issues raised by Dr Drew (paragraph 104). The process was inherently fair (paragraph 122)
- (d) The Tribunal accepted that there were grounds for making all the recommendations contained in the IPR report including the recommendation relating to Dr Drew's uses of religious language.
- (e) The panel dismissing Dr Drew was entitled to conclude that the implementation of the Independent Panel Review without reservation was key to the future of the Paediatric Department and Dr Drew's continued failure to accept and adopt the recommendations had potentially harmful consequences for the Walsall Trust.

243. Dr Drew appealed to the Employment Appeal Tribunal. This appeal was heard on 5 February 2013, with judgment handed down on 20 September 2013. Dr Drew's appeal was dismissed in a judgment running to 109 paragraphs.

KK and the Cordis Bright Report

244. At some point in the latter part of 2013 Dr Drew approached the Walsall Trust along with KK's father, seeking information about the care given to KK by the Walsall Trust. The Walsall Trust in December 2013 commissioned an independent report from Cordis Bright to review the Walsall Trust's care of KK and its responsiveness in investigating and responding to KK's death. The report was authored by Peter Sharp a Consultant and Chartered Psychologist. It is important to note that (for perhaps understandable reasons, given the passage of time) the decision was made that this should be a

desktop report only, and no interviews were carried out with any of those involved in KK's care or the subsequent investigation and response to the death, except for Dr Drew himself.

245. The key findings (in a report dated June 2014) are as follows:
- (a) There is a significant probability that the death could have been avoided if the staff at the Manor Hospital had referred KK to social services on 21 – 24 June 2006 and action had been taken to intervene.
 - (b) The response of the Walsall Trust during 2006 – 2007 was wholly inadequate in four respects (a) failure to refer (b) failure to follow policy (c) poor quality recording, record transfer and (d) not acting decisively to respond to lessons learned from both the (poor quality) RCA and the SCR.
 - (c) There is real concern that medical and nursing staff were not heeded when they voiced concerns about possible non-accidental injury of KK and there is a further concern that the response of the Walsall Trust at the time was seriously inadequate.
 - (d) In recent times (2013-2014) considerable effort has been made to improve safeguarding, and there is evidence of progress across almost all areas raised in the SCR and other investigations.
 - (e) Record keeping in 2006 – 2008 was poor, inadequate and contained numerous admissions, contradictions and errors - even in crucial documents such as the RCA report.
 - (f) Performance management and potential consequences for non-compliance with life-critical policies appear not to have been properly handled at the time, and no censure or reprimands are evident on any of the documents.
246. On 11 June 2014 the Walsall Trust apologised to KK's father for the failure to refer KK to children's social services on 21 June 2006 and the fact that the investigations and reviews that took place after the event were not sufficiently robust, and for the failure to share information about those reviews with him at the time.

G.3 Events at the Derby Trust

247. In June 2010 the Chief Executive of the Derby Trust resigned. The post was advertised on the NHS jobs website. The long list of candidates were interviewed by the head hunters Saxton Bampfylde in August 2010. Four candidates were identified for interview and formal interviews took place on 22 September 2010.
248. The four candidates were interviewed by John Rivers, Derby Trust Chair, Professor Stephen Bailey, the Derby Trust vice Chair, and three others. The interview process involved the candidates being interviewed on a one to one basis. References were considered by Saxton Bampfylde. Mrs James was appointed and started as Chief Executive of the Derby Trust in January 2011.
249. In November 2013 Dr Drew tagged @DerbyHospitals (on Twitter) with reference to the fact that he was going to publish a book. This book was published in April 2014.

250. In April 2014 there was some email communication between Mrs James and the Communications team at the Derby Trust when Mrs James learned that Dr Drew's book was due to be published. She thinks that she informed John Rivers that a book was being published. John Rivers was in any event broadly aware of the issues connected to Dr Drew as Mrs James had had to take time away from work to give evidence at the Employment Tribunal. At this stage, Mrs James was unaware that Dr Drew was alleging that she was personally responsible for the death of KK.
251. On 5 January 2015 the Derby Trust received an anonymous letter referring to Dr Drew's book and raising allegations as to whether Mrs James is a fit and proper person within the meaning of Regulation 5.
252. John Rivers the Chair of the Derby Trust carried out his own investigation into these matters and prepared a report dated 18 February 2015 which he provided to the CQC concluding that Mrs James was a fit and proper person.
253. In February 2015 the Derby Trust completed a Fit and Proper Person Requirement Checklist in respect of Mrs James. This was signed off on 27 February 2015 by Faye Bradley, Head of Workforce, and on 17 March 2015 by John Rivers as Chair of the Derby Trust Board, and then ratified by the Board later that month.

H. ANALYSIS AND FINDINGS (2): MRS JAMES AND DR DREW

H.1 Introductory

254. This section is concerned with the two main protagonists in the events with which we are concerned, Mrs James and Dr Drew.
255. This Investigation is of course about Mrs James. Dr Drew is neither under investigation himself, nor, as we have said, in any sense a “party” to it. However he is in effect responsible for it, having made the allegations which we are investigating. Therefore our views on him are also important because we have to come to conclusions as to whether the allegations that he makes about Mrs James’s conduct are true. This necessarily involves a consideration of his reliability as a witness.
256. We have, in the event, been able to interview both of them. Our findings are informed by our views of each of them, both as a result of those meetings (and our impressions and assessments of them as witnesses as a result) and in terms of the evidence that we have received in its various forms about them. It is we believe both appropriate and likely to be helpful, before dealing with the issues which we have to resolve, to set out those views.
257. We should make it clear that although this section appears in the Report before our findings on the 24 Issues, we have taken into account all of the evidence that we heard (including that on those Issues) before writing what follows.

H.2 Mrs James

258. We heard evidence from a number of witnesses who had worked with Mrs James at the Walsall and Derby Trusts. These were, to a man or woman, all (apart from Dr Drew) highly complimentary about her management skills. We found them all to be honest and credible witnesses.
259. As to the qualities that Mrs James currently displays at the Derby Trust, we would refer in particular to the evidence that we recite from John Rivers (Chair of the Derby Trust) Sir Stephen Moss (Non-Executive Director of the Derby Trust and Senior Independent Director), Cathy Winfield (Director of Patient Experience and Chief Nurse), and Nigel Sturrock (Medical Director). The detail of that evidence is set out at Section I at paragraphs 515 - 521 below (under Issue 21), and in the Summary of Evidence section at Annexe 8.
260. We also, obviously, heard evidence from Mrs James herself. We found her an impressive witness: she was honest and credible; and she gave her evidence in a straightforward and coherent way.
261. As we have stated, the only person who was not complimentary about Mrs James was Dr Drew. It is of course Dr Drew’s complaints (whether directly or via the anonymous letter based on some of the contents of his book) which give rise to this Investigation.

H.3 Dr Drew

Qualities

262. Dr Drew is clearly a dedicated and conscientious clinician. We have heard very good reports of his expertise as a paediatrician. He has a strong sense of duty and a clearly defined moral code to which he often has express recourse. He is intelligent, articulate and persistent in argument, and therefore persuasive. We suspect that he is at bottom a right-minded individual. However we have concluded that he is, for reasons which we can neither fully explore nor resolve, an unreliable witness. The specific reasons why we say this are explained in some detail below, by reference in particular to his own evidence.

General Observations as to the Reliability of Dr Drew's Evidence

263. Dr Drew is by his own acknowledgment an obsessional person. He himself stated this, in interview, specifically in the context of his approach to his own experiences at the Walsall Trust, mentioning the fact that he had some 11-12,000 pages of documentation from that time. This obsessiveness, which relates also to his conviction that he has been badly treated, (which on the face of it at times he has - albeit not, in our view, as a result of Mrs James's actions or omissions – see below) has, unfortunately, and importantly for present purposes, created significant difficulties with accurate recollection or re-telling.
264. The first, over-arching, point here is that throughout this process – both in writing and in interview - he has been candid about the significance to him of his own narrative and agenda: both as to the importance of his characterisation and presentation of himself as a “whistle-blower”; and, specifically, in that he wishes to use his complaint about Mrs James as a test bed for how Regulation 5 works. This has given rise, we believe, to dangers with his reliability, because the need for him to be able to maintain his narrative affects the way in which he tells his story. For the reasons we explore in detail below, this means that his evidence must be treated with caution.
265. Secondly – a related point - he has shown himself, both in documentation that has been generated prior to the Investigation, and during the course of the Investigation itself, to be quite capable of (i) re-interpreting evidence, consciously or not, to fit his narrative and (ii) ignoring, and possibly genuinely forgetting, evidence that did not suit that narrative.
266. These factors mean that his accounts of events are often unreliable, and sometimes very obviously so. We have set out below various examples, of different sorts, of this feature of his evidence.

Dr Drew's Book: *'Little Stories of Life and Death @ NHSWhistleblowr'*

267. Thirdly, we should deal with Dr Drew's memoir about his experiences in the NHS, entitled *'Little Stories of Life and Death @ NHSWhistleblowr'*, published in 2014. This book, along with a parallel online campaign, is clearly intended to tell his story as an NHS whistle-blower; thus it does what it says on the tin. Much of it takes the form of a specific diatribe against the Walsall Trust, and Mrs James, as its then Chief Executive, in particular. His attitude to the lack of ostensible challenge (until now) to the contents of the book is described below.

268. It has been a great advantage to us in our work on the Investigation that he has written this book, since it has meant that we knew his story in detail from the outset. The writing of the book has however been a disadvantage for Dr Drew himself, as it has proved difficult for him to recollect events otherwise than through the prism of the contents of the book itself. Thus, the book has created two problems for the credibility of his account; one general and one very specific.
269. The general problem is that it seemed to us a regular feature of his evidence, when asked about events, that he did not have, or at least seemed not to have, an independent recollection of the events being discussed. Often his instinct was to have recourse to the contents of the book in order to answer the questions we posed.
270. This problem was very seriously compounded by the second, more specific problem, which we have touched on already. This was that (as he with commendable frankness volunteered in interview), the book was telling a story, and what was in it had to fit that story. He seemed to us when saying this consciously to be acknowledging that this meant that the contents of the book were not in all respects either complete or accurate: it had been written specifically with his narrative in mind, and was dictated by, or at least had to fit, that narrative. This second feature made the book a very unreliable “script” for him, and therefore heightened the dangers of him having to have recourse to it in order to answer our questions.
271. For these reasons, the fact that his account is often based on the contents of the book, rather than any independent recollection, is a real concern. That is particularly so given that it seemed to us that the process of writing the book had replaced and possibly “overwritten” any independent recollection of some of the important events described in it. Thus it was not that he was necessarily, on these occasions, consciously dissembling; rather that he was unable to access any true memory as to the events under discussion; the account in the book was as far back as he could go.
272. We would add that he clearly found the process of his chosen narrative being challenged in this way, particularly when that challenge was supported by contemporaneous evidence, difficult to deal with, and indeed at times deeply distressing. The clear impression that he gave was that this was because he recognised that the process operated to undermine that chosen narrative.

Relevant Features of the Evidence given to the Investigation

273. This brings us on to examples of features of the evidence provided to us for the purposes of the Investigation.

(1) The Witness Statement to the Mid Staffordshire Inquiry

274. First, Dr Drew disclosed to us (by mistake, we think, judging by his reaction when we told him about this) a copy of a witness statement that he submitted to the Mid-Staffordshire NHS Foundation Trust inquiry chaired by Robert Francis QC. In that statement (which he made clear to us he had written with the assistance of solicitors) he says the following about the KK case:

*‘A serious case review was held. The patient’s death was judged to be due to a catastrophic failure of the Trust’s child protection procedures. **It was stated that if we had had a properly trained safeguarding nurse in post the death would probably have been avoided and recommended we appoint to this role.***

(our emphasis added)

He then goes on in the witness statement to set out his complaints about the way in which the Walsall Trust eventually appointed the safeguarding lead nurse when the funds became available for the post.

275. We were somewhat surprised to see this, as the version of the SCR that we have seen contains no such statement, or anything that could in any way be interpreted as such. We put this to him in interview. He appeared embarrassed by this, but explained it by saying that at the time he wrote the statement he had not seen the SCR and he was in fact quoting, he said 'verbatim', from a letter from Ms Hurry, the PCT lead on safeguarding. Thus what he appeared now to be saying was not that this was stated in the SCR, but that it was stated to him by Ms Hurry.

276. We have now also seen the letter he refers to from Ms Hurry (dated 7 October 2008 to Mrs James), and it provides as relevant as follows:

'The need for the post within the hospital was highlighted in the last Serious Case Review undertaken by the Walsall Safeguarding Children's Board. Catastrophic mistakes were made and the review concluded that if hospital staff had followed basic Safeguarding procedures the child concerned would have survived. This can never be acceptable and highlighted the need for a well-trained and supported workforce who could challenge decisions made by senior colleagues. This would clearly be the role of the Named Nurse.....'

277. Two points arise from this.

278. First, the passage in Dr Drew's witness statement for the Francis Inquiry is not a verbatim quotation, even from Ms Hurry's letter. Indeed the sense has been changed significantly; the letter stated that the death would have been avoided had proper procedures been followed; his witness statement was to the effect that it would probably have been avoided had a properly trained safeguarding nurse been in post.

279. Secondly, we do not accept that the paragraph in the witness statement can be read in any way other than to convey to the reader that it was the SCR which stated that if there had been a properly trained safeguarding nurse in post, KK's death could have been avoided. Although "It was stated" is in the passive voice, it is clearly intended to convey the impression that it was the SCR which stated it. This is not true and it seemed to us that he must have been aware when he wrote it that it was not true.

280. Dr Drew did try to down play the relevance of this by stating that the witness statement was not signed by him – which indeed it was not. However he was compelled to accept that he had submitted it to the Francis Inquiry with the intention of it being accepted by the Inquiry as being true. This seems to us a clear example of Dr Drew misrepresenting evidence to fit the narrative that he wants to tell. That he was prepared to do so in a witness statement submitted to a public inquiry is in our view significant.

281. There is no doubt that Dr Drew genuinely felt very strongly that there was no properly trained safeguarding nurse at the time, and that this position needed to be rectified. He clearly still feels this. What is of concern to us is that even long after the event he had no compunction about – and thereafter possibly even little recollection of – giving evidence in support of his view that is embellished and exaggerated.

(2) *The Allegation that Mrs James “Falsified” the terms of the IPR Report*

282. One of the most serious allegations made by Dr Drew was that Mrs James interfered with the dissemination of the IPR report within the Walsall Trust for her own purposes (because, as he suggested, it was critical of her).

‘Mrs James vigorously sup[p]ressed this report to limit its readership within the trust. This involved Mrs James falsifying the [IPR] report’s instruction for disseminating the report within the trust.’

283. This amounted to an allegation that Mrs James falsified the instructions about dissemination of the IPR report by changing the text of the IPR’s recommendations as to the same when she circulated a summary of its findings with her letter of 13 April 2010. Dr Drew made this allegation both in his book and to the CQC. He then repeated it in interview with us.
284. This is in the event quite simply wrong: see Section I paragraphs 389 - 391 below. There was no falsification of any parts of the report. The parts of the report that were disseminated were the headline points made throughout the report in bold. There was no cherry picking by Mrs James of what information to share, let alone changing of any wording, as is suggested by the term “falsified”.
285. When we put this to Dr Drew, and he realised that he had simply got this wrong, he had to take some time to come to terms with it, initially saying simply *‘You must understand this is very difficult for me’*. It seemed to us that at this stage of the interview he was in tears, or at least very close to it. It did not seem to us that he was finding it difficult because he had made a very serious allegation about someone else that had turned out to be wrong, but because a central part of his narrative about Mrs James had been challenged on evidence that is plain for anyone to see.
286. This was a clear example of Dr Drew misinterpreting objectively ascertainable evidence in order to fit his own narrative. It was the best confirmation there could be to us of the impression given to us many times during this process: that when he says things that are untrue, Dr Drew may at times be unaware that this is so; he has become convinced that his own narrative (his “story” as he puts it) is correct.
287. Furthermore, it is in our view highly telling that since our interview with him he has sought to adapt his position in relation to this once more. In interview he had acknowledged this allegation of falsification to be *“not just wrong, it is incorrect. Ok. I think it’s probably the one incorrect thing in my whole complaint.”* However when he was given the opportunity to make observations on the transcript of the interviews, he made a note in relation to that quotation to the effect that *“false or misleading impression is better”*. We are, frankly, at a loss to understand what *“false or misleading impression”* he could here be referring to. Once it is accepted that Mrs James did not alter the terms of the IPR, but simply disseminated the passages highlighted in bold, there is, quite simply, no possible false or misleading impression.
288. The only conclusion to which we can come is that, ultimately, Dr Drew is unable (whether he realises it or not) to abandon the narrative which he has put forward on this topic for so many years, even in the face of the clearest possible evidence that it is wrong. Rather, he has chosen to abandon the uncomfortable and unwelcome insight that came to him, albeit (it would appear) fleetingly, during the interview itself. This is of a piece with his general approach to his narrative and to anything which contradicts it.

(3) Account of Interview 25.6.10

289. Similarly, Dr Drew accepted in interview that the account he had put in his book of the meeting he had with Mrs James on 25 June 2010 to discuss his future at the Walsall Trust was false in so far as he stated that Mrs James had left him with the impression that she had the whole Walsall Trust Board on side - he accepted (as he had to, given the transcript of the meeting) that, while she had said something that was consistent with this upon enquiry by him, she had almost immediately corrected the impression given and made it clear that she had not discussed his future with the whole board, but only with the Chairman, Ben Reid.

Reaction to the Absence of Challenge to his Narrative

290. Finally, we should record his interesting approach to the fact that his story, as it relates to Mrs James (as put into the public domain by his book and by other means), has not been publicly challenged by her. His view appeared to be that he was entitled to treat the absence of any such challenge as itself somehow confirming and corroborating the truth of his account. This is, it seems to us, a somewhat convoluted way of demonstrating the reliability of what he was putting forward as evidence, and frankly, a misconceived proposition.

Conclusions as to his Reliability

291. In those circumstances, it seems to us that - whether or not he is now fully aware of the extent of this – Dr Drew is fundamentally unreliable as a witness and has indeed, at times, fabricated elements of his story when telling it; possibly with the ultimate consequence (upon sufficient retelling) that he now believes it. (We have given a number of specific examples of this at paragraphs 274-289 above.) We accept that he may genuinely believe what he says now; indeed it appears from his reaction to this sort of challenge that he does. But in any event we have to treat what he says as unreliable, where it is credibly disputed by others and unsupported by contemporaneous documentation.

I. ANALYSIS AND FINDINGS (3): THE 24 ISSUES

I.1 Introductory

The Structure of this Section

292. This Section consists of an analysis of each of the 24 issues in the Combined List of issues that appeared at Section F, by reference to the evidence we have received, and (where it is necessary for us to make findings of fact or draw conclusions) the findings/conclusions that we make along with our reasons for doing so.
293. As we have explained, each of the 24 Issues appears as appropriate within the template of Dr Drew's headline allegation (bold italics) and supporting narrative (italics). The 24 Issues appear in bold and underlined.
294. The analysis then follows. So far as the evidence is concerned reference is made as appropriate to the Factual Background section (Section G) above and/or to the Summary of Evidence as it appears, witness by witness, at Annexe 8.
295. The relevant findings appear in bold font at the end of each section. For the sake of clarity and convenience, they also appear collectively (on their own) within in the Section K: the Summary of Findings and Recommendations.

I.2 The 24 Issues

(DD) ALLEGATIONS RE CONDUCT AT WALSALL TRUST

DD.1 "Mrs James supported and participated in a cover up of failings of care by Walsall Healthcare that led to the preventable death of a Walsall child."

DD Supporting Narrative:

"Mrs James was CEO in June 2006 when the child ([KK]) died of non-accidental head injury. This resulted from what are now acknowledged by the Trust (Cordis Bright report June 2014) as catastrophic mistakes and failure of the most basic safeguarding. This was covered up for more than eight years. Mrs James had overall responsibility as CEO for the clinical governance failures that allowed this cover-up. The K family were told nothing of these failures by Walsall Healthcare until an independent investigation, commissioned after a complaint, reported in June 2014. In particular Mrs James signed a press release in April 2009 which was untrue and obscured the failings of her hospital until we forced the independent investigation 5 years later.

In addition Mrs James obstructed the remedy of failings related to [KK]'s death. This delayed the development of the safeguarding service

This cover up has resulted, on Walsall Healthcare's own admission, in an 8 to 9 year delay in the lessons of [KK]'s death being learned and used for the protection of vulnerable Walsall children."

Issue (1): Whether Mrs James had any involvement in KK's death.

296. We have seen no evidence to suggest such involvement.
297. In interview Dr Drew agreed that in his view, she had had no such involvement and that he did not ascribe the death of KK to any personal failing by Mrs James.
298. **Finding: we find that Mrs James had no personal involvement in KK's death.**

Issue (2): Whether the subsequent investigation into KK's death was inadequate, and if so what Mrs James's responsibility for this was.

The Adequacy of the Investigations

299. Dr Drew told us that, following the death of KK, he encouraged the Specialist Registrar who had been involved in his previous admission, to record what happened at the time of that admission in a written statement. Dr Drew has retained a copy of that statement and provided us with a copy of it. The statement is dated 3 July 2006. It states that on 24 June 2006 the author was the Specialist Registrar for general paediatrics when he saw KK along with Dr AB (the paediatric consultant), as part of a ward round. Bruising was noted and there was a discussion as to whether a child protection referral should be made to Social Services. Dr AB thought there should not be one and this was agreed by the Specialist Registrar. Following further consideration of this overnight however, the Specialist Registrar approached Dr AB and expressed the view that in fact a child protection referral should be made. Dr AB apparently agreed to make that referral. We have been told that no such referral was in fact made.

The Root Cause Analysis (RCA)

300. In line with Trust policy a Root Cause Analysis was carried out. We have seen two different copies of the RCA report, the first was disclosed to us by the Walsall Trust on the day that we first met with Dr Drew (despite having been asked for it some weeks earlier). It is heavily redacted and did not include the action plan arising from it. Dr Drew subsequently (after we had concluded our interviews with him) disclosed the copy of the RCA report that he obtained as a result of the Cordis Bright report. This document seems to us to be a later version of the RCA report. We therefore disregard the earlier version provided by the Walsall Trust and have considered instead the later one provided by Dr Drew. This contains an action plan.
301. Serious criticism has been made of this document, in particular by the author of the Cordis Bright report, namely that the document was incomplete, unsigned, and contained glaring errors such as the final date of admission being wrong. We repeat what we have said above at paragraphs 83 – 88 that the example given by the author of the Cordis Bright report as to the glaring omissions in the RCA report (namely that the date of KK's final admission to Manor Hospital is wrong in the RCA report) is itself wrong. In other words, the RCA report is accurate in respect of that particular matter. We ourselves have not been able to identify any glaring errors in the RCA report but it is heavily redacted in parts so as to obscure its meaning.
302. We are ourselves concerned that the RCA report appears to be unsigned and undated, however it is not immediately obvious to us how serious a deficit this is. The RCA report has only one place for a signature and that is under the section 'Action plan completion

and sign off'. There is however an action plan included within the RCA report which sets out each remedial/preventative action to be taken arising from the incident, the name of the person responsible for implementing it and the completion date.

303. It does appear to us that sections of the RCA template have not been completed. This is obviously a concern. We cannot however, given the time that has elapsed since the incident, and given the fact that the Walsall Trust do not even appear to have the version of the RCA report that was provided to the author of the Cordis Bright report, be entirely confident that we have the final version of this document.
304. As to the quality of the RCA we heard evidence from Dr Drew that he refused to sign the RCA report because it did not accurately record what had happened. It is true that he has not signed it – no one has. However we are unsure of the significance of this, for the reasons given above: there does not appear to be any place for the RCA report to be signed save for in respect of the action plan section. If the lack of a signature does have the significance to which he now ascribes it, we are surprised that no reference has been made to this fact in any of correspondence emanating from Dr Drew over the years, or indeed in his book.
305. It was unfortunate that we did not have the later version of the RCA report in front of us when meeting with Dr Drew as it is not clear to us in which respects he says it is deficient (the version that we did have at the point we met with Dr Drew is clearly deficient, but it is not the final version).
306. There are three reasons why it would be inappropriate for us to make findings as to the quality of the internal investigation, whether as a whole or in relation to any part thereof.
- (a) It is common ground that Mrs James played no part in the internal investigation. It is therefore not necessary to make findings about the conduct of others at the Walsall Trust.
 - (b) We have not been able to interview anyone involved in the investigation save for Dr Drew. It would therefore be inappropriate to make findings as to their conduct.
 - (c) We have not seen the completed documentation generated by the internal investigation in the following respects: (i) we are aware that another document was generated, an adverse incident/near miss report form on 17.7.06. We have not seen this document; and (ii) the RCA we have seen is heavily redacted so as to obscure its meaning, and we cannot be sure it is the final version.
307. Although we have not seen the full documentation, we are prepared to assume for the purpose of this Report (without making any finding to this effect for the reason that we are not tasked with investigating anyone's conduct at the Walsall Trust save for that of Mrs James), that the internal Walsall Trust investigation was inadequate. We do so because it is not clear from the versions of the RCA report that we have seen that it dealt at all with the questions as to (i) whether there was an agreement between Dr AB and the Specialist Registrar on 24 June 2006 that Dr AB should make a safeguarding referral; or (ii) if there was, why no such referral was in fact made. However we repeat that the document that we have seen is heavily redacted and so it may very well be that such information is contained within the redacted sections. (We ourselves can of course make no findings as to questions (i) or (ii), for the reasons already given.)

The Serious Case Review (SCR)

308. The SCR of course came significantly later because it had to await the conclusion of the criminal proceedings. We have seen the SCR. We have also seen the criticisms made of this by the Cordis Bright report. We do not however consider that the investigation into KK's death, at least as disclosed by the terms of the SCR, was inadequate, let alone obviously so.
309. Unlike the RCA, the SCR appears to have established all the primary facts as we understand them to have been, namely:
- (a) the events leading up to the decision taken to discharge KK without making a safeguarding referral;
 - (b) the subsequent agreement after the discharge between Dr AB and the specialist registrar to make the referral; and
 - (c) the failure to make the referral.

Mrs James's Personal Responsibility for any Inadequacy in the RCA and SCR

310. As we have stated already, Dr Drew acknowledged in interview that Mrs James did not have any personal responsibility for KK's death. However we consider that he does still maintain that she has responsibility for failings in the investigations.
311. As to the RCA, our conclusions (in so far as we can make them) are as follows:
- (a) The investigation undertaken by the Walsall Trust was done in part by Dr Drew as clinical lead for the department and in part by the RCA team (of which Dr Drew was a member).
 - (b) Mrs James (we find) had no personal responsibility for the investigation.
 - (c) We understand the nature of RCAs as essentially clinically generated, and we do not find it surprising that a Chief Executive does not get involved in the individual investigation of failures on the part of a Trust. Mrs James told the investigation that as she has never seen a RCA report, she would not be able to add any value to it.
 - (d) In any case we find that responsibility for the quality of an investigation (as opposed to the fact that an investigation has been undertaken) lies outwith the Chief Executive role.

It follows that Mrs James can have no personal responsibility for any such failings

312. As to the SCR, our findings are as follows:
- (a) We have already said that we do not see that there were such shortcomings.
 - (b) However even if there were it is important to recognise that the investigation reflected in the SCR was undertaken by the Walsall Local Safeguarding Children Board ("the Safeguarding Board"). This is a body that is independent of the Walsall Trust. Mrs James therefore has no responsibility for this. Thus, again we cannot see that she had any personal responsibility for shortcomings in this investigation.

Other Aspects of the Investigations

313. Dr Drew's observations about these investigations included at one point the suggestion that he was given the impression by the lead investigator to the RCA that decisions with respect to the RCA were being made at Board level. We reject any such suggestion and prefer the evidence of Mrs James that she had no personal involvement in the internal investigation.
314. Dr Drew put his case regarding the later SCR investigation undertaken by the Safeguarding Board in a slightly different way. He alleged that it was inappropriate for Gareth Robinson, Divisional Director, to attend as the Walsall Trust representative. Instead it should have been a clinician. He was suspicious of the motives of someone without paediatric or safeguarding experience being involved on behalf of the Walsall Trust, and saw this somehow as evidence of desire on the part of the Walsall Trust to effect a cover-up (see below) although this sits uneasily with what Gareth Robinson did (again see below.)
315. We reject this suggestion too. Gareth Robinson was not being called upon to give a medical opinion; that was a matter for the witnesses the Safeguarding Board chose to interview. He was there to ensure the proper co-operation of the Walsall Trust with the investigation including with the action required of them. In such circumstances it was in our view appropriate to have the divisional manager involved with the SCR.
316. Dr Drew also suggested, in interview, that the decision to make Gareth Robinson the Walsall Trust representative on the SCR was an attempt by Mrs James to control the information coming from the SCR. We simply do not understand this point given that that there does not appear to have been any problems with the implementation of the recommendations coming out of the SCR (which point we deal with below at paragraph 352).
317. Further, he was of the view that if a clinician had represented the Walsall Trust at the SCR questions would have been asked about what parts of the report meant and the conclusions that were reached. He did not provide any specific criticisms to which this statement attached.
318. Mrs James made it clear in her evidence to us that the decision as to who should represent the Walsall Trust was not hers, but that of EF, as Chief Operating Officer and Director of Nursing. EF was not only head of safeguarding, but also Gareth Robinson's line manager.
319. Finally, and perhaps most significantly, we note that it was Gareth Robinson who in fact insisted on the addendum to the SCR which expressly noted the part in events that Dr AB had played. It seems to us that this clearly undermines Dr Drew's suggestion that the Walsall Trust was concerned by appointing Mr Robinson to the Safeguarding Board, to minimise the ramifications in terms of consultant or Trust error. This insistence seems to have been to the opposite effect.
320. **Finding: We can make no concluded findings as to whether the RCA following KK's death was inadequate; we find that the SCR was (so far as we can tell) satisfactory; in any event we find that Mrs James had no personal responsibility for either investigation report, and therefore none for any such failing**

Issue (3): Whether there was a failure to ensure the performance management and censure of Dr AB following KK's death, and if so, Mrs James's responsibility for this.

The Issues arising out of Dr AB's alleged conduct

321. We repeat that we can make no findings as to whether Dr AB's conduct was negligent or otherwise inappropriate. That would be wholly wrong and unfair, particularly (i) we have not seen any of the relevant medical records, and (ii) Dr AB has not been given any opportunity to give his own account. However we can explore what questions that apparent conduct did, or should have, raised, and that is the sensible starting point for consideration of this issue.
322. It seems to us that there are two such possible questions
- (a) The first relates to the clinical judgement of Dr AB that the cause of the bruising was sepsis / handling.
 - (b) The second relates to Dr AB's decision to overrule colleagues' concerns that the bruising was from non-accident injury ("NAI") and prevent a safeguarding referral being made; this has to be seen in the light of Dr AB's apparent subsequent agreement to make a safeguarding referral the day after KK's discharge at the specialist registrar's request, and the fact that on the face of it Dr AB never did this.
323. For the reasons stated above we ourselves can make no findings about what Dr AB did on the 23 and 24 June 2006. For the purposes of this Report therefore we assume (without making findings ourselves upon these matters) that what is said in the SCR is accurate, namely that during KK's admission to the Manor Hospital between 21 and 24 June 2006 the following events took place:
- (a) It was noted that KK had unexplained bruising.
 - (b) A clinician and the specialist registrar had concerns that this was caused by non-accidental injury.
 - (c) Dr AB took the view that the bruising was caused by either sepsis or handling.
 - (d) There was a discussion about whether a safeguarding referral should be made before discharge. Dr AB overruled the two colleagues and no referral was made.
 - (e) KK was discharged on 24 June 2006.
 - (f) At some point after KK's discharge (probably 24 June 2006) the specialist registrar spoke to Dr AB again, and Dr AB agreed to make a safeguarding referral.
 - (g) Dr AB did not in fact make a safeguarding referral, instead a referral to the health visitor was made for follow up.

Suspension from Safeguarding and Retraining

324. It is common ground that immediately after KK's death, Dr AB was removed from safeguarding duties. Dr Drew asserts that the suspension was for a few days or a week at most; after that Dr BC put Dr AB back on the safeguarding rota; it would have been impossible for Dr AB to have undergone safeguarding training in that time. Ultimately Dr Drew's position was that he doubted that Dr AB had ever undergone safeguarding training.
325. Both Mrs James in her written statement for this Investigation and Sue Hartley the Director of nursing (in response to an Freedom Of Information request) stated that Dr AB did undertake Safeguarding training. We accept this evidence.
326. It is however unclear to us whether Dr AB was put back on the rota by Dr BC before undergoing safeguarding training.
327. It is common ground that Dr AB was not suspended from practice generally. Dr Drew asserts that this was a decision of Dr BC's made against the advice of Dr Drew. We have not been able to verify this by speaking to anyone else who was involved in making these decisions at the time. We take into account the facts that:
- (a) at the time of this incident Dr Drew and Dr AB had what Mrs James described as a 'history'.
 - (b) Dr BC had told Mrs James that he considered the judgment that Dr AB had made about the cause of the bruising to be plausible; and
 - (c) Dr AB was apparently defending the decision that he had made about the cause of the bruising.
328. We are unable to come to any conclusions on these questions relating to length of suspension and retraining, given that (i) we have not heard any evidence from Dr BC on either of these issues, (ii) there is no contemporaneous documentation that we have seen which deals with this issue, and (iii) Dr Drew himself could not himself recall the details of the training that had been made available to the paediatric department more generally. For the reasons set out earlier in this report we have not felt able to accept Dr Drew's uncorroborated account of these matters.

Mrs James's Personal Responsibility for these Matters

329. If however these decisions did amount to failings, the question still arises as to what personal responsibility Mrs James has for them.
330. Mrs James gave evidence to us that:
- (a) Decisions about clinical practice were for the medical director. This must be right. In our view it would be wholly inappropriate for a non-clinical Chief Executive to make decisions about clinical practice.
 - (b) The decision not to suspend Dr AB, but rather to suspend only from the safeguarding rota was Dr BC's.

- (c) While Mrs James was told by Dr BC that Dr AB had been suspended from dealing with safeguarding work (because as Chief Executive she would have needed to know), she was not told and would not be expected to be told when Dr AB went back on the rota to do this kind of work.
331. As against this was the evidence of Dr Drew that he had the “impression” at the time from Dr BC that he was discussing this case with Mrs James. It seems to us that this may well be right (and given the seriousness of the incident, entirely appropriate). This does not mean that Mrs James had any personal role in the decisions about Dr AB’s clinical practice.
332. We prefer the evidence of Mrs James over the impressions of Dr Drew and so do not consider that Mrs James has any personal responsibility for any failures that there may have been (as to which we are unable to make findings) to censure Dr AB appropriately.
333. **Finding: Ultimately, we are unable to make any findings as to whether there was a failure to ensure the performance management and censure of Dr AB following KK’s death, in particular because the precise position as to whether Dr AB received safeguarding training before returning to safeguarding work is unclear. However we find in any event that Mrs James had no personal responsibility for this.**

Issue (4): Whether the press statement issued by the Walsall Trust on 23 April 2009 was false. If so, what Mrs James’s responsibility for this was.

The Relevant Content of the Statement

334. We were told by Dr Drew that the part of the press statement that he considered to be false was as follows (in bold):
- “We also conducted an internal investigation into the case **and, based on the facts gathered at the time, there seemed to be no direct evidence of abuse**, however in light of the subsequent events it is clear that an opportunity to detect abuse had been missed”.*
335. We have considered this press statement carefully.
336. As to the content of the statement, we take the following view
- (a) The reference to “*internal investigation ... based on the facts gathered at the time*” reads most naturally as a reference to the RCA, or at least to investigations made around that time including the RCA. On that basis the Press Statement is, strictly speaking, in our view accurate. It did not seem to the clinicians at the time of KK’s admission that there was any **evidence** of abuse. Two staff members (probably one clinician and one nurse) had suspicions that the bruising might be evidence of abuse. The consultant thought the opposite. There was therefore disagreement – but there was no clear position.
- (b) For this reason we do not consider that the words in bold of which Dr Drew complains were positively false.

(c) We do however agree that in failing to make reference in those words either (i) to the fact that bruising was noted on KK, or (ii) to the fact that there was a concern on the part of two staff members that this may have been caused non-accidentally, the statement is at the very least carefully worded, and certainly not as candid as it could and arguably should have been by this stage.

(d) It is wrong however to take that sentence in isolation, as Dr Drew's complaint does. The real point here is that in any event the following sentence is a clear admission of wrongdoing on the part of the Walsall Trust, which in our view removes both the culpability and the effect of any failure in transparency in the words in bold, or at least renders them negligible. Thus while the exact circumstances in which the wrongdoing by the Walsall Trust are not set out, there is no attempt to mislead or hide the fact that Walsall Trust was at fault.

337. In the circumstances we do not agree that the terms of the press statement quoted above were misleading in any significant way at all.

Mrs James's Personal Responsibility for the Statement

338. We understand that Mrs James did not draft this statement, herself. She would no doubt have approved it however, and she certainly put her name to it. In that sense she must have at least an element of personal, as well as ministerial, responsibility for its contents, whatever her own state of knowledge or otherwise as to whether it was misleading in any way. However in the circumstances we do not regard this as significant.

339. **Findings: We find that wording of that part of the Press Statement in relation to which Dr Drew complains was carefully phrased, and perhaps could, and arguably should, have been more open; however its overall effect, particularly given the admission of culpability on the part of the Walsall Trust, was neither false nor misleading in any real sense. We find that Mrs James did not write the Press Statement issued by the Walsall Trust on 23 April 2009; she did put her name to it, and in that sense she did undertake a personal responsibility that it should be accurate. However in the circumstances we do not regard (given what we say above) this as a significant issue, and in any case do not regard her as culpable or responsible in any real sense for it.**

Issue (5): Whether Mrs James helped cover up the failings of the Walsall Trust that led to the preventable death of a child

340. Dr Drew presented no evidence to support this allegation. Neither did we see any evidence to this effect from any other quarter

341. **Findings: We find that there is no evidence that Mrs James helped cover up the failings of the Walsall Trust that led to the preventable death of a child, and that she did not do so.**

Issue (6): Whether Mrs James obstructed the improvement of child protection processes at the Walsall Trust.

342. Dr Drew's position on this allegation was twofold:

343. First, he said that Mrs James had personal involvement in the decision to employ an internal candidate as the designated nurse for safeguarding children and that this decision amounted to an obstruction in the improvement of child protection processes.
344. Secondly, he said that Mrs James may bear some responsibility for delay (if there was any) in implementing the recommendations arising out of the KK case.

The Appointment of the Internal Candidate to the Safeguarding Role

345. With respect to the appointment of the designated nurse for safeguarding children we find as follows:
- (a) It is common ground that the funding for this new post became available in or about October 2008.
 - (b) It is also common ground that during this period redundancies in the paediatric department were being made to the nursing staff as a result of the reduction in bed numbers.
 - (c) Mrs James explained that it is good practice in such circumstances to try and re-deploy staff who are being made redundant within the organisation. There was therefore a policy of minimising redundancies. We can see sound financial and management reasons for this.
 - (d) Mrs James told us that CD, in consultation with EF took the view that one particular paediatric nurse who would otherwise have been made redundant would be suitable for the designated safeguarding children post, albeit she would need training.
 - (e) Mrs James told us that she was advised by EF that the nurse was suitable for the post, albeit she would require training. She accepted this advice.
 - (f) That nurse was offered the job. Mrs James understands that the nurse in question was not overly keen on the idea but took it as the alternative was redundancy.
 - (g) This appointment was made without advertising and without consultation with Dr Drew or with the PCT Safeguarding lead on safeguarding, Ms Hurry.
 - (h) After three months it became clear that the nurse who had been appointed was not suited to the role and was not developing the skills as hoped. She resigned. The post was then advertised externally.
346. In interview Dr Drew told us the following:
- (a) First, he takes the view that the appointment of this nurse to the post was a mistake. He clearly held that view at the time (as he made clear in his 16 October 2008 letter to Mrs James) and events show that he was right about that.
 - (b) He objected to the process by which the appointment was made on the basis that as it was an important post for the Walsall Trust it should have been advertised externally, and advice should have been taken from the PCT safeguarding lead, Ms Hurry. He indicated to us (in the main through his facial

expression), that he did not consider it important for the Walsall Trust to have a policy of minimising redundancies in the Trust by re-deploying staff.

- (c) He holds Mrs James personally accountable for the appointment for two reasons: (i) because the policy of minimising redundancies was hers; and (ii) because when he raised an objection to the appointment (which he did in a letter dated 16 October 2008), she chose to accept the advice of CD, over his, even though CD had neither paediatric nor safeguarding experience.
347. We note that by the time Dr Drew registered his complaint about the recruitment process, the post had already been filled. His letter of the 16 October 2008 asks Mrs James to 'review' the appointment. It is not clear what is meant by this and in such circumstances we do not understand what it is that Mrs James is supposed to have done wrong beyond making an appointment of which he disapproved.
348. Dr Drew ascribes great significance to the letter of 7 October 2008 written to Mrs James by Ms Hurry, the PCT Lead on Safeguarding, to which we have already referred at paragraph 275 above. Indeed, he has continued in relation to this topic to assert what we have recorded at paragraph 273 as stated by him to the Mid Staffordshire Inquiry, namely that Ms Hurry had stated in that letter that if a properly trained Safeguarding Nurse had been in post then the death of KK would probably have been avoided. As we have made clear at paragraph 275, we did not see Ms Hurry's letter until Dr Drew produced it to us. However, for the reasons we give in those paragraphs, he is wrong to assert that it states as he maintains. In any event, we repeat that the appointment had already been made by the time Dr Drew made his complaint to Mrs James. We do not know whether Ms Hurry's letter was received before or after the appointment was made.
349. In any event, we take the view that it was appropriate for Mrs James to take the advice of the managers who had operational responsibility for nursing on the issue of the appointment of a nursing post over the view of Dr Drew, even though he was an experienced paediatrician.
350. We would observe that Dr Drew became quite heated in interview when recalling these events. He seemed unable to appreciate that there might be a range of reasonable decisions open to Mrs James (which included both accepting Dr Drew's advice over that of CD's and EF, and taking the course that she did). This seemed to echo the approach he takes to a number of issues, from which he cannot step back and accept that someone else might (reasonably) hold a different view to his.

Delay in Implementation of Recommendations arising out of Review of KK's Death

351. With respect to the delay in implementing the KK recommendations Dr Drew was in fact unable to say one way or another whether there had been delay in implementing the recommendations from either the RCA or the SCR and in any event accepted that the delays in implementing them could not be put at Mrs James's door.

RCA Recommendations

352. We note the following:
- (a) We have now seen the action plan which was completed as part of the RCA process. We note that all of the remedial/preventative measures are there said to have been completed (or begun to be completed) by December 2006.

- (b) We have seen the reports made by EF (or EF's deputy) to the Walsall Trust board in February and September 2007 in which the Walsall Trust Board are kept informed as to the implementation of the action points arising from the RCA. By September 2007 the Walsall Trust Board was informed that the action points had been fully implemented.
- (c) We heard evidence from Dr Drew that he had been tasked with implementing certainly one of the action points from the RCA. He was unable to say when this was.
- (d) There is no evidence before us to suggest that the implementation of the action points from the RCA were delayed.

SCR Recommendations

- 353. We have seen the action points arising from the SCR. We have seen that responsibility for implementing them was given to Gareth Robinson. We can see from the SCR that these were all completed. No dates are given but we note that all of the recommendations in the SCR bar one were those made in the RCA. We conclude therefore that work was started on all of these recommendations by December 2006 and completed by February 2007. We have seen no evidence that there was delay in implementing these action points.
- 354. In any event, we accept that the operational responsibility for ensuring that the action points are implemented is not that of the Chief Executive.
- 355. We deal at this point with the allegation that the Walsall Trust did not ever receive a copy of the SCR. We accept that by the time Richard Kirby was appointed Chief Executive, the Walsall Trust did not have a copy of the SCR. This does not however mean, in our view, that the Walsall Trust never had a copy of the SCR as alleged by Dr Drew in his book. Dr Drew has subsequently stated to us that Richard Kirby had said, in a letter to KK's father, that he had been told by the Safeguarding Board that they had not provided a copy of the SCR to the Walsall Trust for legal reasons. We have not had sight of this letter and have been unable to raise it with witnesses, as we had by the time we received this information, concluded our interviews.
- 356. However, it seems to us, notwithstanding this, that it is unlikely that the Walsall Trust never had a copy of the SCR. We say this for the following reasons: (i) this is inherently unlikely in the circumstances; (ii) Gareth Robinson was present at the meeting where the findings and recommendations were presented, and was able to insert an addendum ascribing blame to the consultant concerned; (iii) the Walsall Trust undoubtedly had a copy of the recommendations from the SCR, as this formed the basis of the Walsall Trust's action plan; and (iv) in any event Mrs James said that the Walsall Trust "certainly" had a copy at the time and that she was "fairly certain" that she had seen it. Furthermore, for what it is worth, the notion that the Walsall Trust never received a copy seems to us to sit very uneasily with Dr Drew's own theory on this topic, namely that the Walsall Trust wished to control the flow of information in relation to and from it.
- 357. We cannot, of course, be sure about this. It seems to us that a much more plausible explanation as to why there was no SCR present at the Trust when Richard Kirby was in post, is that (as Mrs James suggested) in the multiple moves of accommodation and over the passage of time (and loss of corporate memory) the document was lost. However, we make no findings about this.

358. Findings: We find that there is no evidence that Mrs James obstructed the improvement of child protection processes at the Walsall Trust, and that she did not do so.

DD.2: “Mrs James suppressed a Royal College of Paediatrics report which was critical of her leadership at a time when she had recently escaped a vote of no confidence by the consultant body”.

DD Supporting Narrative

“In 2010 Walsall Healthcare commissioned an Independent Review Panel (IRP), recommended by the Royal College of Paediatrics, to review my concerns about child protection and other issues at Walsall Healthcare. In addition it was asked to investigate my own mistreatment as a result of whistle-blowing. The IRP produced a report in March 2010. The report was highly critical of Mrs James and senior management.

Mrs James vigorously sup[p]ressed this report to limit its readership within the trust. This involved Mrs James falsifying the [IPR] report’s instruction for disseminating the report within the trust. Even the trust board was not allowed to see the report but instead was given a sanitised version which prevented the board seeing the original instruction for dissemination and prevented senior clinical managers (CDs) from seeing the report at all. I challenged the instruction on dissemination which would have effectively gagged me from speaking about the report. As a direct result Mrs James asked me to resign. Mrs James was politically vulnerable at this time as she had recently escaped a vote of no confidence by the hospital consultant committee and was known to be looking for CEO posts elsewhere.

The IRP chair was then appointed by Mrs James to a position in the trust to help further his managerial aspirations. The [IPR] chair was fully complicit with Mrs James in suppressing the report and was aware that she had altered the instruction for dissemination.”

Issue (7): Whether Mrs James narrowly escaped a vote of no confidence from the Consultant Body in or around March 2010.

359. Dr Drew told us that at a meeting of the Senior Medical Staff Committee he and others wanted there to be a vote of no confidence in Mrs James. He said that as an alternative, it was agreed that the letter that we have seen from Dr Holland, the chair of the Senior Medical Staff Committee dated 3 December 2008 to Ben Reid was written. This letter cites grave concerns about the lack of insight and the inability of the management team to listen to clinicians. There is no mention of Mrs James by name, and no suggestion that the Committee have lost confidence in her leadership.
360. Dr Drew told us that following delivery of this letter, Dr Holland had met with Ben Reid, and Ben Reid had expressed serious concern to Dr Holland about such a vote being put at the point where the Walsall Trust were trying to secure the PFI project for the new hospital.
361. We note that Dr Holland does not raise this issue in the statement that she prepared in support of Dr Drew for his Employment Tribunal.

362. The evidence that we have seen, namely the letter from Dr Holland, does not support Dr Drew's allegation that Mrs James narrowly escaped it being put to the vote that the senior medical staff committee had no confidence in her. In light of this contemporaneous document and in light of our concerns about Dr Drew's recollection of events, we cannot accept Dr Drew's allegation.
363. We are also somewhat concerned at the way in which Dr Drew has expressed this in his book. It seems to us to have been drafted in such a way as to suggest that the issue was put to a vote and it was narrowly defeated. This is of course misleading.
364. **Findings: We find that Mrs James did not narrowly escape a vote of no confidence from the Consultant Body in or around March 2010. For the avoidance of doubt, given the ambiguity in the allegation, we find that no such vote was taken.**

Issue (8): Whether Mrs James prevented the Walsall Trust Board from seeing the Independent Panel Review Report and falsified its instructions as to dissemination.

365. The IPR contained conclusions and recommendations that were in bold (which we understand from Dr Moghal to have been the headline or "key" findings, and conclusions and recommendations). The full list of these can be found in Section G.2 at paragraph 208 above. Below each of these bold headlines were some explanatory paragraphs that were not in bold.
366. Recommendation 10, as to its dissemination, stated as follows:- :

"Outcome required for communicating this report with the paediatric department and wider hospital community

Paediatric staff and management team understanding the key findings of the report and engaged in delivering the recommendations.

The executive team to ensure:

- a. The key findings of the report are communicated to staff within the paediatric department and the wider hospital community within two weeks from March 26th 2010 – the urgency is necessary to avoid the build-up of gossip and assumptions.*
- b. The paediatric department is engaged in the decision-making and ongoing delivery of recommendations 5, 6, and 7."*

367. There are two questions raised by Dr Drew
- (a) Whether Mrs James failed to follow its instructions as to dissemination
 - (b) Whether Mrs James falsified its terms on dissemination
368. We deal with these separately below (the second of them has already been explored in the context of our findings about Dr Drew himself at Section H.3 paragraphs 228 – 288 above).

Preliminary: Dr Drew's Assertion that the IPR was Critical of Mrs James's Leadership?

369. Before we do however, we should deal with one logically prior point. Dr Drew's case on this is based on the proposition that Mrs James wished to suppress the IPR, and limit its dissemination, because it was critical of her leadership. We wish to make it clear for the avoidance of doubt (although it is not formally one of the issues identified in the Remit) that, having considered the IPR carefully and discussed its findings with Dr Moghal, we find that, while it did make observations and recommendations about the Board's approach to certain matters, it was not in any way critical of either Mrs James personally or of her leadership. In this regard we refer to the Summary of Evidence at Annexe 8, where the relevant evidence from Dr Moghal is set out. The consequence of this is, of course, that the basis for these allegations about the dissemination of the IPR, and the falsification of the instructions for this, fall away.

The Dissemination Issue

370. It is common ground that a full copy of the report was seen by only three individuals at the time that it was delivered, Mrs James, Ben Reid and Dr Drew. There is therefore no dispute that the Chair of the Walsall Trust Board saw the whole report. Mrs James accepts that no other member of the Walsall Trust Board saw the whole IPR report. Thus we find as a fact that the only members of the Walsall Trust Board who saw the whole IPR report were Mrs James and Ben Reid.

Mrs James's Evidence as to Dissemination

371. We have heard evidence from Mrs James and seen the letter that she drafted on 13 April 2010 in which she sets out a summary of the key findings and recommendations of the IPR. We note that this letter was addressed to all paediatric consultants and members of the family health and diagnostic divisional management team. We accept that this letter, which contained the key findings and recommendations (i.e. those that had been put in bold by the IPR team) was sent to those individuals. Ultimately this was not, as we understand it at least, disputed by Dr Drew.
372. We have seen the witness statement made by Mrs James for the Employment Tribunal in which she states at paragraph 54 that this letter went to members of the Walsall Trust Board and the Walsall Trust Divisional Directors as well. Mrs James repeated this assertion to us when we met her. We note that the Employment Tribunal found as a fact that Mrs James had circulated this letter to the Walsall Trust Board, the Divisional Directors and the paediatric consultants. We note however that the Walsall Trust Board and the Divisional Directors were not listed on the letter as addressees.
373. We have seen a 'Progress Report to the Trust Board on the implementation of the Independent Review of Paediatrics' authored by Mrs James for the Walsall Trust Board meeting of the 6 May 2010. This begins 'Board members have a copy of my letter of 13 April which summarised the outcome of the Independent Review of Paediatrics...'. We therefore accept that the Board members saw the letter of 13 April 2010 and were updated at Board meetings by Mrs James about the IPR report. Thus while most of the Board did not see the whole IPR themselves, we do not find that Mrs James prevented them from seeing it.

374. Later on in that document Mrs James states:

All paediatric medical staff, CMG and Board members and members of the Divisional Management Team, together with the Chair of the Senior Medical Staff Committee and Associate Medical Directors have received a copy of the letter of 13 April.

375. We note that this statement is consistent with:

- (a) Mrs James's evidence to the Employment Tribunal.
- (b) The letter Mrs James wrote on 27 October 2010 to Dr Drew setting out her actions in disseminating the report (in which she states that she also provided this letter to the Chief Executive of the PCT and the Director of Social Services).
- (c) The evidence that she gave to us.

Other Relevant Evidence

376. As against this we have seen the transcript of the evidence given by Nick Turner, Associate Medical Director at Dr Drew's disciplinary hearing in December 2010. Dr Drew told us that he interpreted this evidence as Nick Turner stating that he had not seen the letter of 13 April 2010 (which as associate medical director he ought to have). We do not accept that his evidence goes that far. He was shown a copy of the letter but he was not asked whether he had received it. We also note that Andrew Hartland gave evidence for Dr Drew at that hearing and said that he had not seen the main points of the report. We derive no assistance from this statement as he was not an associate director and so not someone to whom the 13 April 2010 letter would have been sent in any event.

377. We accept the evidence of Mrs James on this issue and therefore find as a fact that Mrs James disseminated the letter of 13 April 2010 to the CMG, the Chair of the Senior Medical Staff Committee and the Associate Medical Directors. We find that she did not provide that letter to the wider consultant body nor to the clinical directors for each department in the hospital. We also find that Mrs James disseminated a less detailed summary of the IPR to all other staff in the paediatric department.

378. Dr Drew was of the view that Mrs James should have shared the findings and recommendations with all the clinical directors and all the consultants. He told us that the two clinical directors who gave evidence for him at his disciplinary hearing agreed with this opinion.

379. We have seen the transcript of their evidence which provides as follows:

- (a) Nick Turner gave evidence that he was an ENT consultant, Associate Medical Director and Acting Medical Director. He had been provided with a copy of the report by Dr Drew and gave evidence to the effect that as he was offering to act as Dr Drew's mentor, this was in his view, reasonable. He also stated that he interpreted the 'wider hospital community' to mean at the very least the consultants within the division if not across the whole hospital. He also stated that while Mrs James said that she sent something round the consultant body no one has any record of receiving it. He was not asked specifically whether he as associate medical director had seen a copy of the letter of 13 April 2010 although he was taken to a copy of it.

- (b) Andrew Hartland gave evidence that he was a Consultant Chemical Pathologist who has been the secretary of the Senior Medical Staff Committee for 5 years. He stated that he had not seen a copy of the IPR, and that he had not seen the main points in the report. He was not asked if he had seen a copy of Mrs James's letter of 13 April 2010. When asked by Dr Drew what he interpreted the 'wider hospital community' to mean, he said 'I had interpreted it as the consultant body'. He did however accept that it would not be appropriate to disseminate parts of the report critical of an idiosyncratic personal action.
380. Dr Drew sought to obtain further support for his view as to the meaning of the 'wider hospital community' by pointing out that Mrs James had disclosed the report to other agencies (the PCT and the Local Authority) and asked why in those circumstances the clinical leads from other departments could not see it.
381. We have considered the recommendation made in the IPR as to the sharing of the findings and recommendations. It is our view that the term 'wider hospital community' used there means (as is clear from the second paragraph), the management team. It does not mean the wider consultant body. We find that it was entirely reasonable for Mrs James to share the report with those that she did, and not to share the report with the clinical directors of each department or indeed the whole consultant body. Equally we found that Dr Drew's interpretation (supported by Andrew Harland and to some extent by Nick Turner) of what the 'wider hospital community' to mean to be reasonable.
382. This seemed to us also to be a typical example of a situation in which Mrs James as decision maker has a decision to make; there is a range of reasonable responses open to her; and she picks one which is not the same option that Dr Drew would pick. Instead of deferring to her judgment (given that she was the decision maker and her response was not obviously unreasonable), he instead criticises her, and in this case makes false and repeated accusations against her in the public domain.
383. When this was put to Dr Drew he told us (in written comments he made about the transcript of the interviews we conducted) the following:
- I disagree fundamentally with that view. As a matter of conscience and the ethical requirement laid on me by my professional regulator, the GMC, when I saw matters that were obviously going to have a negative impact on patient care and safety I was obliged to say so. Sue James, in refusing to meet me and resolve this matter of dissemination put me in a position where morally I had no choice but to challenge that. Neither Sue James nor Dr Moghal were willing to explain what "wider hospital community" meant or justify the restriction of the report's circulation. We can never know what the outcome of a more reasonable approach on their part would have been. Their view was imposed on me. This was the essence of NHS hierarchy which every recent report into the NHS is trying to discourage. Hierarchy, especially when it results in secrecy and fear, is detrimental to safe patient care.*
384. This is another good example of Dr Drew seeing matters from only one perspective. There are of course a number of sound management reasons why the circulation of the report should be restricted to those to whom it was circulated: (i) because they were the ones who were affected by the dysfunctional paediatric department, and (ii) because, as is plain from the report, if the report was circulated to all consultants it would risk making the position of CD, Dr BC and Dr DE untenable, when the criticisms of their behaviour appeared to be unique to the way in which they managed the paediatric department.

385. Furthermore, it seems to us on the face of somewhat inconsistent for Dr Drew to be complaining that Mrs James wished to limit dissemination because of the (improper) motive of wishing to prevent criticism of her being known generally, and simultaneously to be relying (in order to support his interpretation of the dissemination instruction itself) on the fact that she disclosed the report to other bodies such as the PCT and the local authority. The two are unlikely to sit together.
386. Two further points arise from this: one specific and one general. The first, specific, point is that Dr Drew did not make clear to us on what basis he maintains that, as a matter of patient safety, all the consultants in the hospital needed to see the key recommendations of a report dealing with the paediatric department, beyond making a general observation about transparency in the modern clinical context. We accept the advantages of transparency, but do not accept that there can never be countervailing concerns; that is exactly what there were here.
387. The more general point also has resonance in the context of Dr Drew's wider concerns and of his conduct. It is that large organisations cannot operate without hierarchies. Decisions must be made by the person responsible and accountable. They cannot be made collectively, and they should not (absent justified concerns) be second-guessed as a matter of course by other professionals simply because they disagree with them.
388. We find the sharing of information by the letter of 13 April 2010 rather than the whole report to be entirely appropriate. This was not seriously challenged by Dr Drew.

The "Falsification" Issue

389. The most serious part of this allegation, however is the assertion that Mrs James had falsified the dissemination instructions in the IPR order to conceal a report that was said to be critical of her, by changing the text of that recommendation on the letter of 13 April 2010. It is a very serious allegation. Dr Drew made this allegation in his book, and to the CQC, and he repeated it in interview.
390. We have already dealt with Dr Drew's case on this, and explained our findings on it (and their relevance to our attitude to Dr Drew's evidence generally) within Section H.3 at paragraphs 228 – 288 above. We repeat now what we said there. In short, that case is quite simply wrong. There was no falsification of any parts of the report. The parts of the report that were disseminated were the headline points made throughout the report in bold. There was no cherry picking by Mrs James of what information to share, let alone changing of any wording, as is suggested by the term "falsified".
391. We have explained in the passage referred to above about Dr Drew's reaction to it being pointed out to him that he was here in error, and there is no need to repeat that again. For present purposes we are concerned only with the truth or otherwise of the allegation. It is, as we say, simply not true.
392. **Findings: We find that the IPR was not critical of Mrs James's leadership. We find that she did not either falsify or fail to act upon the instructions in the IPR as to dissemination, in anything she passed on to others, whether in the summary of the IPR that she circulated or otherwise. We find that the only members of the Board who saw a full copy of the IPR were Mrs James and Ben Reid. We find however that there was nothing inappropriate about this (or inconsistent with the terms of the IPR) and that there was no attempt by Mrs James inappropriately to prevent the full Board from seeing the report.**

DD.3 “Mrs James attempted to pay me a settlement (accompanied by demonstrably dishonest statements) to induce me to leave quietly and sign a gag, specifically contrary to Department of Health directions.”

DD Supporting Narrative

“On 25 June 2010 I met Mrs Sue James with her HR director and my BMA representative in a digitally recorded meeting. Mrs James told us that the board had decided my position in the organisation was untenable. This was untrue. My departure and settlement was never discussed at any board meeting. I was offered an extraordinary financial settlement (outside the terms of my contract) to leave immediately with a good reference on the proviso that I signed a confidentiality agreement.

Mrs James claimed the confidentiality agreement was required as a result of SHA Involvement in the offer. This was untrue. BMA inquiries at the SHA showed that they had no knowledge of me or the offer I was being made.

The offer was made contrary to the requirements for settlement laid down in Maintaining Higher Professional Standards (MHPS). In particular MHPS specifies that settlement with a compromise agreement should not be used in any case that warrants disciplinary action. I had already been sent an appointment by Mrs James to attend a disciplinary hearing in April 2010. At this recorded meeting my BMA rep. asked what would happen if I refused the offer. Mrs James answered that I would be entered into a disciplinary procedure with a view to dismissing me.

The reason for this MHPS restriction on settlements is clear. It would otherwise allow the swift departure of bad doctors who warrant disciplinary action, allowing them to leave with a settlement and gag in order to avoid a drawn out process including employment tribunals. This allows the bad doctor to move on and work elsewhere, leaving future employers blind to this. Alternatively pay and gag is a well-recognised way of getting rid of whistle-blowers. As the House of Commons Health Committee has endlessly recognised this effectively conceals patient safety concerns as in my case. Signing a gag would have effectively prevented me exposing, over the next 4 years, the Trust’s failings in the KK case. It is also doubtful that I would have got my book past the lawyers for publication.

It would have been wrong in these circumstances for me to accept this offer. I declined in writing calling it a bribe; which it was.”

Issue (9): Whether Mrs James suspended Dr Drew for what turned out to be groundless allegations by one of the bullying managers.

393. It is accepted by Dr Drew that he was in fact suspended by Dr BC following a grievance being raised against him by CD. We were told by Mrs James that she did not know anything about Dr Drew’s suspension until after it had happened. We have seen no evidence to suggest otherwise and we accept this.
394. It would not be appropriate for us to make findings as to whether or not the allegations made by CD against Dr Drew were groundless, as we have not had an opportunity to receive evidence from CD, or as to whether Dr BC was justified in suspending him. For the purposes of this report all we can do is to assume (without finding) that the conclusions of Dr Rashid’s investigation into CD’s grievance were correct.

395. These were to the effect that
- (a) There was some evidence to support CD's allegation that Dr Drew had excluded CD from a number of incidents which related to nursing issues, and
 - (b) that some of his comments could be perceived as being judgmental about CD's abilities with regard to protecting the service but
 - (c) that there was little or no evidence to support CD's other allegations.
 - (d) that there is no case to answer with regard to Dr Drew's misconduct issues.
396. On that basis we would accept that there must be real questions as to the justification for and basis upon which Dr BC's suspension of Dr Drew. However we cannot explore those questions further ourselves
397. **Finding: We find that, whatever the rights or wrongs of Dr Drew's suspension, Mrs James herself did not suspend him. She had no personal responsibility for this decision.**

Issue (10): Whether Mrs James asked Dr Drew to resign for challenging her decision about how the IPR should be disseminated.

398. This allegation is disputed by Mrs James.
399. We have seen the transcript of the interview between Dr Drew and Mrs James on 25 June 2010. One of the complaints that Dr Drew repeatedly made about Mrs James was that she would not meet him face to face, and did everything in writing. Indeed it is common ground therefore that this recorded meeting was the only time the two met to discuss the IPR. There is no mention in that transcript of her asking Dr Drew to resign for challenging her decision about how the IPR should be disseminated. Rather she asked Dr Drew to take early retirement in the interests of the service, namely for his failure to accept the recommendation of the IPR thus interfering with the work the paediatric department was required to do to move forwards.
400. We find therefore that Mrs James did not request Dr Drew to resign.
401. Nor do we find that the motivation behind Mrs James asking Dr Drew to take early retirement was that he had criticised her decision in respect of disseminating the IPR. We note that the recommendations made by the IPR in respect of other members of staff had much more serious repercussions for their position at the Walsall Trust than the recommendations made in respect of Dr Drew, and they were expected to accept them without qualification or caveat. We therefore find that the motivation behind Mrs James asking Dr Drew to take early retirement was because she held the honest (and in our view, reasonable) belief that his continued employment at the Walsall Trust was not tenable.
402. **Finding: We have seen no evidence to suggest that Mrs James asked Dr Drew to resign for criticising her decision about dissemination of the IPR, and we find that this did not happen.**

Issue (11): Whether Mrs James “sacked” Dr Drew by means of “a sham disciplinary process”

403. We can deal with this allegation shortly. We have seen the transcripts of the disciplinary procedure and the appeal. We have read the material that was before the Employment Tribunal and read the judgments of the Employment Tribunal and the Employment Appeal Tribunal.
404. In short, Dr Drew mounted a robust challenge with the assistance of solicitor and counsel to the disciplinary procedure which concluded with his dismissal. He was unsuccessful in showing that it was in any way unfair in both the Employment Tribunal and the Employment Appeal Tribunal. We are effectively bound by these rulings, and in any event (for what it is worth) agree with the analysis involved in them. There is no respect in which this procedure was in any way ‘sham’.
405. Since meeting Dr Drew we have received a document from him entitled ‘Religion’ in which he says the following about the recommendation in the IPR that he refrain from using religious language:

This was the only instruction in the IPR that I categorically refused to accept. It was incomprehensible (even Sue James and Nadeem Moghal have polar views on its meaning), it had no basis in fact and was oppressive. Being able to express myself as a practicing Christian is more than important to me it is essential. I have never to my knowledge upset anyone in this way.

Sue James capitalised on my refusal to accept this particular instruction and used it to claim that I was in effect refusing the whole set of IPR instructions. The agreed record of her cross examination on this speaks volumes.

406. The reference to Mrs James’s cross-examination is the record of the evidence she gave in the Employment Tribunal.
407. We have some considerable sympathy with Dr Drew in relation to some aspects of the “religious language” issue, and made this clear to him when we met him. It is by no means clear to us that there is an easy way to distinguish between two distinct ends of what is probably a continuum: (i) at the one end, the habitual, possibly secular, and in any event inoffensive, use of religion-based terminology and idiom, something, as Dr Drew himself points out, that is not only done by the devout, and (ii) at the other, the much more problematic habitual and intentional use of religious imagery, language and reference, in order to claim a position of advantage (such as “I forgive you because I am a Christian” - literally being “holier than thou”). Ultimately, we suspect (although we cannot know) that the problem here may have been that Dr Drew is convinced he was at one end of that range, and others were equally convinced that he was the opposite end.
408. In any case – and whatever the position about that - we also take the view that Mrs James’s decision to accept wholesale the IPR recommendations was really the only option open to her given the circumstances in which the report was commissioned and given the very serious repercussions arising from the recommendations for some of the divisional management team.
409. Furthermore, we cannot agree with Dr Drew that the only instruction in the IPR that he refused to accept was the one relating to his use of religious language. We have considered the following additional evidence:

- (a) We have seen an email from Dr Drew to Mrs James dated 30 March 2010 in which he makes his acceptance of some of the recommendations in the report contingent on the actions of other people, and in which he also asks the executive to apologise to the department.
 - (b) We have seen a lengthy letter dated 26 April 2010 in which the recommendations are analysed and a number of clarifications are requested, in particular in respect of the use of religious language and regarding the dissemination of the report.
 - (c) We have seen an email from Dr Moghal (as interim clinical lead) to Dr Drew dated 8 June 2010 setting out the key time linked objectives required for Dr Drew to accept the recommendations of the report, and we have seen the response from Dr Drew in which he states 'As I think you know I cannot accept the recommendations of your report without reservation.'
 - (d) He disagreed with Mrs James's interpretation of the instruction on disseminating the IPR and showed it to a number of his consultant colleagues. He maintained in interview with us that it should have been disseminated more widely than it was.
410. We also consider his reference to Mrs James's view of his use of religious language and his statement that she "capitalised" on it in order to get rid of him, to be misguided. The important point here was that he was indeed unreasonably refusing to accept the recommendations of the report, which she had (reasonably, as the Employment Tribunal found) decided to accept, that report having been prepared on the basis of evidence from a range of witnesses about a range of issues in circumstances where those witnesses were assured that the evidence would not be attributed. The fact that she had not heard Dr Drew express himself in the way apparently reported to the IPR is not the point.
411. Since meeting with Dr Drew we also received from him a document in which he sets out a number of respects in which Mrs James was herself in breach of the required outcomes of the IPR. We feel it right that we should deal with each of these in turn:
- (a) First it is alleged that she breached the requirement for outcome 8 (i.e. that the HR Director should be clearly accountable for HR processes for all staff) when she sent a letter to Dr Drew of 15 April 2010 herself inviting him to a disciplinary meeting, without having followed procedure by carrying out an investigation to consider whether there was a case to answer. Mrs James dealt with this in her statement to the Employment Tribunal. She acknowledged that she had realised, (once it was pointed out to her by Dr Drew's BMA representative) that she made a mistake, and she took no action in respect of this letter. We accept that this was a breach of outcome 8, but one that was quickly accepted as being an error.
 - (b) Secondly, that in instructing Dr BC not to apologise to Dr Drew, Mrs James was in breach of outcome 2 which required Dr BC to provide a verbal and written apology to Dr Drew. We spoke to Mrs James about this. She told us that she gave that instruction to Dr BC to wait to issue his apology to Dr Drew until such time as Dr Drew had indicated that he accepted the recommendations in the IPR. It is our view that this was within the range of reasonable responses open to her.

- (c) Thirdly, that Dr Moghal as the interim clinical lead had breached outcome 6 by failing by the time that Mrs James had left the Walsall Trust in December 2010 to resolve the issue of job planning. This issue was unfortunately raised after we had finished interviewing (having delayed interviewing Mrs James for the second time until we had concluded with Dr Drew in order to be able to put to her any issues raised by him). We are not sure that we understand this criticism. It takes both sides to come to a resolution. It seems to us that the blame cannot be placed at the door of one side of a negotiation; and in any event the primary criticism appears to be against Dr Moghal.
- (d) Fourthly, that in the way in which Dr Moghal was engaged as clinical lead, Mrs James breached recommendations 5 and 10 which required the paediatric department to be engaged in the decision making in bringing in a paediatric medical lead. It is alleged that she failed to inform anyone in the paediatric department that she was even interviewing Dr Moghal and failed to involve them in his appointment. As we received this allegation after the time that we had finished interviewing Mrs James, we were unable to ask her about this. We are cautious about accepting the evidence of Dr Drew on this issue without corroboration; however in any case we accept the evidence of Mrs James (reinforced by our own impression of Dr Moghal when we saw him) that his appointment was clearly a very positive step for the future of the paediatric department.

412. In any event, it is our view that even if Dr Drew is correct that the IPR recommendation was breached in all these different ways by other employees of the Walsall Trust, that does not alter the fact that the process by which his employment was terminated was fair and proper.

413. **Finding: We follow the findings of the Employment Tribunal and the EAT to the effect that the disciplinary process by which Dr Drew's employment was terminated was fair and proper. We reject the suggestion that it was the disciplinary process by which he was sacked was a sham.**

Issue (12): Whether Mrs James wrongfully offered Dr Drew a compromise agreement to terminate his employment or else face disciplinary action leading to dismissal

414. This allegation arises out of the meeting Mrs James and Dr Drew had on 25 June 2010. There is a transcript of this meeting which we have looked at with care.

415. It is accepted that Mrs James made an offer to Dr Drew to enable him to retire early from the service in the interest of the service. It is said by Dr Drew that this was in breach of the National Policy 'Maintaining High Professional Standards' which provides (as relevant):

"In some circumstances, terms of settlement may be agreed with a doctor or dentist, if their employment is to be terminated. The following good practice principles are set out as guidance for the Trust:

.....

Offers of compensation, as an inducement to secure the voluntary resignation of an individual, must not be used as an alternative to the disciplinary process."

416. Mrs James's evidence to us and indeed to the Employment Tribunal was that she was not offering him compensation within the meaning of the guidance, but an enhanced retirement benefit in the interest of the service, as such it was part of a discretionary contract that she had the authority to offer.
417. It seems to us that the offer that was being made to Dr Drew was an inducement to secure his early retirement. Further, we do not understand the offer to have been one of compensation (in the English sense of "damages", as opposed to the American sense of "work-related pay"). It was an offer to enable Dr Drew to obtain the monies he was already contractually entitled to, only to access these monies two years earlier. There is therefore at the very least a decent argument that it comes outwith the guidance.
418. Perhaps more pertinently in terms of the nature of her conduct, even if that argument were wrong, Mrs James told us that she was aware that at the time there was a lot of debate about this issue and so 'almost as a courtesy' she phoned the SHA and spoke to Ian Cumming the Chief Executive, not as part of an approval process but to ensure that they knew what she was proposing. When this was put to Dr Drew he told us that Mrs James cannot have got the approval of the SHA by word of mouth in a conversation that was not recorded. We do not understand that is what Mrs James is asserting, rather she was informing them of the offer that she was making to check with them that they agreed that this was an offer she was entitled to make.
419. We accept the evidence of Mrs James that she spoke to the SHA prior to making the offer to Dr Drew.
420. Dr Drew's main point about the offer was that Mrs James was not entitled to come to a compromise with him (which involved the signing of a confidentiality agreement) because it is forbidden to get staff to sign confidentiality agreements where they are raising concerns (whistle blowing). A number of points need to be addressed in relation to this:
- (a) We of course accept that there are a number of DOH circulars and other material which make it plain that it is not acceptable for an employer to restrict an employee's ability to make a protected disclosure or to disclose information in the public interest. Indeed such a term included in any agreement would be void pursuant to section 42J of the Public Interest Disclosure Act 1988.
 - (b) We do not however understand that Mrs James was asking Dr Drew to sign a 'gagging clause' when she discussed a confidentiality agreement with him. The transcript makes it clear that there were only very preliminary discussions about the terms of any such agreement. The purpose of the confidentiality agreement was said to be to prevent the terms of the severance being made public and to prevent Dr Drew from attempting to get damages from an employment tribunal. It was Dr Drew who suggested this was a gagging clause, however we note that there was no suggestion by either Mrs James or Sue Wakeman on behalf of the Walsall Trust that there would be any clause within the confidentiality agreement preventing Dr Drew from making protected disclosures.

Dr Drew as a "Whistle-blower"

421. While we are dealing with this topic we ought to deal with the more general points relating to Dr Drew's characterisation of himself as a whistle-blower.

422. It is clear that a central plank of Dr Drew's narrative now is that he was sacked because he was a whistle-blower. That raises at least two questions: whether this was in the mind of Mrs James (or others at the Walsall Trust), and whether it was in his mind, at the time.
423. As to the former, we cannot see what disclosures or concerns in the public interest Mrs James would have been being concerned about, or (in the context of any confidentiality agreement) would have been wishing to "gag". We say this not simply because we consider that she is not that kind of Chief Executive, but also and more importantly because we have seen no evidence of any link between Dr Drew's dismissal and the fact that that he was raising concerns at work, except of course that his intransigence about the IPR was probably of a piece with his intransigence in his communication style.
424. Furthermore, we are in any event unpersuaded as to the latter – i.e., that Dr Drew himself was at the time making a link between the disciplinary action taken against him and the concerns that he was raising at work at the time. We pressed him at interview to explain the link between his raising concerns and his dismissal. This was because we had understood that he was dismissed for failing to accept the recommendations of the IPR report without caveat or qualification.
425. Ultimately, his view, as expressed to us, was as follows: (i) that he was dismissed as clinical director as a direct result of raising concerns about Dr AB's performance (i.e. being a whistle-blower); (ii) that as a consequence of this he was away from work for a few months; (iii) that in that time Mrs James put in place the divisional management structure with CD, Dr DE and IJ; (iv) that had he been clinical director these changes would never have been made; and (v) that the presence of these three managers led to the commissioning of the IPR and his subsequent dismissal for failing to accept its findings.
426. It seems to us that this analysis is seriously flawed. We cannot see that it is possible to make the necessary causative links between these events in the way that Dr Drew does. Any link between his dismissal as clinical director (assuming for the purposes of this report, without making any findings to that effect, that this was because he was raising concerns about Dr AB's performance) and his subsequent refusal to accept the findings of the IPR, is in our view tenuous in the extreme.
427. But there is a further point here: even if this convoluted argument as to the causation of his dismissal (i.e. that it would not have occurred had the IPR not been commissioned, etc.) were correct, it would not get close to establishing the motivation for his dismissal.
428. As to that, we have also considered very carefully whether there was a motivation on the part of Mrs James to get rid of Dr Drew because he was raising concerns. We asked Mrs James herself about this. She denied any such motivation. We have seen no evidence to support this. Rather it is our view, and one that was shared by Dr Moghal in interview, that in fact Dr Drew was able to raise his concerns in person with both Mrs James as Chief Executive and Ben Reid as the Chair of the Walsall Trust without any repercussions. We note for example that after Dr Drew appeared on television to make disclosures about the heating failure on the ward (dealt with in more detail below at paragraphs 502 - 514) there was no censure of, or other repercussions for, him for having done so.

Conclusions

429. It seems to us that:
- (a) The offer made by Mrs James was not an offer of compensation. It therefore probably does fall outside the guidance.
 - (b) It was an offer that Mrs James had the authority to make without the approval of the SHA.
 - (c) Mrs James in any event ran the matter past the SHA who (informally) indicated that what she was doing was appropriate.
 - (d) The early retirement package was as an alternative to the disciplinary process, although the disciplinary process had not at that time been instigated.
 - (e) There is no evidence that Mrs James intended to gag Dr Drew from making protected disclosures by suggesting that he sign a confidentiality agreement.
430. We note the point that was made by the Walsall Trust, in cross-examination of Dr Drew at the Employment Tribunal, that in any event as Dr Drew was not disciplined for a performance issue offering compensation was not a breach of this policy. We also see the force of this.
431. **Finding: We find that Mrs James did not offer Dr Drew an inappropriate compromise agreement to terminate his employment.**

Issue (13): Whether Mrs James lied to Dr Drew about SHA and/or Board knowledge of the offer and the Board's view of his continued employment.

432. This allegation arises out of the meeting between Mrs James and Dr Drew on 25 June 2010. There is a transcript of this meeting which we have looked at with care.
433. The relevant parts of the transcript provide as follows:
- (a) Mrs James informed Dr Drew that the Board felt that if Dr Drew did not accept the recommendations in the IPR, this was an untenable position.
 - (b) In response to a query by Dr Drew as to whether the whole Board were in agreement that it was time for the Walsall Trust and Dr Drew to part ways, Mrs James stated that while they had not and would not take a vote on such an issue, there were no dissenting voices on the board.
 - (c) A little later on she says 'I would not normally discuss personnel issues with the whole board. I have discussed this in detail with Ben Reid as chairman and he is entirely supportive of the action that we're proposing this morning'.
 - (d) Mrs James then made an offer to Dr Drew for which she said she would need to get SHA approval, going on to say that they had approved it in principle, but not been given the detail.

434. This issue was also dealt with in the Employment Tribunal. We have considered Dr Drew's and Mrs James's witness statement on this issue. We note that while Dr Drew makes the allegations that the SHA had not approved the offer, he makes no reference there to the Walsall Trust Board.
435. Mrs James told us that she did not need the authority of the Walsall Trust Board to make this offer. We accept this.
436. Dr Drew in his book says that he spoke to a non-executive director following this meeting who alleged that he/she knew nothing about Dr Drew being asked to leave.
437. It seems to us that what Mrs James said initially was certainly capable of giving the impression to Dr Drew in the first instance that she had the whole Walsall Trust Board's approval of the statement that Dr Drew's position was untenable. (We rather doubt in the circumstances whether he did in fact get that impression; we suspect that he correctly interpreted what she said). However, and this is the point, almost immediately after making this statement she clarified it by informing him that she has not discussed it with the whole Board, but only with Ben Reid. Dr Drew accepted when he spoke to us that he had been told by Mrs James that she had had a detailed discussion with Ben Reid, and Ben Reid only about this.
438. When it was put to him that Mrs James had corrected the impression she had given that she had discussed the situation with the whole Board within about 40 seconds of having said it, so that Dr Drew was left at the end of the meeting with her in no doubt as to the correct position, he rather tellingly added 'But that's the way I've told my story'. We took this as a reference to his book, and possibly also the complaint to the CQC, and regarded it effectively as an admission that those accounts of the meeting were to this extent false. It is telling that he adopts and maintains this approach even in circumstances where he knows that a transcript of that meeting is in existence.
439. With respect to the SHA, Dr Drew asserts that Mrs James was lying that she had notified the SHA about the proposed offer because there was no record of such a notification when he made a Freedom of Information Request of the SHA. We accept Mrs James's evidence on this point and find no evidence that she lied about having informed the SHA about the proposed offer. Her evidence provides a complete explanation as to why there was no record of her contact with the SHA.
440. **Finding: We find that Mrs James did not lie to Dr Drew in the meeting of 20 June 2010, either about Trust Board involvement or the involvement of the SHA.**

Issue (14): Whether Mrs James mismanaged personnel grievances.

441. We understand this allegation to be a reference to the grievances Dr Drew raised against Dr BC, Mrs James, and later CD, which were dealt with by the IPR.
442. We have seen a transcript of the meeting between Dr Drew, Mrs James and Ben Reid of 5 November 2009 in which Dr Drew requested an independent investigation of his grievances and agreed that the independent review that he was suggesting was to replace the usual procedure for investigating grievances. In other words he agreed to 'step outside the process'.
443. We note that Dr Drew accepted that this is what he had agreed in the (recorded) meeting with Mrs James on 25 June 2010 and further it was a finding of fact made by the Employment Tribunal.

444. We have also seen the correspondence with Dr Drew in which he was provided with the terms of reference for the IPR and the individuals who were being put forward to undertake it. We note that he was informed that this was not a College review. We find that he was provided with the terms of engagement of the review and that this clearly stated that anonymity would be provided to those being interviewed for the review. We find that given the dual purpose of the review, to investigate Dr Drew's grievances and to look more widely at what everyone acknowledged at the time to be a highly dysfunctional department, this was a reasonable way to try and find a solution.
445. We heard evidence from Mrs James and Dr Moghal that the panel were able to design their own methodology, and it was the panel's idea to destroy their notes.
446. We bear in mind the context in which the IPR was commissioned and in particular the view of Mrs James that she considered the IPR as really the last chance for the paediatric department to sort itself out before the move to the new building.
447. This was denied by Dr Drew who gave us the impression that he regarded the allegations that the paediatric department was dysfunctional as being exaggerated and part of a tactic to scare staff into toeing the line.
448. We reject Dr Drew's characterisation of the department.
- (a) We are aware (and it is agreed) that: (i) Dr AB had made an allegation of bullying against Dr Drew; we are told by Dr Drew that he went to the BMA with this allegation; and (ii) Dr Drew was raising concerns about Dr AB's competence. We find it difficult in these circumstances to accept that there were not at the very least, serious tensions in the consultant body.
 - (b) Added to this there were (and this is also agreed) a very serious breakdown in the relationship between staff in the paediatric department and the divisional management team.
 - (c) Finally, we note that Dr Drew stated, in the minutes he took of the meeting on 20 November 2009, that the paediatric department had 'been through hell' in the last 18 months. It seems to us that this observation made at the time, was accurate.
449. Dr Drew complains bitterly about the fact that the notes taken by the IPR panel were destroyed. We get the impression that he regards this not only as bad practice but also as evidence of wrongful motivation, on the part of the panel and possibly also the Walsall Trust, and possibly in advance of (rather than simply after) the investigation itself. He makes the point that while he knew that witnesses were to be given anonymity, this is not the same as knowing (and therefore agreeing) to all records and notes being destroyed.
450. We accept that this is an unusual methodology. However in the circumstances described above, and in particular given the fact that (as Dr Moghal and Mrs James both agreed when this was put to them) the IPR was not only to be the diagnosis but also the start of the cure, and the consequent need and desire of all concerned to move on from the past, we conclude that it was a reasonable methodology. We see no basis for an accusation of inappropriate motivation for it on the part of the panel.

451. That is even more the case in relation to the Walsall Trust Board, including Mrs James - who were of course not involved in that decision in any case. Mrs James told us and we accept, that she was unaware that the IPR proposed this methodology until she received the report.
452. We also note that the Employment Tribunal and the Employment Appeal Tribunal found that this process was a fair one.
453. Another of Dr Drew's complaints about the IPR is that it did not make any reference to the issues he alleges he was raising about the Walsall Trust's failing in respect of the KK case. As to this we note the following
- (a) We have seen the grievances that Dr Drew raised which were part of the IPR remit (namely the letter of 11 September 2009, 26 October 2009 and 7 January 2010). No allegations are made in those documents that relate to the conduct of the Walsall Trust and any of their employees over KK's treatment (although this case is cited to give background to the concerns that Dr Drew is raising over the appointment of the safeguarding nursing post). These documents do not suggest that the issues raised by KK's death were regarded by anyone as part of the remit of the IPR.
 - (b) Furthermore, we have seen the transcript of the meeting between Mrs James, Ben Reid and Dr Drew of 5 November 2009 at which it was agreed that an independent report would be commissioned to consider these grievances, and to carry out a review of the paediatric department. The meeting was convened to establish what Dr Drew's core issues were.
 - (c) As set out by him, these were
 - (i) the issue about his reference to his religion when communicating;
 - (ii) his dismissal as Clinical Director;
 - (i) His suspension by Dr BC and the subsequent handling of his return to work;
 - (ii) Dr BC's referral of him to a psychiatrist;
 - (iii) heating failures on the ward;
 - (iv) bullying within the department;
 - (v) Mrs James meeting with the consultants to talk about the problems within the department.
 - (d) While Dr Drew did make mention of the KK case when talking about the competence of Dr AB, this was only mentioned to explain the reason why he alleges he was dismissed by Dr BC as Clinical Director. He was not asking for there to be any investigation of any aspect of KK's treatment.
 - (e) Dr Moghal stated in terms to us that during the IPR process he did not receive any information from any source about KK. His evidence was that KK was not mentioned. We accept this evidence.
 - (f) This appears to be confirmed by the list of the material that Dr Drew sent to the authors of the IPR. There is nothing relating to KK in that.
 - (g) Despite this, Dr Drew told us that he had in fact sent an administrator information relating to KK. We are perplexed as to why this was not sent directly to Dr Moghal with whom he had a channel of communication. In any case, for the reasons set out earlier in this report we are cautious about accepting this evidence.

454. It follows from this that: (i) we do not accept Dr Drew's evidence that he tried to raise the issue of KK with the panel and they refused to listen to him; and (ii) even if Dr Drew did send information about KK to an administrator, we find that it was not passed on to the IPR panel.
455. It seems to us on the basis of the information that we have heard, that while the KK case was clearly important to Dr Drew prior to his dismissal, this was not in relation to whistle-blowing, but rather in the context of its potential explanation for his dismissal as clinical lead by Dr BC (his contention of course being that he was dismissed for raising issues about the competence of Dr AB, such concerns being based on matters including the treatment of KK). Thus it seems to us that the KK case did not, until sometime after even his employment tribunal case, have the "whistle-blower" significance in his narrative that it now has.
456. We are supported in this view by the following matters:
- (a) Dr Drew was unable to recall whether he had raised any issues with anyone other than Dr BC about the decisions regarding Dr AB's censure of which he makes such complaint. Given what we know of Dr Drew we consider it is highly likely that if he had raised concerns about this, it would have been in writing.
 - (b) We do bear in mind that Dr Drew told us that his computer hard disk was destroyed by the Walsall Trust and so he has lost at least some of his documents.
 - (c) Strikingly however, even once he had instructed legal advisors who were supportive of his claim in the Employment Tribunal of being a whistle-blower, the list of protected disclosures that it was alleged that he had made did not include any reference to any matters arising out of the KK case.
457. We therefore do not find it surprising that there was no mention of KK in the IPR. We find that this was not part of the IPR remit and no information or documentation was given to the panel on this issue.
458. **Finding: We find that there is no evidence that Mrs James mismanaged personnel grievances, and that she did not do so.**

DD.4 “Mrs James refused to deal with a bullying management culture.”

DD Supporting Narrative

“In November 2014² took the senior nursing staff and consultants to meet Mrs James to report very serious managerial bullying in the department. There were two meetings (20 November 2009 and 4 December 2009), both minuted. Despite the Trust harassment and bullying policy mandating a full investigation of these serious reports Mrs James as minuted took no action. The two managers responsible for most of the bullying were removed from all contact with the paediatric department on the instruction of the RCPCH review in June 2010. Nursing staff suffered 6 months of unnecessary bullying as a result of this. No proper investigation of this bullying ever took place.”

Issue (15): Whether the executive team at Walsall (with particular emphasis on Mrs James’s part), mismanaged the paediatric team between 2006 and 2010.

459. It is common ground that there were difficulties and problems within the paediatric department from 2006 to 2010. This was a period of great change for the Manor Hospital and the paediatric department in particular.
460. So far as the paediatric department was concerned, this was not only because it was for the first time managed within a divisional structure, but also because there was a reduction in bed numbers and ward numbers and it was in the vanguard of the change programme for the Walsall Trust.
461. We accept that the way in which this change was effected was problematic. We accept that there were real tensions and a significant division between management and staff. We accept the findings of the IPR for the purposes of this report (without making any findings to this effect ourselves) that the management team in place had an aggressive style. We also accept that the allegations being made by staff about these managers (for example in the 20 November 2009 meeting) if proved, would amount to bullying. (We say if proved, because of course we have not seen any actual evidence about these incidents, nor heard or seen any account from any of the individuals involved.)
462. It is our view (for the reasons set out below), that the divisional management of the department was only one facet of the problems within the department.
463. Even before the divisional management structure was in place, there were problems between consultants, namely Dr Drew and Dr AB, culminating in Dr AB making a complaint of bullying against Dr Drew. We have also heard of reports of consultants arguing about patient care at the foot of the bed (although we note that Dr Drew denied any knowledge of this and also minimised the significance of any account of such in his evidence to us).
464. We note that the paediatric department was led by Dr Drew, formally as clinical lead until April 2008 and informally in the absence of a replacement, after that. We have formed a firm view of Dr Drew’s qualities having read a substantial amount of material that he has generated (both correspondence, witness statements and his book) and having interviewed him on two occasions lasting over nine hours. As we have noted already he was very clearly a highly conscientious and deeply compassionate clinician, of great experience and so far as we can see also expertise. By his own admission

² As stated above, presumably this should be 2009

he is obsessional. This quality can, and did here, have unfortunate consequences. His method and style of communication has been found by a number of people (in particular Dr Rashid and the IPR) to be inappropriate. We agree. We also have first-hand evidence of him misrepresenting evidence in order to bolster his own position. We therefore conclude, on the basis not least of the findings and recommendations of the IPR, that his presence in the department was a destabilising one.

465. As to particular management decisions taken over this period we conclude as follows:

- (a) We accept the conclusion of the IPR for the purposes of this report (without making any finding to this effect ourselves) that Dr BC mismanaged the removal of Dr Drew as clinical lead for the paediatric department in April 2008, but that his removal was the right decision. We find that Mrs James had no personal responsibility for this decision.
- (b) We accept the evidence of Dr Moghal and Mrs James that it was best practice and appropriate to put in place a scheme of divisional management in or around 2006 made up of a clinician, a nurse and a manager. We deal below with the actual appointments made. We consider that this was an appropriate management decision for which Mrs James is personally accountable.
- (c) We note and accept the conclusion of the IPR for the purposes of this report (without making any finding to this effect ourselves) that Dr BC mishandled the suspension of Dr Drew. We find that Mrs James had no personal responsibility for this decision.
- (d) We set out below at paragraph 478 in more detail, the steps taken personally by Mrs James to deal with the allegations of bullying, culminating in the commissioning of the IPR. We have concluded that she acted appropriately. We therefore find no evidence on her part during this period of mismanagement of the department.
- (e) We conclude that the acceptance of all the recommendations in the IPR and insistence that all employees accept and implement them too was a reasonable management decision made by Mrs James. We are bolstered in this view as this was also the finding of the Employment Tribunal.
- (f) We find that the appointment of Dr Moghal as interim clinical director was a reasonable management decision. The department needed a strong clinical lead. We accept the evidence of both Dr Moghal and Mrs James that this idea was not mooted until sometime after delivery of the IPR report.

466. **Finding: We find that there is no evidence that Mrs James mismanaged the paediatric team between 2006 and 2010, and that she did not do so.**

Issue (16): Whether the executive team at the Walsall Trust made inappropriate appointments to divisional and departmental leadership roles, and if so, Mrs James's responsibility for this.

467. We understand this allegation to be in respect of the appointment of CD as divisional head of nursing, Dr DE as Associate Medical Director, IJ as Divisional Director, and if Dr DE was appointed clinical director for the paediatric department (as alleged in interview by Dr Drew), that appointment too.

468. We heard evidence from Mrs James about the decision making process that led her to appoint these managers: She stated as follows:-
- (a) CD had been an extremely effective leader as head of midwifery. As a consequence of this CD headed up nursing in the gynaecology and obstetrics department as well. This had been a success. The next step in promoting CD was as divisional head of nursing.
 - (b) Dr DE was a highly effective leader in the obstetrics department.
 - (c) IJ was appointed as divisional manager at a time when the department was in trouble. IJ was seen by Mrs James as someone who would be able to hold the department together.
 - (d) They were in Mrs James's view the best candidates available for the posts.
469. We heard from Dr Drew that Dr DE and CD were well known as bullies before their appointment as divisional managers. It is this along with their lack of expertise in paediatrics which made them, in his view, inappropriate appointments.
470. We note that none of the triumvirate of divisional managers had any paediatric experience. We note that this is a feature of divisional management. We do not consider that this fact alone made their appointment inappropriate.
471. As to whether at the point that CD and Dr DE were appointed as divisional managers they were known as bullies:
- (a) We have heard evidence from Mrs James that CD and Dr DE were highly effective and popular in their own departments.
 - (b) We have also seen the minutes of the meeting that took place on 20 November 2009 taken by Dr Drew himself in which Mrs James is recorded as expressing the view that it was only the paediatric department who were making allegations of bullying against CD. No challenge is made by Dr Drew or anyone else to this statement. This it seems to us gives support to Mrs James's view that outside paediatrics, these managers were not considered to be bullies.
 - (c) We have had no evidence from anyone save Dr Drew to suggest that CD and Dr DE were considered bullies in any department save for the paediatric department. We note that they remained in leadership roles in these other departments after the IPR and we were told by Richard Kirby that while Dr DE was no longer in post, CD continued to work effectively in that role and that there were no performance problems.
 - (d) We are unable to accept this allegation as made by Dr Drew without supporting evidence for all the reasons set out elsewhere in this report.
472. The statement in the IPR that these appointments were "inappropriate", which appears to be the genesis of Dr Drew's complaint under consideration, is ambiguous as to whether it means "inappropriate at the time" or "turned out with hindsight to be inappropriate". We accordingly asked Dr Moghal himself what it meant. He said that the IPR recommendation did not mean that at the point the managers were appointed they were inappropriate appointments. The appointments had been made in good faith. Rather it meant that by the time of the IPR it had become clear that they had

been inappropriate appointments because the managers failed to develop the skills and knowledge of paediatrics to enable them effectively to lead the department.

473. We find that at the time the divisional managers were appointed to their roles, they were appropriately qualified candidates. We also bear in mind that at the time the appointments were made, posts were difficult to fill in Walsall for all the reasons set out at the beginning of the background section. We accept that these candidates were the best of those that were available and were appropriate appointments.
474. We note as we say that these managers remained effective and popular as leaders in the other departments in the division (i.e. departments other than paediatrics) after their removal as a result of the IPR. The most that we can say is that we get the impression – without being able to make findings (both because we have insufficient information and because in any event we have not given them the chance to explain the position themselves) that there was something about the mixture of the dysfunctional nature of the paediatric department, and the management style and personalities of CD and Dr DE that made them unsuitable to manage such a department.
475. We accept the conclusion of the IPR for the purposes of this report (without making any such finding ourselves) that Dr DE and CD became inappropriate appointments as managers of the paediatric department.
476. We must also deal here with the allegation made by Dr Drew in interview with us, that Dr DE had been appointed as clinical lead to the paediatric department in April 2008 (at the point where Dr Drew had been dismissed from this position by Dr BC). This was denied by Mrs James. Her evidence was to the effect that the department remained without a clinical lead. Mrs James's evidence was supported by Dr Moghal's evidence to us. This also reflects the evidence that we have seen. We consider that Dr Drew is mistaken about this.
477. **Finding: We find that the appointments to divisional and departmental leadership roles, when made, were not inappropriate.**

Issue (17): Whether there was an 'aggressive management style' of divisional management and if so Mrs James's responsibility for this.

478. We can take the first question here shortly. For the purposes of this Report, we assume that the IPR is right that there was at least an aggressive style of management. We make no findings about this ourselves, for reasons of fairness and natural justice.
479. We note the following chronology:
- (a) On 26 September 2009 Louise Cremonisini resigned. Two days later she had an exit interview with Mrs James in which she made it clear to Mrs James that CD was a terrible (and we infer bullying) manager. Mrs James told us however that the allegations must be seen in context. CD had refused Ms Cremonisini a pay rise.
 - (b) We have seen Louise Cremonisini's evidence given to the Employment Tribunal about this meeting in which she criticises Mrs James for blaming the bullying on the dysfunctional paediatric department. Mrs James accepted when talking to us that she is likely to have asked why it was that the managers seemed not to have a problem in other departments and may have suggested it might be a

feature of the dysfunctional nature of the paediatric department. We find that this is a reasonable avenue to explore.

- (c) Dr Bangalore, Consultant Paediatrician left the Walsall Trust in October 2009. Dr Drew alleges this was due to bullying. Mrs James told us that she offered him an exit interview, which he declined. We cannot accept Dr Drew's evidence on this without corroboration for the reasons set out above.
- (d) On 5 October 2009 2 matrons delivered a list of incidents to Mrs James where they had been bullied by managers. We have not seen this.
- (e) On 7 October 2009 Mrs James made a Board to Ward visit and heard complaints about bullying and working practices.
- (f) By 20 October 2009 Mrs James had commissioned an external nurse, Jackie Taylor to do an independent quick review of paediatric nursing. Her report was presented to the Board on 5 November 2009 identifying the need for additional support for the matrons but reporting that nursing levels were adequate.
- (g) We heard from Dr Drew that he considered the Jackie Taylor review to be a whitewash. We have read the statements made in the Employment Tribunal and read the notes of the oral evidence given by Dr Cremonisini and Dr Darwood, who echo this sentiment. It appears to have been felt by them that the report did not deal with the bullying culture of which the nurses were complaining. We note that the report is expressed in fairly bland terms, but it did result in the appointment of Kathryn Halford (see below). We do not, in any event, interpret any criticisms of this report (which no one suggests was not independent) as being a criticism of Mrs James.
- (h) On 5 November 2009 Ben Reid and Mrs James agreed to an independent review of the paediatric department (the IPR).
- (i) On the 20 November 2009 Mrs James met with the matrons and the consultants and heard allegations of bullying by managers.
- (j) Mrs James told us that following this meeting she instructed Dr BC to speak to DE about Dr DE's communication style and to arrange some coaching for Dr DE. We agree with Mrs James that it was appropriate for Dr BC to do this work with Dr DE rather than her given that Dr BC had management responsibility for Dr DE.
- (k) On 3 December 2009 Mrs James discussed the paediatric department with the Walsall Trust Board. A plan was put in place to recruit a nurse lead (Katharine Halford) for the department to act as a buffer between the matrons and CD, to set up a workshop with a consultant psychologist, and to offer one to ones with staff in the department with a psychologist.
- (l) On 4 December 2009 Mrs James met with staff to discuss the plan determined with the Board.
- (m) Later that month Katherine Halford was recruited to provide leadership to the Matrons in the paediatric department and to provide a buffer between them and CD. We understand she came into post in the early part of 2010.

- (n) Between January and March 2010 the commissioning of the IPR was advanced, leading to the IPR taking place at the beginning of March 2010.
 - (o) Dr DE and CD were removed as managers of the paediatric department following the IPR.
 - (p) In June 2010 Dr Moghal was brought into provide clinical leadership to the paediatric department.
480. Dr Drew told us that at the point that Mrs James became aware of the very serious allegations of bullying being made by the matrons against the management team (on 5 October 2009 or the very latest the 20 November 2009), action should have been taken immediately. He did not specify what this action should have been.
481. He also complained about the way that Mrs James investigated the matter. We had thought at first that this was a complaint that she had acted outside the Trust's Harassment/Bullying at work Policy (which Mrs James accepts she did), but that was not his criticism. He accepted that the situation facing Mrs James in November 2009 was truly exceptional and required a bespoke response. It was unclear what he thought Mrs James should have done, save that he seemed to think that the response should have been quicker.
482. It seems to us that in approaching Mrs James, the matrons had asked her to deal with the matter herself. She therefore took steps to try and deal with the matter as set out above.
483. When providing comments to us on the transcripts of the interviews we had with him, Dr Drew said this:
- 'I intended to reinforce at that point, in response to your question as to what Sue James's failure was, that in the face of all this first hand testimony, she failed to recognise any fault in [CD] or the others and actually suggested that either we were to blame for the bullying or were making it up.'*
484. We had of course finished interviewing by the time we received this comment, so could not ask Mrs James about it, but cannot accept this as accurate. These comments he now ascribes to Mrs James were not recorded in the minutes of the meeting that he himself took, and were not included in his book.
485. Dr Drew did not consider that any of the steps taken by Mrs James to deal with the allegations of bullying were appropriate. This included the independent review by Jackie Taylor, the appointment of Ms Halford, the two meetings with the nursing staff and the consultants (one of the reasons for being suspicious about this appears to have been Mrs James's request that he not attend the meeting so she could hear the allegations from the nursing staff first hand rather than being filtered through him, but he did accept when pressed that this was a reasonable request given his position in the department).
486. When considering the reasonableness or otherwise of those steps, we bear in mind that Mrs James was aware that the complaints being brought by the matrons in the meeting of 20 November 2009 about bullying was only one facet of a wider problem within the department. There was already in train a root and branch review of the department (the IPR). She was aware that the relationships between the management team and the clinical team had broken down. She told us that she took the view that in the interim period, dealing with individual grievances, or suspending the whole

management team would not have been the right thing for patient care or for the department. We agree that this was a reasonable view to take.

487. We find that Mrs James took appropriate action when she was alerted to the aggressive management style of the divisional department to investigate the allegations, both by Board to Ward Visits, meeting with staff and commissioning independent reports. She then acted decisively on the recommendations of both independent reports she received, including appointing a lead nurse and removing managers from their roles within the paediatric department.
488. We have heard evidence from a number of people who have worked with Mrs James both in the Derby and Walsall Trusts. We have also heard evidence from Mrs James herself about her management style. We have seen nothing to suggest that she would support an aggressive style of management. Quite the opposite.
489. It is of note that Dr Drew does not allege that Mrs James engaged in bullying behaviour herself, but he does say that she was never available for face to face meetings and was remote. He takes the view that she hid behind bullying managers.
490. Dr Drew also denies that Mrs James worked as a healthcare assistant on the wards when at the Walsall Trust. As to this;
- (a) We heard evidence from Mrs James that she tried to do one shift a month as a health care assistant, and prioritised the paediatric department. She estimated that in a 15 month period she would have done 2 shifts on the paediatric ward. She only once saw Dr Drew on the ward when she was there. We accept this evidence.
 - (b) We bear in mind the evidence Mrs James gave to us that with Dr Drew, she had to write everything down. Given his propensity in our experience to reformulate evidence to support the point he is making, even where there are transcripts of meetings (see for example paragraphs 432 – 439 above in relation to the conversation about Board approval for the retirement package) we have some considerable sympathy with this approach. Having to communicate in writing and having to record meetings clearly makes trying to resolve matters through an informal approach very difficult.
 - (c) We have in any event seen letters from Mrs James to Dr Drew inviting him to meet with her, for example on 29 March 2010 she offered to meet Dr Drew to discuss the findings of the IPR, Dr Drew only agreed to meet on the proviso that Mrs James accept his 'exceptions and qualifications' of the IPR set out in an email to her of 30 March 2010.
491. **Findings: We accept the conclusions of the IPR that the management style of the divisional managers was aggressive. We find that there was no personal responsibility on the part of Mrs James for this.**

Issue (18): Whether there were bullying managers at the Walsall Trust, and if so, whether Mrs James inappropriately supported them and refused to deal with them.

492. Much of what is set out above is relevant to this finding. We do however consider it appropriate to say something about whether there was in fact any bullying as opposed to aggressive management style.

493. Dr Moghal in his evidence was clear that he did not see anything that he considered to be bullying at the Walsall Trust. It was his view that the term bullying was used inappropriately, in that any management instruction with which a clinician did not agree became an instance of bullying.
494. Dr Moghal also told us that his experience of Mrs James's management style was that it was a very supportive and listening style, specifically supportive to the consultant body. He considered her to have a very positive approach, and to be an example of a good Chief Executive. We give this evidence significant weight given that Dr Moghal is not working under Mrs James, but in a completely different Trust.
495. We do not consider it safe for us to draw any conclusions about whether any individual was in fact bullied as we have not seen the appropriate evidence, save to note that the list of incidents of alleged bullying set out in the minutes of the meeting of 20 November 2009 could in our view amount to bullying (if proved) and clearly a number of individuals felt that they were bullied by management.
496. We note with interest however that management also made allegations that they themselves were victims of bullying by clinicians, thus for example CD raised a grievance against Dr Drew, accusing him of bullying CD. Of course he made the very same complaint about CD. Mrs James told us that IJ was of the view that Dr Drew's avalanche of correspondence was itself a form of bullying.
497. We would conclude by reciting what was discussed in a number of our interviews on this topic, including that with Dr Drew, namely that the term "bullying" is dangerously subjective in nature, and its definition may alter over time. Dr Drew himself stated that nowadays it is recognised, at least in some quarters, that failing to listen or pay attention to someone's concerns is properly to be characterised as bullying. We do not accept this terminology, which seems to us to have elements of Humpty Dumpty ("a word means just what I choose it to mean") about it. However it does illustrate to us that the term can generate more light than heat, and that is probably the position here.
498. In this context it is interesting that, while Dr Drew does not seek to characterise Mrs James as a bully herself, his focus of attention on Mrs James herself as the villain of the piece appears to us to have been engendered by her not being prepared to listen to or to take his advice – a slight which he has found very hard to take.
499. **Findings: We are unable to make any findings as to whether there were bullying managers in place in the division. We find that Mrs James did not inappropriately support them. We find that she dealt with the allegations robustly and proportionately.**

Issue (19): Whether there was a lack of insight by the Trust Board and if so, Mrs James's responsibility for this.

500. We note the IPR finding that the Board was slow to catch on to problems in the paediatric department. We have not been able to draw any conclusions ourselves about this issue as we have not had the benefit of seeing all the relevant Trust Board Minutes over the period. We find however that by 2008 when relationships within the paediatric department and with the managers had deteriorated, Mrs James was taking steps to investigate matters and was by at least December 2008 providing detailed reports to the Board about the issue.

501. **Finding: We take this allegation to be derived from the IPR. We are unable to make findings about the Board's insight generally in relation to the problems with the paediatric department. We find no evidence of a lack of insight on the part of Mrs James, and we find, in accordance, with Dr Moghal's own view as expressed to us, that her reactions to the problems identified in the IPR (both before it and in response to it) were appropriate.**

(B) REVISED REMIT ONLY: OTHER ALLEGATIONS AS TO CONDUCT AT THE WALSALL TRUST (which did not appear in Dr Drew's submissions to the CQC)

Issue (20): Whether Mrs James covered up serious heating failures in the paediatric wards.

502. There is no dispute but that the heating failed on a number of occasions on the paediatric ward. We heard evidence (which is uncontentious) that the heating system was very old and not fit for purpose. The Walsall Trust was fairly close to moving to a new building. We infer from that, that it was not a good use of funds to put in a new heating system, rather it was a question of propping up the old one. We have seen reference to a drop in temperature on the paediatric wards in the winter of 08/09 and 09/10.
503. We understand the heating failure to which this allegation relates is that which took place in December 2009, around the 17th. We have seen Dr Drew's witness statement for the Employment Tribunal in which he alleges that following this incident Dr BC wrote an untrue account of this incident, without gathering evidence from the nurses on duty at the time, checking the baby temperature records or speaking to Dr Drew who was on the ward at the time of the failure. Dr Drew repeated this allegation in interview with us.
504. We have not been able independently to verify whether Dr Drew was spoken to or not by Dr BC as part of his investigation. In particular, and importantly, we have not been able to speak to Dr BC about this. Nevertheless we consider this is quite likely given that the relationship between the two of them had broken down by this stage that Dr BC did not. If Dr BC did prepare the report without speaking to either Dr Drew or anyone else on the ward that night, then this would of course be a concern.
505. We understand Dr BC's report to have concluded that the nurses on the ward had failed to respond to the heating failure appropriately by putting in place the contingency plans of dressing the babies in warm clothing including hats, and plugging in the emergency heaters.
506. Dr Drew gives an account of what he found when he was on the ward in his book. He says that the nurses had taken the appropriate action, that the engineers had been called, and that by 10 am the following morning the ward was warm again. It is in this respect (along with minimising the drop in temperature) that he says Dr BC's report is false.
507. We can make no firm finding as to the true position as to this, for all the reasons set out above, particularly since (i) we have no independent evidence or corroboration of the position and (ii) we have neither seen a copy of the report by, nor spoken to, Dr BC. Thus we consider it to be unsafe to attempt to conclude one way or the other as to whether Dr BC wrote a false account of the temperatures on the ward, and of the nursing staff's response to the heating failure.

508. But for present purposes the real point is that Mrs James told us that she received Dr BC's report and saw no reason to suspect that it was false.
509. Dr Drew's main complaint in respect of Mrs James was that once she learned of his concerns about the accuracy of Dr BC's report, she failed to speak to Dr Drew. We asked Mrs James about this. She told us that by this stage the impression that she had was that Dr Drew was seeking to damage Dr BC in any way he could. She described receiving an avalanche of communication from Dr Drew relating to Dr BC. (In saying this we are not making a finding about Dr BC one way or the other, but we regard it as relevant to the question of the reasonableness of Mrs James's own reaction – see below). Her failure to engage with Dr Drew on this issue must therefore be seen in this context.
510. Dr Drew's response to this incident was to report what he saw as a cover up (as a result of minimising the drop in temperature) to the Safeguarding Board. When he got no response from the Safeguarding Board he spoke to the Press.
511. We are aware that Mrs James also gave an interview to the Press. Both interviews were broadcast on television. We have not seen these interviews
512. Mrs James also told us that following this incident she asked for the temperature of the ward to be checked on three occasions each night. Dr Drew in his book accepts that there was, following the interview on television, a much more visible presence of engineers on the ward.
513. We cannot see any evidence to suggest that (even assuming there was a cover up by Dr BC), Mrs James has any personal responsibility for this or was in any way party to that cover up. She was entitled, certainly in the first instance, to accept the report made to her by the medical director. Thereafter when it became clear that there was an issue as to the true impact of the heating failure on the night of 17 December 2009, (i) she went on the television to talk about what the Walsall Trust were doing to respond to the problem of the antiquated heating system (it is not suggested that she denied that the heating failed); and (ii) she took (reasonable) steps to try and guard against further heating failures, given the circumstances in which she was operating.
514. **Findings: We find that there is no evidence to suggest that Mrs James covered up serious heating failures in the paediatric wards, and that she did not do so.**

(C) REVISED REMIT ONLY: ALLEGATIONS RE CONDUCT AT DERBY TRUST

GENERALLY AS TO HER RECORD IN POST SINCE APPOINTMENT IN 2011

Issue (21): As to Mrs James's management style at the Derby Trust

515. We heard evidence from Cathy Winfield, Director of Patient Experience and Chief Nurse, Dr Nigel Sturrock, Medical Director, Sir Stephen Moss, Non-Executive Director and Senior Independent Director and John Rivers, Chair of the Derby Trust. They were all extremely complimentary about Mrs James's leadership and management style. Their evidence is set out in the Summary of Evidence at Annexe 8. It is appropriate however to restate that summary here.

516. In fact we heard evidence from John Rivers, Derby Trust Chair, on two occasions. He adopted in his evidence the terms of his own initial report into whether Mrs James is a fit and proper person of February 2015.
517. That report sets out the governance framework at the Derby Trust.
- (a) The Derby Trust has a number of sub-committees to the Trust Board including the Finance and Investment Committee and the Quality and Audit Committee. Each committee is led and chaired by a designated Non-Executive Director and supported by a structure providing clear pathways for escalation of relevant issues.
 - (b) The Board receives both a quality report and a 'confidential issues' report from the medical and nursing directors. This allows for immediate escalation to the board of matters relating to serious incidents, inadequate performance and senior level disciplinary issues.
 - (c) There is a culture of visible leadership. The Board to Ward walks involve all executive and non-executive directors. The chief Nurse and the Medical Directors carry out weekly ward safety walks. Mrs James does regular 'back to the floor' sessions working as a health care assistant or ward hostess.
 - (d) There is an active council of governors.
 - (e) There is a patient safety newsletter, information on safety on the intranet and regular staff briefings to help learn from serious incidents.
 - (f) They have begun to tackle the 'freedom to speak up' campaign. Sir Stephen Moss has been designated as the Independent Officer whom staff can contact to raise concerns. He holds non-executive surgeries where he meets staff. The 'I want good care' forum allows staff to raise concerns anonymously. In the last National staff survey the Derby Trust was in the top 20% of Trusts for staff agreeing that they would feel secure in raising concerns about unsafe clinical practice.
 - (g) He had twice met Ben Reid who stated that Mrs James was a highly effective leader of the Walsall Trust, who was not a bully. (These views echoed those expressed by the other witnesses from the Derby Trust – see below.)
 - (h) He concluded by stating his view that Mrs James was a fit and proper person within the meaning of the Regulations.
518. He told us in interview as follows.
- (a) The Derby Trust commissioned a well-known recruitment consultancy to help them recruit the CE post.
 - (b) Mrs James had two very supportive references, one from Ben Reid and one from Cynthia Bowers the former Chief Executive of the CQC.
 - (c) At interview Mrs James came across very strongly in four key areas, working with partner agencies, her drive to develop talent and leadership within the Trust, her financial expertise, and her skill and competence having been an effective CE of two previous Trusts.

- (d) He was aware of Dr Drew's employment tribunal as Mrs James needed time off to attend and give evidence. He was given a copy of the judgment to read when it was released. He was familiar therefore with some of the issues, but not the KK issue as this had not been raised in the Employment Tribunal.
- (e) He read Dr Drew's book in January 2015; he understands that he was the first member of the Derby Trust to do so. It was at this time, having received the anonymous complaint and having been in correspondence with the CQC that he realised that Dr Drew (and the anonymous complainant) were linking Mrs James with KK's death.
- (f) He expressed concern at the way that Dr Drew chose to inform the Derby Trust about the existence of his book, through tweets. He felt that it would have been more appropriate to write to him as the Chair of the Derby Trust and make the allegations about Mrs James directly and formally.
- (g) Equally he expressed concern that a number of senior people in the NHS must have known of Dr Drew's allegations, and yet none of them raised them with him. In particular, the first he knew about the KK allegations was when he received the anonymous complaint and been in correspondence with the CQC referral in January 2015.
- (h) He was of the view that Mrs James would not tolerate bullying. She is open in her style and debates matters at length.
- (i) He was content with the arrangements in place for Mrs James to report matters of a serious nature that may impact on the reputation of the Derby Trust to the Board.
- (j) There are 31 public Governors of the Derby Trust and Mrs James deals with them in an open manner. The Governors have said that they have felt supported by the Trust.
- (k) It is his view that Mrs James is a fit and proper person to be the Chief Executive of the Derby Trust. She has conducted herself exceptionally well throughout this process.

519. Cathy Winfield (Director of Patient Experience and Chief Nurse) told us that

- (a) She had been at the Derby Trust for six years and worked as part of the executive team for three years.
- (b) She found Mrs James to be a supportive and open manager, who was challenging and driven. She described her as operationally focused.
- (c) She considers Mrs James to be inclusive and willing to listen to others view points, including clinicians.
- (d) Mrs James has done a lot of transformational organisational work at the pace that the clinical management team were advising her to take.
- (e) Ms Winfield is encouraged by Mrs James to go straight to the Board herself with any issues that are appropriate.
- (f) Mrs James is regularly present on the wards

- (g) She was not aware of anyone being aggrieved by any action that Mrs James had taken.
- (h) She had seen nothing approaching a bullying culture at the Derby Trust, quite the opposite, she saw Mrs James as someone who was very supportive of developing good leadership in the organisation.
- (i) When asked about Mrs James's shortcomings, she said that it was probably getting her to focus on the here and now rather than the bigger picture. She saw Mrs James as a visionary.

520. Dr Sturrock (Medical Director) told us that

- (a) He considered Mrs James to be an excellent Chief Executive.
- (b) There is a very open culture at the Derby Trust, led by Mrs James.
- (c) This is his first medical directorship post, initially Mrs James was very supportive of him, seeing him weekly for 1:1s.
- (d) Mrs James will not accept "good enough". She wants the organisation to succeed.
- (e) There is a positive consultant body with a can do attitude.
- (f) There is now a clinician-led structure to the organisation.
- (g) There is good leadership development in the organisation.
- (h) He does not have to go through Mrs James to get to the Board.
- (i) He sends out a weekly email to the clinical staff and also has a weekly surgery so staff can raise issues with him.
- (j) We asked for examples of good leadership by Mrs James. He told us that Mrs James considered that the Derby Trust responses to complaints were not meeting the needs of the complainants, were defensive and did not acknowledge the genuine concerns that were held. She therefore supported the Chief Nurse to devise the new complaints procedure and showed personal leadership in running a training session on how to respond openly and effectively to complaints. She also signs off all complaint letters.

521. Sir Stephen Moss (Non-Executive Director and Senior Independent Director, a man who has significant relevant experience having been brought in as Chair at the Mid-Staffordshire NHS Foundation Trust in order to turn it around) told us that:

- (a) He knew of Mrs James by reputation before he came to the Derby Trust. She had a reputation as a very effective CE.
- (b) He sees her as totally focussed on delivering the best deal for patients, while recognising the need to motivate staff.
- (c) From his experience of dealing with failing organisations, Derby is a good Trust, one of which the local community is proud.

- (d) Mrs James has been effective at establishing partnerships with other agencies and working with the regulators.
 - (e) He has been impressed by the scale of the transformation of clinical services in Derby. He sees her success as due to having gathered around her people with the same focus as her, but different skills.
 - (f) He meets with the chairman of the staff side regularly, and has never heard any complaint from the staff about being pressured to modernise services.
 - (g) He holds non-executive surgeries. A common theme is staff feeling pressurised by their immediate line manager. When this was fed back to Mrs James she took it very seriously and has developed the leadership programme in the Trust for managers to address this.
 - (h) His experience of Mrs James is that she never tries to hide anything. Far from suppressing issues, she is the one who puts them out for discussion.
522. We have also had the opportunity to consider the most recent CQC reports of the Derby Trust. We note that the overall rating provided in December 2014 to both the Royal Hospital and the Trust itself was Good. The CQC noted that the profile of Mrs James within the acute part of the Trust was high, having worked in most areas alongside staff. All services at the Royal Derby Hospital were judged to be good for their leadership. There was found to be a shared vision across the executive. Most staff felt able to raise concerns and felt well supported. The union representatives reported that there was a positive culture at the Derby Trust. Staff felt it was a friendly place to work.
523. **Finding: We have seen and heard evidence from each of the Derby Trust's Chair, its Senior Independent Director, its Chief Nurse and Head of Patient Experience, and its Medical Director. This evidence is all to the effect that Mrs James is a first class Chief Executive who commands great respect, and that her management style at the Derby Trust is entirely appropriate. We so find.**

Issue (22): Whether there have ever been any complaints made about Mrs James while at the Derby Trust.

524. We have made enquiries of Mrs James herself and of the other officers of the Derby Trust, and we are told that there have been no complaints against her.
525. **Findings: We have seen no evidence of any such complaints or issues being raised against her while at the Derby Trust, and we find that there have been none.**

SPECIFICALLY

Issue (23): Whether Mrs James failed to inform the Derby Trust of the allegations made against her in Dr Drew's book when she was informed of its existence in June 2014.

526. We were told by both John Rivers (Derby Trust Chair) and Mrs James that he had been made aware by her, early on in her appointment, of the issues surrounding Dr Drew's dismissal, because she had to ask for time off in order to give evidence at the

Employment Tribunal. John Rivers told us that he read a copy of the Employment Tribunal judgment. At this point, Dr Drew was not linking Mrs James in any way to the death of KK, so this was not an issue of which John Rivers was made aware.

527. We note that the Derby Trust was aware through the Communications team, at around the time of publication, that Dr Drew had written a book.
528. Mrs James said that she was informed of its existence in June 2014, and passed this information on to the Trust. She said that she did not read the book herself until preparing to be interviewed for this investigation. She did not therefore know that Dr Drew was linking her with the death of KK. For this reason she did not inform John Rivers of these matters.
529. **Findings: We find that Mrs James had, prior to the publication of Dr Drew's book, informed the Derby Trust Chair, Mr Rivers, as to the Employment Tribunal and (thereafter) the EAT proceedings: of the issues there raised by Dr Drew, the progress of those proceedings, and their outcome. We find that thereafter the Communications team of the Derby Trust became aware of the existence of Dr Drew's book in 2014, at around the time of its publication. We find that Mrs James was informed of its existence by them at about that time. We find that she did not read it at that stage, and did not know what Dr Drew's allegations in it against her were; in particular she did not know that Dr Drew was alleging that she had any involvement in either the death of KK or failures on the part of the Walsall Trust properly to deal with matters arising from KK's death. We find that for that reason she did not inform Mr Rivers of these particular allegations.**

Issue (24): Whether Mrs James has failed to present any challenge to Dr Drew's account of her actions and if so whether that is because she knows that that account is true

530. This is a somewhat curious allegation. It is common ground that Mrs James has not challenged Dr Drew's account of her actions. She gave a logical and sound justification for this, that being that to give any attention to the allegations would only lead to them being given oxygen. She made it clear to us that she does not accept that his account as set out in his book and in other documents is true. We believe her.
531. In interview, Dr Drew accepted that simply because Mrs James did not challenge his account of events and in particular her conduct, this did not mean that she accepted them as true. He did seem to suggest however that the absence of rebuttal from her entitled him to maintain his "story" as set out in his book and present it as the truth in its entirety. The inference was that he recognised that in at least some respects it was not this.
532. **Findings: We find that the fact that Mrs James has not presented any challenge to Dr Drew's account of her actions does not suggest that it is true, and is immaterial to the question of whether she accepts his account (which she does not).**

J. CONCLUSIONS AND RECOMMENDATIONS

533. Our conclusions and recommendations, on the basis of the Findings that we have made above, can be simply stated.
- (a) **Mrs James is, on the basis of the evidence that we have heard (and that we accept) an exemplary Chief Executive, and fulfils all aspects of the FPP requirement.**
 - (b) **As to Dr Drew's allegations against her, it follows from the analysis that we have undertaken above (which requires no repetition here) that we consider these, quite simply, to be misconceived throughout.**
 - (c) **We therefore do not consider that there is any basis for any suggestion by anyone, let alone for any finding or recommendation by us, that she does not fulfil the FPP requirement imposed by Regulation 5; whether by reason of the misconduct / factors referred to in Regulation 5(3)d or by reason of any of the other sub-paragraphs of the Regulation. We have considered each of the Nolan Principles and consider that there is no evidence that she has been in breach of any of them.**
 - (d) **What the Derby Trust does in response to this is of course not a matter for us.**
 - (e) **However our recommendation would be that our conclusions above be made public and that she be publicly exonerated, with her credentials to hold office made clear.**
534. On one view we should leave matters there. However we believe, for the reasons set out below, that it is important also to deal in this Section with our approach to Dr Drew and his evidence.
535. We repeat the final paragraph of the IPR report (quoted above), written 5 years ago.
- "As a clinician David Drew has a great deal he can contribute to improve and secure the clinical reputation of the service. The independent panel believes that if David Drew does not accept this review as a final resolution and continues to unreasonably pursue through grievance procedures, tribunals or even courts of law any or all of his grievances, he will gain a reputation undeserving of his highly recognised professional clinical value, will unfairly continue to damage individuals, including his fellow clinical colleagues, the paediatric service and the Trust."*
536. These observations did two things: they paid tribute to Dr Drew's professional qualities (as we have above); and constituted advice and indeed a well-intentioned and in our view appropriate warning to him about, among other things, his own well-being. They were also prescient. He has behaved exactly as they were concerned he would.
537. However we echo those observations made by them not only for that reason. We associate ourselves with these sentiments (in the context of the quite distinct exercise that we have been undertaking) also because we wish to say that we consider that it is extremely unfortunate that a man who seems to have so much energy, and to be so prepared to expend it in advance of the public good, is also capable of misinterpreting or misrepresenting matters, and to do so in order to propound what we consider to be a misguided campaign. (We should make it clear that by this we are not suggesting

that public interest disclosure, or “whistle-blowing”, is anything other than a good thing; we are simply noting that his campaign against Mrs James has been utterly unjustified.)

538. We have ultimately concluded that it would be wrong for us to explore the reasons for all this. We are not qualified to do so, and in any event it is no part of our remit. We do however believe that we should explain why it has been necessary for us to record the facts and express the opinions about Dr Drew that we have, notwithstanding that our remit relates to Mrs James and not to him. We have done this because it is necessary, in order properly to set out our analysis of the facts and our conclusions, to explain why we reject the allegations that he makes about her. That in turn requires us to analyse not only the allegations themselves, but the factual basis upon which he makes them and the way in which over time he has given his evidence about them. We have to judge his credibility by reference to all of these things. That would be the case in any equivalent judicial exercise, and it applies here, subject of course to the constraints under which we have operated, all as set out above.
539. At a purely human level we do wish to say that we regard the turn of events that have led to the need for us to write this report as deeply unfortunate. Whether or not Dr Drew’s misguided campaign, as we have described it, was generated by the obsessional traits that he has himself acknowledged is not a matter for us, but the consequences of that campaign have been very significant for those involved, in terms of time, money, and, for Mrs James herself, acute distress. From our review of all the evidence, it is plain to us that there was no justification for this, and that the allegations against Mrs James are entirely unfounded.

K. SUMMARY OF FINDINGS AND CONCLUSIONS

540. In this Section:-

- (a) We summarise the conclusions which we have reached about the two main protagonists, Mrs James and Dr Drew, as they appear in detail at Section H above
- (b) We set out in full the specific Findings that we make on the 24 Issues contained within the Combined List of Issues, as they appear in (in bold script at the foot of the analysis on each issue) Section I above.
- (c) We summarise the Conclusions and Recommendations that we make in Section J above.

K.1. Summary of Findings as to the Main Protagonists (Section H)

541. This sub-section is concerned with the two main protagonists in the events with which we are concerned, Mrs James and Dr Drew. Our findings are informed by our views of each of them, both as a result of our meetings with them and in terms of the evidence that we have received in its various forms about them.

Mrs James

542. The position as to Mrs James, summarised, is as follows

Qualities

- a. We heard evidence from a number of witnesses who had worked with Mrs James at Walsall and Derby. These were, to a man or woman, all (apart from Dr Drew) highly complimentary about her management skills. We found them all to be honest and credible witnesses. As to the qualities that Mrs James currently displays at the Derby Trust, we heard complimentary evidence from John Rivers (Chair of the Derby Trust) Sir Stephen Moss (Non-Executive Director of the Derby Trust and Senior Independent Director) Cathy Winfield (Director of Patient Experience and Chief Nurse) and Dr Nigel Sturrock (Medical Director). The detail of that evidence is set out at Section I above (under Issue 21 at paragraphs 515 - 521), and in the Summary of Evidence section at Annexe 8.
- b. As we have stated, the only person who was not complimentary about Mrs James was Dr Drew. It is of course Dr Drew's complaints which give rise to this Investigation.

As a Witness

- c. We also, obviously, heard evidence from Mrs James herself. We found her an impressive witness: she was honest and credible; and she gave her evidence in a straightforward and coherent way.

Dr Drew

543. The position as to Dr Drew, summarised, is as follows

Qualities

- a. He is clearly a dedicated and conscientious clinician. We have heard very good reports of his expertise as a paediatrician. He has a strong sense of duty and a clearly defined moral code to which he often has express recourse. He is intelligent, articulate and persistent in argument, and therefore persuasive. We suspect that he is at bottom a right-minded individual. However we have concluded that he is, for reasons which we can neither fully explore nor resolve, an unreliable witness. The specific reasons why we say this are explained in some detail above, by reference in particular to his own evidence.

General Observations as to the Reliability of Dr Drew's Evidence

- b. Dr Drew is by his own acknowledgment an obsessional person. He himself stated this, specifically in the context of his approach to his own experiences at Walsall, mentioning the fact that he had some 11-12,000 pages of documentation from that time. This obsessiveness, which relates also to his conviction that he has been badly treated (which on the face of it at times he has - albeit not, in our view, as a result of Mrs James's actions or omissions – see above) has, unfortunately, and importantly for present purposes, created significant difficulties with accurate recollection or re-telling.
- c. First, he has been candid about the significance to him of his own narrative and agenda: both (i) generally about the importance of his characterisation and presentation of himself as a "whistle-blower", and (ii) specifically that he wishes to use his complaint about Mrs James as a test bed for how Regulation 5 works. This has given rise, we believe, to dangers with his reliability, because the need for him to be able to maintain his narrative affects the way in which he tells his story. This means that his evidence must be treated with caution.
- d. More generally, he has shown himself throughout to be quite capable of (i) re-interpreting evidence, consciously or not, to fit his narrative and (ii) ignoring evidence and possibly genuinely forgetting evidence that did not suit that narrative. These factors mean that his accounts of events are often unreliable, and sometimes very obviously so.

Dr Drew's Book

- e. Thirdly, for the reasons that we set out above, the fact that Dr Drew has written a book, (much of which takes the form of a specific diatribe against the Walsall Trust, and Mrs James as its then Chief Executive in particular) has had the consequence, we consider, of distorting his evidence. The book has been a great advantage to us in our work on the Investigation, since it has meant that we knew his story in detail from the outset.
- f. The writing of the book has however been a disadvantage for Dr Drew himself. It has proved difficult for him to recollect events otherwise than through the prism of the contents of the book itself
- g. It seemed to us a regular feature of his evidence when asked about events that he did not have, or at least seemed not to have, an independent recollection of

the events being discussed. Often his instinct was to have recourse to the contents of the book in order to answer the questions we posed.

- h. This problem was very seriously compounded by the second, more specific problem, which we have touched on already. This was that (as he put it) the book was telling a story and what was in it had to fit that story. We took this as acknowledgment by him that the contents of the book were not in all respects either complete or accurate: thus the book became a very unreliable “script” for him, and therefore heightened the dangers of him having to have recourse to it in order to answer our questions.
- i. For these reasons, the fact that his account is often based on the contents of the book, rather than any independent recollection, is a real concern. That is particularly so given that it seemed to us that the process of writing the book had replaced and possibly “overwritten” any independent recollection of some of the important events described in it. He was not necessarily, on these occasions, consciously dissembling; rather he was unable to access any true memory as to the events under discussion; the account in the book was as far back as he could go.
- j. He clearly found the process of his chosen narrative being challenged, particularly when that challenge was supported by contemporaneous evidence, difficult to deal with, and indeed at times deeply distressing. The clear impression that he gave was that this was because he recognised that the process operated to undermine that chosen narrative.

Relevant Features of the Evidence given to the Investigation

- k. In Section H.3 at paragraphs 274 to 289 we set out various examples, of different sorts, of these features of his evidence. What these all demonstrated, in our view, was (i) a tendency to cherry-pick the truth (focussing on what supported his narrative, and (ii) ignoring or denying anything that did not; and (ii) a resultant tendency to lose sight of what had and what had not actually happened.
- l. At times (as we have made clear) he acknowledged that his narrative was not accurate; indeed his attitude seemed to be that its importance meant that it did not matter if it were not in all respects true: the “story” itself had its own truth which was all that mattered.
- m. At other times he clearly did not realise (in the face of overwhelming evidence) that his narrative was false. As we have said, he found challenge of this sort deeply distressing, and we suspect that the acknowledgments that we received from him that what he was saying was wrong will by now have become, in his mind, mistakes.
- n. The only conclusion to which we can come is that, ultimately, he is incapable (whether he realises it or not) of abandoning the narrative which he has put forward on this topic for so many years, even in the face of the clearest possible evidence that it is wrong. He prefers to abandon the uncomfortable and unwelcome insights that he has on occasion expressed, to the effect that his narrative is wrong.

Reaction to the Absence of Challenge to his Narrative

- o. Finally, he has a telling reaction to the fact that his story has not been publicly challenged by Mrs James: he believes that he is entitled to treat the absence of any such challenge as itself somehow confirming and corroborating the truth of his account. This is a misconceived proposition.

Conclusions as to his Reliability

- p. In those circumstances it seems to us that - whether or not he is now fully aware of the extent of this - he is fundamentally unreliable as a witness and has indeed, at times, fabricated elements of his story when telling it; possibly with the ultimate consequence (upon sufficient retelling) that he now believes it. (We have given a number of specific examples of this at paragraphs 274-289 above.) We accept that he may genuinely believe what he says now; indeed it appears from his reaction to this sort of challenge that he does. But in any event we have to treat what he says as unreliable, where it is credibly disputed by others and unsupported by contemporaneous documentation.

K.2. Summary Statement of Findings on the 24 Issues (Section I)

544. The Findings on the 24 Issues as they appear in Section I are as follows.

(A) ALLEGATIONS RE CONDUCT AT WALSALL TRUST

Issue (1): Whether Sue James had any involvement in KK's death.

545. Finding: We find that Mrs James had no personal involvement in KK's death.

Issue (2): Whether the subsequent investigation into KK's death was inadequate, and if so what Sue James's responsibility for this was.

546. Finding: We can make no concluded findings as to whether the RCA following KK's death was inadequate; we find that the SCR was (so far as we can tell) satisfactory; in any event we find that Mrs James had no personal responsibility for either investigation report, and therefore none for any such failing

Issue (3): Whether there was a failure to ensure the performance management and censure of Dr AB following KK's death, and if so, Sue James's responsibility for this.

547. Findings: Ultimately, we are unable to make any findings as to whether there was a failure to ensure the performance management and censure of Dr AB following KK's death, in particular because the precise position as to whether Dr AB received safeguarding training before return to safeguarding work is unclear. However we find in any event that Mrs James had no personal responsibility for this.

Issue (4): Whether the press statement issued by the Walsall Trust on 23 April 2009 was false. If so, what Sue James's responsibility for this was.

548. Findings: We find that wording of that part of the Press Statement in relation to which Dr Drew complains was carefully phrased, and perhaps could, and arguably should, have been more open; however its overall effect, particularly given the admission of culpability on the part of the Trust, was neither false nor misleading in any real sense. We find that Mrs James did not write the Press Statement issued by the Walsall Trust on 23 April 2009; she did put her name to it, and in that sense she did undertake a personal responsibility that it should be accurate. However in the circumstances we do not regard (given what we say above) this as a significant issue, and in any case do not regard her as culpable or responsible in any real sense for it.

Issue (5): Whether Sue James helped cover up the failings of the Walsall Trust that led to the preventable death of a child

549. Findings: We find that there is no evidence that Mrs James helped cover up the failings of the Walsall Trust that led to the preventable death of a child, and that she did not do so.

Issue (6): Whether Sue James obstructed the improvement of child protection processes at the Walsall Trust.

550. Findings: We find that there is no evidence that Mrs James obstructed the improvement of child protection processes at the Walsall Trust, and that she did not do so.

Issue (7): Whether Sue James narrowly escaped a vote of no confidence from the Consultant Body in or around March 2010.

551. Findings: We find that Mrs James did not narrowly escape a vote of no confidence from the Consultant Body in or around March 2010. For the avoidance of doubt, given the ambiguity in the allegation, we find that no such vote was taken.

Issue (8): Whether Sue James prevented the Walsall Trust Board from seeing the Independent Panel Review Report and falsified its instructions as to dissemination.

Findings: We find that the IPR was not critical of Mrs James's leadership. We find that she did not either falsify or fail to act upon the instructions in the IPR as to dissemination, in anything she passed on to others, whether in the summary of the IPR that she circulated or otherwise. We find that the only members of the Board who saw a full copy of the IPR were Mrs James and Ben Reid. We find however that there was nothing inappropriate about this (or inconsistent with the terms of the IPR) and that there was no attempt by Mrs James inappropriately to prevent the full Board from seeing the report.

Issue (9): Whether Sue James suspended Dr Drew for what turned out to be groundless allegations by one of the bullying managers.

552. Finding: We find that, whatever the rights or wrongs of Dr Drew's suspension, Mrs James herself did not suspend him. She had no personal responsibility for this decision.

Issue (10): Whether Sue James asked Dr Drew to resign for challenging her decision about how the IPR should be disseminated.

553. Finding: We have seen no evidence to suggest that Mrs James asked Dr Drew to resign for criticising her decision about dissemination of the IPR, and we find that this did not happen.

Issue (11): Whether Sue James “sacked” Dr Drew by means of “a sham disciplinary process”

554. Finding: We follow the findings of the Employment Tribunal and the EAT to the effect that the disciplinary process by which Dr Drew’s employment was terminated was fair and proper. We reject the suggestion that it was the disciplinary process by which he was sacked was a sham.

Issue (12): Whether Sue James wrongfully offered Dr Drew a compromise agreement to terminate his employment or else face disciplinary action leading to dismissal

Finding: We find that Mrs James did not offer Dr Drew an inappropriate compromise agreement to terminate his employment.

Issue (13): Whether Sue James lied to Dr Drew about SHA and/or Board knowledge of the offer and the Board’s view of his continued employment.

Finding: We find that Mrs James did not lie to Dr Drew in the meeting of 20 June 2010, either about Trust Board involvement or the involvement of the SHA.

Issue (14): Whether Sue James mismanaged personnel grievances.

555. Finding: We find that there is no evidence that Mrs James mismanaged personnel grievances, and that she did not do so.

Issue (15): Whether the executive team at Walsall (with particular emphasis on Sue James’s part), mismanaged the paediatric team between 2006 and 2010.

556. Finding: We find that there is no evidence that Mrs James mismanaged the paediatric team between 2006 and 2010, and that she did not do so.

Issue (16): Whether the executive team at the Walsall Trust made inappropriate appointments to divisional and departmental leadership roles, and if so, Sue James’s responsibility for this.

557. Finding: We find that the appointments to divisional and departmental leadership roles, when made, were not inappropriate.

Issue (17): Whether there was an ‘aggressive management style’ of divisional management and if so Sue James’s responsibility for this.

558. Findings: We accept the conclusions of the IPR that the management style of the divisional managers was aggressive. We find that there was no personal responsibility on the part of Mrs James for this.

Issue (18): Whether there were bullying managers at the Walsall Trust, and if so, whether Sue James inappropriately supported them and refused to deal with them.

559. Findings: We are unable to make any findings as to whether there were bullying managers in place in the division. We find that Mrs James did not inappropriately support them. We find that she dealt with the allegations robustly and proportionately.

Issue (19): Whether there was a lack of insight by the Trust Board and if so, Sue James's responsibility for this.

560. Findings: We take this allegation to be derived from the IPR. We are unable to make findings about the Board's insight generally in relation to the problems with the paediatric department. We find no evidence of a lack of insight on the part of Mrs James, and we find, in accordance with Dr Moghal's own view as expressed to us, that her reactions to the problems identified in the IPR (both before it and in response to it) were appropriate.

(B) REVISED REMIT ONLY: OTHER ALLEGATIONS AS TO CONDUCT AT THE WALSALL TRUST (which did not appear in Dr Drew's submissions to the CQC)

Issue (20): Whether Sue James covered up serious heating failures in the paediatric wards.

561. Findings: We find that there is no evidence to suggest that Mrs James covered up serious heating failures in the paediatric wards, and that she did not do so.

(C) REVISED REMIT ONLY: ALLEGATIONS RE CONDUCT AT DERBY TRUST

GENERALLY AS TO HER RECORD IN POST SINCE APPOINTMENT IN 2011

Issue (21): As to Sue James's management style at the Derby Trust

562. Finding: We have seen and heard evidence from each of the Derby Trust's Chair, its Senior Independent Director, its Chief Nurse and Head of Patient Experience, and its Medical Director. This evidence is all to the effect that Mrs James is a first class Chief Executive who commands great respect, and that her management style at the Derby Trust is entirely appropriate. We so find.

Issue (22): Whether there have ever been any complaints made about Sue James while at the Derby Trust.

563. Findings: We have seen no evidence of any such complaints or issues being raised against her while at Derby, and we find that there have been none.

SPECIFICALLY

Issue (23): Whether Sue James failed to inform the Derby Trust of the allegations made against her in Dr Drew's book when she was informed of its existence in June 2014.

564. Findings: We find that Mrs James had, prior to the publication of Dr Drew's book, informed the Derby Trust Chair, Mr Rivers, as to the ET and (thereafter) the EAT proceedings: of the issues there raised by Dr Drew, the progress of those proceedings, and their outcome. We find that thereafter the Communications team of the Derby Trust became aware of the existence of Dr Drew's book in 2014, at around the time of its publication. We find that Mrs James was informed of its existence by them at about that time. We find that she did not read it at that stage, and did not know what Dr Drew's allegations in it against her were; in particular she did not know that Dr Drew was alleging that she had any involvement in either the death of KK or failures on the part of the Walsall Trust properly to deal with matters arising from KK's death. We find that for that reason she did not inform Mr Rivers of these particular allegations.

Issue (24): Whether Sue James has failed to present any challenge to Dr Drew's account of her actions and if so whether that is because she knows that that account is true

565. Findings: We find that the fact that Mrs James has not presented any challenge to Dr Drew's account of her actions does not suggest that it is true, and is immaterial to the question of whether she accepts his account (which she does not).

K.3 Summary of Conclusions and Recommendations

566. We repeat our main conclusions in full.
- (a) **Mrs James is, on the basis of the evidence that we have heard (and that we accept) an exemplary Chief Executive, and fulfils all aspects of the FPP requirement.**
 - (b) **As to Dr Drew's allegations against her, it follows from the analysis that we have undertaken above (which requires no repetition here) that we consider these, quite simply, to be misconceived throughout**
 - (c) **We therefore do not consider that there is any basis for any suggestion by anyone, let alone for any finding or recommendation by us, that she does not fulfil the FPP requirement imposed by Regulation 5; whether by reason of the misconduct / factors referred to in Regulation 5(3)d or by reason of any of the other sub-paragraphs of the Regulation. We have considered each of the Nolan Principles and consider that there is no evidence that she has been in breach of any of them.**
 - (d) **What the Trust does in response to this is of course not a matter for us.**
 - (e) **However our recommendation would be that our conclusions above be made public and that she be publicly exonerated, with her credentials to hold office made clear.**

567. We wish here to repeat some of what we have said above about our conclusions as to Dr Drew himself. There is no need for us to repeat those conclusions in full here. We will confine ourselves in this summary to the final two paragraphs of Section J above, in which we stated (among other things) the following.

“... we should explain why it has been necessary for us to record the facts and indeed express the opinions about Dr Drew that we have, notwithstanding that our remit relates to Mrs James and not to him. We have done this because it is necessary, in order properly to set out our analysis of the facts and our conclusions, to explain why we reject the allegations that he makes about her. That in turn requires us to analyse not only the allegations themselves, but the factual basis upon which he makes them and the way in which over time he has given his evidence about them. We have to judge his credibility by reference to all of these things. That would be the case in any equivalent judicial exercise, and it applies here, subject of course to the constraints under which we have operated, all as set out above.

At a purely human level, we wish to say that we regard the turn of events that have led to the need for us to write this report as deeply unfortunate. Whether or not Dr Drew’s misguided campaign, as we have described it, was generated by the obsessional traits that he has himself acknowledged is not a matter for us, but the consequences of that campaign have been very significant for those involved, in terms of time, money, and, for Mrs James herself, acute distress. From our review of all the evidence, it is plain to us that there was no justification for this, and that the allegations against Mrs James are entirely unfounded.”

CHARLES CORY-WRIGHT QC

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23.10.15