EMPLOYMENT TRIBUNALS

Claimant: Mrs Y Slaven

Respondent: Manchester University NHS Foundation Trust

Heard at: Manchester **On:** 24 February 2020
25-28 February 2020
in chambers

Before: Employment Judge Sherratt
Mr A G Barker
Ms V Worthington

REPRESENTATION:

Claimant: Mr S Lewinski, Counsel
Respondent: Ms A Niaz-Dickinson

JUDGMENT ON RECONSIDERATION

The Tribunal has reconsidered the judgment and reasons sent to the parties on 19 March 2019 and our conclusions are set out below.

REASONS

Introduction

1. As it is for this Tribunal to make a determination of facts on which the parties cannot agree the Tribunal acceded to the claimant's application for reconsideration on the basis that further explanation was required in respect of some of our findings and because the claimant suggested there was some inconsistency in our conclusions. Notwithstanding the respondent's submission that some of the points were appeal points we considered it in the interests of justice to deal with them by way of reconsideration to allow this long running claim to proceed without, it is hoped, the need for an appeal to the Employment Appeal Tribunal.

2. For the purposes of the reconsideration application the claimant took the Scott Schedule document appended to our narrative judgment which had the item reference, claimant's position, respondent's position and Tribunal's conclusion, and added a new column which it described as "Relevant evidence highlighted by the

claimant for the purpose of the ordered reconsideration with accompanying comments". There was then a final column in which the respondent added its comments. Although Ms Niaz-Dickinson represented the respondent when oral submissions were made the respondent's written submissions and comments on the schedule were provided by Mr Boyd who appeared as counsel at the original hearing.

3. The Tribunal's Reconsideration Judgment will be in narrative not tabular form and will use the reference/allegation/page numbers set out in the schedule.

Section 1 subs 6. No. 1(3)

4. Looking at the Scott Schedule we were asked to determine whether the claimant was responsible for clinical governance issues in relation to the service in her role. We agreed with the respondent that the claimant was not accountable for clinical governance issues in respect of patients as this rested with the consultants. We confirm our original decision in respect of patients but accept that the claimant had responsibility in respect of the cardiac physiology service.

Section 1 subs 6. No. 3 (should read No. 2)

5. The job description from which we work does not have a number 2, but looking at the respondent's new position where it states that it appears not to be in dispute between the parties that the claimant held overall responsibility for various matters, we change our conclusion from respondent to claimant.

Section 1 subs 6. No. 3(3)

6. We agreed with the respondent that the claimant was not responsible for the long-term and day-to-day planning and organisation of the research work in the department over the reference period. We remain of this view based on the evidence in particular of Professor Ray. The claimant may have helped to facilitate matters but was not involved on a day-to-day basis.

Section 1 subs 6. No.4(3)

7. We maintain our conclusion that the claimant did not hold a role for the respondent as "Clinical Lead for Cardiac Physiology Education in the North West". This is a title that the claimant gave herself. Her role for the respondent related to the work of the Trust. The evidence seems to relate to Manchester rather than the whole of the North West which would encompass Liverpool, Lancashire, Cheshire and Cumbria. Whilst the claimant was clearly active in clinical education in our judgment the evidence does not give her the standing she claims for herself.

8. At (3) we agreed with the respondent in the main that the claimant had not throughout the reference period taken responsibility for establishing and maintaining various matters relating to education. We maintain our finding that the respondent's view was broadly correct with the involvement of the claimant reducing as the involvement of Andrea Arnold increased. We do not doubt that the claimant was still involved until shortly before she left on sickness absence in 2009, but the claimant was not the person doing the work on the ground. We do not take the view that our

finding in paragraph 48 that the claimant maintained her involvement with MMU in general and Dr Hick in particular is inconsistent with these findings.

Section 1 subs 8. No. 6(3)

9. We accepted that the claimant had carried out some peer reviews in the reference period but not that she did she did 4-6 peer reviews each year during the reference period, particularly as her mobility declined throughout the course of the reference period. No evidence was produced as to documentation arising from the peer reviews carried out by the claimant. No evidence was given as to how she would have travelled to do these reviews or the period of time it would have taken her to do them, and how this was consistent with her carrying out her normal day-to-day activities for the respondent. The carrying out of such reviews does not figure in the way in which the claimant allocated percentages of her time to various tasks. We confirm our finding.

Section 1 subs 8. No. 7(4)

10. Our finding for the respondent is consistent with our conclusion that in our judgment the claimant did not hold a role for the respondent as Clinical Lead for Cardiac Physiology Education in the North West.

Section 1 subs 8. No 8(4)

11. We found for the respondent that in the reference period it was not accepted that the claimant travelled abroad for conferences or that throughout the reference period she attended conferences in the UK with the frequency stipulated.

12. In the claimant's job description she referred to being invited to attend meetings abroad but does not say that she ever attended any. She claims that in later years she passed the invitations to junior colleagues. Whilst the claimant may have attended some conferences earlier in the reference period we do not consider it appropriate to change our finding in favour of the respondent.

Section 1 subs 11. No. 9(4)

13. We accepted the contention of the respondent that in the reference period the claimant did not come into the office once a month at weekends. For the purposes of reconsideration, we note the witness statement of the claimant in which she referred to coming in approximately once a month and that the frequency of her weekend visits decreased during the latter part of the reference period to occasional visits as and when required. This is consistent with the finding that she did not come into the office once a month at the weekend throughout the whole of the reference period.

Section 1 subs 11. No. 9(5) also No. 10

14. At (1) we agreed with the respondent that it did not accept that approximately three times a month the claimant received calls from the hospital or members of the team needing advice out of working hours. Reconsidering matters in accordance with the comments of Mr Lewinski and Mr Boyd, we are persuaded that the first item

should be found in favour of the claimant on the basis that there was no evidence that confirmed she did not receive calls three times a month in the reference period.

15. In relation to the second matter under this heading, we agreed with the respondent which did not accept that approximately once a month the claimant attended the hospital out of hours to complete complex implanted pacemaker or implanted defibrillator evaluations. We maintain our finding on the basis that on a review of patient notes Andrea Arnold was unable to find any record of the claimant's involvement. Had the claimant been involved in a clinical way then we would have expected she would have either noted this herself or that anyone she had worked with would have recorded that she had been involved and/or given an opinion.

16. The third item in this subsection is not disputed.

Section 2: Management and Professional Leadership. No. 11

17. The claimant claims that she spent approximately 45% of her time in management and professional leadership in 2005 increasing to 50% in or around 2009. We agreed with respondent in not accepting that she spent as little as 45%-50% dealing with the management and leadership of the service. Looking at our Judgment we referred to the claimant using 20%-25% of her time to deal with the management of the overall strategic direction/development of the Cardiac Physiology Services and the Cardiology Administration Service. Taking this together with the 45%-50% we find that her total management time was from 65%-75%. We maintain our finding for the respondent.

Section 2: Management and Professional Leadership. No. 12(6)

18. As to whether the claimant ultimately took decisions on the purchase of clinical products, we do not change our Judgment in supporting the respondent's position that the claimant put into effect the purchasing decision reached by the team.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 14(9)

19. The Tribunal found that the claimant did not apply in practice doctorate level knowledge of each of the three sub-specialisms practised within the service. In our judgment the claimant was a knowledgeable and experienced practitioner in the field of cardiac physiology. Her clinical involvement had reduced considerably over the years. We are not satisfied that the claimant worked at a doctorate level of knowledge, particularly when there were three subject specialists in their particular fields who would, in our judgment, have known more than the claimant about their own specialist subjects. They appear to be qualified to MSc level not to doctorate level.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 15(9-10)

20. Although there is no challenge by the claimant here the respondent suggests that there is likely to be a typographical error in paragraph 35 of the Tribunal's

Reasons where we found that the claimant was taking 10% of her time by 2009 giving expert advice in matters medical. They suggest that this should be 2005, and on reconsideration we agree that there was a typographical error such that in paragraph 35 2009 should have been 2005.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 16(10)

21. The claimant had been involved in performing and supervising a range of complex specialist cardiac investigations on patients, including those required for scheduled and emergency patient care, clinical research, product registry and clinical trials. The respondent disputes that the claimant remained updated with regards to the procedures and skills required to perform these procedures so that she could train people to perform them and assist without out of hours queries or issues. On the basis of the evidence that we received we do not find that the claimant had the specialist knowledge and/or skill to perform and supervise a range of complex specialist cardiac investigations on patients throughout the reference period. The claimant was a generalist rather than a specialist and whilst we accept that she had sufficient knowledge to oversee the activities within her department, we do not find that she was able to carry out such clinical activities throughout the reference period.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 17(10)

22. This appears to relate to the claimant saying that because she performed and supervised a range of specialist cardiac investigations and because she applied in practice doctorate level knowledge of each of the three sub-specialisms that she was able to train people to perform procedures as part of the teaching/training aspect of her role. Having found that the claimant did not perform and supervise a range of complex specialist cardiac investigations and did not apply doctorate level knowledge, we are not satisfied that the claimant could train people to perform the procedures as part of the teaching/training aspect of her role. Having said that, there appears to be some confusion as to the numbering system utilised by the insertion of manuscript numbers on the pages of the job description. Items 17 and 18 appear to be conflated because we have found for the respondent but accepted that the claimant may have stepped in to help with procedures which seems to relate more to item 18.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 18(10) and (13)

23. This was divided into two parts. The first we found for the claimant and unsurprisingly this finding is not challenged on reconsideration. In relation to the second matter we agreed with the respondent in not accepting that over the reference period the claimant dealt with out of hours queries and provided advice or assistance out of hours to cardiac physiologists, nurses or other staff at the respondent.

24. Having reconsidered and changed our response in respect of section 1 subsection 11 number 9 and the first of the three parts, we must conclude that in the

reference period the claimant did deal with out of hours queries. We therefore reconsider and change from the respondent to the claimant.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 19

25. There is no number 19 written on the job description therefore there is some uncertainty as to which wording this relates to, but reconsidering matters in the round we confirm our finding for the respondent on the basis that the claimant did not have clinical responsibility for any patients on her own admission as set out in paragraph 10 of her witness statement.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 20(14)

26. We did not find that from 2005 towards the end of the reference period the team leaders were only gradually becoming embedded in the Cardiac Physiology Service. Having reconsidered the matters put forward on both sides we cannot see anything that makes us change our judgment on reconsideration. In any event this seems to be more a matter of narrative than a matter of job description.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 21(10)

27. The claimant refers to having developed a staff structure with each person trained to a level appropriate to the tasks they were allocated and that with her doctorate level knowledge and experience of all fields of cardiac physiology she would step in as required, albeit less frequently towards the end of the reference period. According to the claimant, this would include helping trainees and qualified cardiac physiologists when they were having difficulties e.g. when they were unsure of what programmable option to apply when programming a device. She also offered her opinions in connection with the interpretation of data in difficult cases.

28. We found for the respondent that the claimant was not involved in training on the basis that training involves, in our judgment, formal and regular instruction with a specified objective and purpose. We accept that the claimant may have given ad hoc assistance but we do not conclude that this amounts to training and so we see no reason to change our conclusion in favour of the respondent.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 22(11)

29. We agreed with the respondent that the claimant's knowledge and understanding of echocardiography and cardiac rhythm management learned on a theoretical basis was not a substitute for hands on clinical practice. We remind ourselves that the claimant was not accredited with the British Society of Echocardiography from 2004 onwards. The decision making in relation to the acquisition of equipment we have previously found was based on the decision of a number of people, with the claimant being the person to carry out that decision. We see no reason to reconsider the finding in favour of the respondent.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 24(15)

30. The claimant claims to have been the go to person in relation to any issues related to cardiac investigations. We found for the respondent that she was not the go to person save in respect of the doctors who gave evidence for the claimant. The claimant was in our judgment "a" go to person rather than "the" go to person. We see no reason to change our finding.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 25(15)

31. We found that on an ad hoc basis because the claimant was not rostered to work on the wards she provided some teaching or training. Reconsidering this does not lead us to change our finding as set out.

Section 2: Performing and supervising a range of complex specialist cardiac investigations on patients. No. 26

32. We found that the claimant provided some training but only for the respondent's physiotherapists. The claimant's witness statement, paragraph 26, refers to training the respondent's physiotherapists and also providing training "at other hospitals during the reference period" without giving any further information as to when, for how long, where, etc. On reconsideration we are not persuaded that our view is to be changed given the lack of evidence as to how much training was provided elsewhere.

Section 2: Clinical Lead Consultant for training …

33. We agreed with the respondent that the claimant did not hold a role for the respondent as Clinical Lead Consultant for Training in Cardiac Physiology in the North West. The parties helpfully remind us that we have dealt with this above at paragraph 4. We remain of the conclusion that the claimant did not hold such a role.

Section 2: Clinical Lead Consultant for Training Etc. No. 28(17)

34. The claimant in her job description refers to training people from the workforce in tertiary units. In her witness statement she accepts that the Wigan Catheter Lab was the only one that seems to have opened in the reference period. The evidence of Janet Fallon on cross examination was to the effect that some training did continue after this Catheter Labs opened, and therefore we conclude on reconsideration that we should find in favour of the claimant on the basis that the training was given by the department she was head of.

Section 2: Clinical Lead Consultant for Training etc… No. 30

35. On reconsideration of this point it would appear that during the period when the old BSc course continued the claimant was involved on behalf of the respondent in liaising with Dr Hick of MMU.

36. Based on the evidence of Andrea Arnold we find that the old degree was up and running when she arrived in May 2004 thus the work done by the claimant in setting the standard would have been done prior to the start of the reference period. We do not find the claimant had any role in connection with the new BSc course which started in 2010. Whilst the claimant may have been involved in mentoring students, the evidence does not appear to point to her being a formal mentor. We do not find the claimant was responsible for the recruitment of Andrea Arnold in the reference period. It happened before.

37. On the basis of this evidence on reconsideration there appear to be points in favour of both the claimant and the respondent under this heading.

Section 2: Clinical Lead Consultant for Training etc… No. 31(18)

38. This was split into two sections. We found that the claimant was the joint founder of the Introduction to Echocardiography Course and the claimant does not seek reconsideration in respect of this finding.

39. In relation to the second part we agreed with the respondent that in the reference period the claimant had responsibility for the Introduction to Echocardiography Course and that she was Clinical Course Leader and/or Expert Lecturer and/or taught on it as part of her role.

40. From the evidence of Keith Pearce we find that the course was started no later than 1995 which is well before the start of the reference period. When he was on the course at that time the claimant was a lecturer and a tutor. The only evidence provided in support of the claimant's claim to a continuing involvement in Introduction to Echocardiography was a 45 minute lecture on 25 June 2007, a 90 minute lecture on 26 June 2007 and a one hour lecture on 27 June 2007.

41. Given the evidence of only three lectures in the reference period we do not change our finding from the respondent.

Section 2: Clinical Lead Consultant for Training etc… No. 33(18)

42. We found for the respondent in not accepting that the claimant was Professional Lead Adviser and National Opinion Leader in Cardiac Physiology over the reference period. One of the things that supported this conclusion was the claimant's own witness statement (paragraph 33) where she acknowledges that she was not formally designated as either. We also take into account the fact that the claimant was not a member of the British Society of Echocardiography nor was she a member of the committee of any of the national professional organisations. In any event, holding such titles would not in our judgment be part of the claimant’s job description because such titles could be held by anyone regardless of where they worked and did not involve work for the employer. Had the claimant held such a role it would not have passed automatically to her successor as it was not in the gift of the respondent.

Section 2: Clinical Lead Consultant for Training etc… No. 34(18)

43. The claimant says that she was invited to perform peer reviews of other Cardiac Physiology Services in, for example, Torbay, Belfast and Barnsley. She was asked to be an external member on interview panels at Salford, Leeds and Torbay. She was asked to advise on equipment prior to purchase by local GPs and hospitals including Steeping Hill, Manchester Royal Infirmary and BMI Healthcare. She was asked for advice on cardiac investigation requirements of clinical research programmes within the respondent and North West Lung Centre and Christie Hospital.

44. The respondent did not accept that in the reference period the claimant performed formal peer reviews or that she was required to do so as part of her role and did not accept that the claimant was required to sit as an external member of interview panels as part of her role.

45. We found for the respondent in the first instance but added that the claimant may have carried out occasional peer reviews on an informal basis. In the second matter we found for the respondent but said that the claimant might have sat on interview panels.

46. In reaching our conclusions we noted paragraph 34 of the claimant's witness statement which does not provide any dates when any reviews may have been carried out nor do we have in the bundle any evidence of any reviews that the claimant carried out. The claimant accepts Belfast was before the reference period.

47. We do not find that the claimant was required to carry out these reviews or be a member of any such bodies as a part of her role managing the respondent's service. We therefore maintain our findings in favour of the respondent.

Section 2: Develop and implement short courses. No. 36(20)

48. We agreed with the respondent that the claimant did not develop the Introduction to Echocardiography Course in the reference period. The claimant refers us to her witness statement at paragraph 36 which then refers us back to paragraph 31 where the claimant accepts that the Introduction to Echocardiography Course was founded prior to the reference period. We maintain our finding for the respondent.

Section 2: Develop and implement short courses. No. 37(20)

49. We found that the claimant did not develop the cardiac monitoring in the catheter laboratory course in the reference period. In this we are supported by the evidence of Keith Pearce in his witness statement (paragraph 39) to the effect that the course was already developed prior to the reference period beginning. The way in which the claimant uses the word "develop" in relation to the Introduction to Echocardiography Course means when it was established rather than developments such as might have taken place to modify the course in the event of, for instance, the introduction of new equipment. We maintain our finding that the course was not developed in the reference period.

Section 2: Management overall strategic direction. No. 38(20)

50. This relates to the percentage of time spent by the claimant managing the service. We have already covered this at item number 11(5) above when we put together the two sets of management time claimed by the claimant and we found in favour of the respondent. On reconsideration we are content that the finding is for the respondent.

51. Looking at items 11 and 38 taking them together and adding the overall time spent by the claimant on management of the service, we accept the claimant's estimate of the percentages.

Section 2: Management overall strategic direction. No. 39(20)

52. The claimant asserted that as the most senior Cardiac Physiologist employed by the respondent she was responsible for the continuous planning, monitoring, analysis and assessment of all that was necessary for the organisation to meet its goals and objectives in terms of Cardiac Physiology Services. The respondent asserted that the claimant was not solely responsible for these matters.

53. On reconsideration we favour the claimant rather than the respondent, given her role as then she did have sole responsibility for these matters notwithstanding the input of various other members of the team.

Section 2: Management overall strategic direction. No. 40(20)

54. In respect of this the claimant asserts that the positions of both parties are correct and the respondent notes that it appears to be agreed between the parties that the claimant did not attend scientific meetings or trade exhibitions with any frequency in the reference period, therefore on reconsideration we are content to change respondent to respondent and claimant.

Section 2: Management overall strategic direction. No. 42(21)

55. To clarify a matter at the request of the respondent, we accept there was an informal scheme for clinical placements for secretaries. We have no knowledge of the extent to which such a scheme operated.

Section 2: Management overall strategic direction. No. ??[21]

56. On reconsideration, as we found above, the claimant was a go to person for the doctors who gave evidence for her. In reaching this conclusion we note that the claimant does not deal with the frequency with which she dealt with such matters and we note there were the three leaders to whom questions could be asked by those working on the same floor and in the same department as them rather than talking to the claimant who was, latterly, physically removed from them in a different part of the building.

Section 3(a): Typical Educational Qualifications No. 48(27)

57. Looking at the person specification the claimant writes that:

> "The list of qualifications below is taken from a person specification (agreed by Ms Coombes) for the role (i.e. the list was not written for me personally) which forms the second part of the documentation required when recruiting into any post in the respondent. The first part the documentation is the job description:
>
> (1) PhD or equivalent level experiential learning in biological or physiological sciences relevant to tertiary cardiac physiology."

58. The claimant maintains that such a level of experience reflects the degree of complexity of the role and the level of knowledge and expertise and experience required across so many areas and that it reflected her experience and overall level of qualification and expertise. By contrast the respondent's position is that PhD or equivalent level experience and knowledge is not required for the role. The clinical work undertaken by the cardiac physiologists is not at PhD level.

59. There is therefore a conflict apparent between what is said to have been written by Ms Coombes of the respondent as to the requirement for PhD or equivalent level experience and the contention of the respondent in these proceedings that it is not.

60. In our judgment it is for the employer rather than the employee or job applicant to prepare the person specification. We maintain our finding for the respondent on the basis of our conclusion that the claimant did not have PhD level knowledge.

Section 3(b): Typical experience required. No. 49(27)

61. Again the claimant quotes from the person specification agreed by Ms Coombes, and not written for her personally, as:

> "(1) Minimum of ten years hands-on experience practising independently in tertiary cardiac physiology at a senior grade applying PhD level clinical and scientific knowledge to the complete range of complex cardiac diagnostics, procedures, and interventions."

62. This is a repeat of the position set out at number 48 where it is for the respondent to set the level of clinical and scientific knowledge in the person specification, and notwithstanding the discrepancy between the person specification and the submission in this case we do not on reconsideration change our view, which was in favour of the respondent.

Section 3(b): Typical experience required. No. 51(28)

63. Taken from the job description prepared by the claimant, number 6 is:

> "Experienced in working with multi-disciplinary project teams on major capital redevelopments (e.g. catheter lab developments, Heart Centre development)."

64. In the Tribunal's experience a person specification will usually indicate whether particular matters are desirable or essential in a candidate. The untested

evidence of Judy Coombes is that she does not accept that experience in working in multi disciplinary project teams on major capital investments is a prerequisite for starting the job. The work the claimant did in connection with the new Cardiac Physiology Department arose because the project happened to take place during the reference period. Projects like this are uncommon and project-related experience is not a prerequisite for the job.

65. For these reasons, and notwithstanding the apparent disparity between the person specification and the view of Ms Coombes, we do not on reconsideration change our view that the finding is for the respondent.

Section 3(d): Ongoing additional training, experience coaching etc. No. 54(28)

66. The claimant says that she undertook a great deal of additional specialist training, research and study to maintain her skills and knowledge, including attending annual scientific meetings of relevant professional bodies and/or reading all original research papers and posters presented at each meeting…to keep up to speed with any scientific, clinical and technical advances and developments. This includes professional bodies of which the claimant was not necessarily a member. When unable to attend due to difficulties with walking any distance she says that she read all pertinent abstracts from the meetings and obtained prints of all papers for a more detailed study when appropriate.

67. In respect of this the respondent does not accept that the claimant undertook a great deal of specialist training and research over the reference period. On reconsideration we have no evidence that the claimant undertook any research over the reference period (there were no research papers that she prepared or presented produced in evidence) and the reading of papers does not, by itself, in our judgment amount to receiving specialist training. We therefore on reconsideration confirm our finding in favour of the respondent.

Section 3(d): Ongoing additional training, experience coaching etc. No. 55(29)

68. The claimant says that she undertook “self study” (attendance at scientific meetings, study of medical literature, peer reviews) to satisfy the academic requirements for the role of Clinical Lead/Chief Clinical Examiner for Cardiac Physiology North West as determined by the formal course evaluation process at MMU for the BSc Clinical Physiology and the MSc Clinical Physiology courses. The role required highest level current specialist knowledge to ensure BSc and MSc courses, examinations and clinical assessment remain relevant to current cardiac physiology practices and that on graduation attendees were “fit for practice” and was performed in collaboration with the Course Leader for the Academic (Pure Sciences) elements of the course, Dr Hick”.

69. We agreed with the respondent’s contention that the claimant did not have such a role or that she was in the reference period the Clinical Lead/Chief Clinical Examiner. The claimant did not have responsibility for ensuring BSc and MSc courses, examinations and assessments remained relevant.

70. We have reconsidered this matter. The claimant makes a bold assertion but does not produce substantive evidence showing that she held such roles, nor was Dr

Verity Hick called by the claimant to give evidence in support of these contentions or any of the other matters on which she could have given relevant evidence. None of the witnesses for the respondent were aware of the claimant holding such roles and therefore we do not change our view in favour of the respondent.

Section 3(d): Ongoing additional training, experience coaching etc. No. 56(28)

71. The claimant claims that she attended at frequent intervals (6-8 times a year) educational meetings with the Medical Industry for presentations of complex and highly specialised new technologies ready for clinical use. "This enabled me to gain the highest level of understanding of the latest available technologies and their applications prior to dissemination of that knowledge to medical staff and specialist cardiac physiologists with the aim of problem free implementation of clinically sage new services".

72. The respondent's position is that attending such presentations did not mean that the claimant had the highest level of understanding of the latest available technologies and their applications. For the purposes of reconsideration, the claimant makes plain in her witness statement that she is not suggesting that attending such meetings per se caused her to have the highest level of understanding but that attending such meetings contributed to her level of knowledge and to that extent the position of both parties might be thought to be correct.

73. Looking at paragraph 56 confirms this and the claimant concludes by suggesting that attending such meetings contributed to her knowledge building during the reference period.

74. The wording used by the claimant in the job description is not consistent with the wording in the witness statement. We therefore on reconsideration confirm our finding that attending presentations etc did not mean the claimant had the highest level of understanding and knowledge.

Section 3(d): Ongoing additional training, experience coaching etc. No. 57(28)

75. The claimant attended at educational meetings (3-4 times per year) with the Medical Industry and/or Principal Clinical Investigators for presentations of proposed clinical trials which enabled her to acquire the highest of knowledge and understanding of current research in cardiology and its implications for Cardiac Physiology Services and to enable informed forward planning of possible future service developments.

76. The view of the respondent was that attending such meeting did not mean the claimant had the highest level of knowledge and understanding of current research etc.

77. For the purposes of reconsideration the claimant suggests that attending such meetings contributed to knowledge building.

78. Again, we note that what the claimant states for the purposes of reconsideration is not the same as the claim in the job description and maintain our finding for the respondent.

Section 3(d): Ongoing additional training, experience coaching etc. No. 58(29)

79. This deals with the claimant providing mentoring of BSc and MSc students and our response was that "C may have mentored on an ad hoc basis and advised the doctors who gave evidence on questions including the interpretation of the complex data".

80. On reconsideration it is appropriate to insert after "mentored" the words "BSc and MSc students" on an ad hoc basis.

Section 3(d): Ongoing additional training, experience coaching etc. No. 59(29)

81. According to the claimant effective mentoring of PhD students requiring doctorate level knowledge of clinical cardiology and of clinical research procedures which was achieved by the methods detailed above.

82. We note that this paragraph refers to PhD students but there were no such students. It does not seem to relate to other students, however we maintain our finding for the respondent whilst adding that the claimant provided ad hoc informal mentoring as and when requested by students or other members of staff within the department.

Section 3(d): Ongoing additional training, experience coaching etc. No. 61(29)

83. The claimant claims that regular visits to other cardiac centres "was also essential for my role as Cardiac Physiology Adviser to the BCS in their formal assessment of cardiac centres (on behalf of the DOH)".

84. We agreed with the respondent's contention that in the reference period the claimant was not Cardiac Physiology Adviser to the British Cardiovascular Society in their formal assessment of cardiac centres.

85. For the purposes of reconsideration the claimant states that in cross examination she explained her name was retained on the BCS list and the respondent accepts that such an answer was given but equally Professor Ray made clear there were no BCS reviews in the reference period.

86. The claimant did not provide any documentation to confirm that she had such a role, and we accept the evidence of Professor Ray that there were no such reviews in the reference period. If such a role was held then it was not held for the respondent.

87. On reconsideration we maintain our finding for the respondent.

Section 3(d): Ongoing additional training, experience coaching etc. No. 63(29)

88. The claimant claims that "it was essential to the role that I had a level of knowledge and understanding commensurate with this across all elements (i.e.

including all of the three sub specialties) of cardiac physiology practice, education and continual professional development".

89. We agreed with the respondent that the claimant's job title and where it sat did not mean that she had the highest level of knowledge and/or understanding of cardiac physiology.

90. We accept the evidence of Professor Ray that whilst "it is true that Yvonne had a good overview of all specialist areas as would be expected of a highly competent Head of Department but by 2005 cardiac physiology had become so specialised that it was impossible for one individual to have highly specialised knowledge across the breadth of the discipline. Moreover Yvonne was not practising clinically on a regular basis by this date…By 2005 she was not to my recollection performing echocardiography and would not have been involved in a personal capacity in the more complex echocardiographic procedures…"

91. On reconsideration we are satisfied that whilst the claimant may have had a high level of knowledge it was not possible for her to have had the highest level of knowledge across all three sub specialities. We therefore on reconsideration still find in favour of the respondent.

Section 3(e): Any other knowledge required to undertake the job to a competent standard. No. 64(29)

92. The claimant says that clinically there was no role above her role within the respondent's cardiac service and she was the most senior cardiac professional within the respondent. The respondent took the view that the claimant was not the most senior cardiac professional within the respondent in the reference period. Our finding was that the claimant managed the service including three cardiac leads. Without defining the terms this question is not capable of a further answer.

93. The claimant asks if we might go further in our finding. We conclude that we might not. There would need to be the definition of "professional" and "senior". Does "professional" include the medical staff? Does "senior" relate to age, years of service or level of experience within a particular specialty?

Section 3(e): Any other knowledge required to undertake the job to a competent standard. No. 65(30)

94. According to the job description:

> "With regard to scientific knowledge I was required to have the highest level of knowledge of the biological sciences in order to contribute to the clinical services and to effectively manage a large team of cardiac physiologists practising a wide range of clinical, scientific procedures, including…"

95. We agreed with the respondent that the claimant was not required to have the highest level of knowledge.

96. On reconsideration we maintain our position. The claimant was required to have sufficient knowledge to carry out her role which involved little clinical practice.

What is meant by "the highest level of knowledge"? Arguably the Clinical Leads would have had greater knowledge of their subject areas than the claimant. We therefore maintain our finding in respect of the respondent.

Section 3(e): Any other knowledge required to undertake the job to a competent standard. No. 66(30)

97. The claimant writes in the job description:

> "As I have mentioned previously in relation to my references to having to have 'the highest level of knowledge' there was no level in cardiac physiology in the NHS above that at which I worked. The service included the most complex and challenging elements of cardiac physiology practice including cardiac physiology education and research in the NHS. It was essential to the role that I had a level of scientific, clinical and social care knowledge commensurate with this."

98. On reconsideration we maintain our finding for the respondent that it was not necessary for the claimant to have the highest level of knowledge. She needed sufficient knowledge.

Section 3(e): Any other knowledge required to undertake the job to a competent standard. No. 67(30)

99. According to the job description the claimant "was required to have knowledge of cardiac equipment and the maintenance and repair of such equipment …".

100. We agreed with the respondent that the claimant was not required to have such knowledge and that she did not repair and maintain equipment. In our judgment the equipment in question was highly complex electronic equipment and would have been maintained by either the manufacturer's or the Trust's specialist technicians.

Section 3(e): Any other knowledge required to undertake the job to a competent standard. No. 68(30)

101. The claimant says that she was "required to have knowledge of areas of research and advances in current practice and treatment options, to interpret the complete range of highly complex cardiac physiology data and to prepare accurate reports on investigations, including recommendations for outcome".

102. We accepted the respondent's contentions. On reconsideration we maintain this finding. The doctors who consulted the claimant would have received her opinion. There was no evidence of any reports/investigations including recommendations for outcome that had been carried out by the claimant. Indeed the respondent's software for patient management had no entries relating to the work of the claimant.

Section 3(e): Any other knowledge required to undertake the job to a competent standard. No. 68(31)

103. The claimant says that she would "train, develop and motivate staff to improve current performance and to prepare for higher level jobs and manage staff performance".

104. In our original findings we agree with the respondent that the claimant did not train Trust cardiac physiology staff in the reference period. For the purposes of the reconsideration the claimant repeats the points made at point 21 as does the respondent. So does the Tribunal.

Section 3(f): Skills required. No. 70(31)

105. Using the introduction "Analytical" the claimant was involved with the analysis of complex clinical data acquired from echocardiograms, pacemaker assessments.

106. We found that the claimant did not do this in the reference period.

107. For the purposes of the reconsideration the claimant puts forward that this is at odds with the evidence which was to the effect that the claimant was capable of doing this and/or that she could have done it, but given that the claimant was not involved in regular practice, was not rostered, we cannot be satisfied that she did and so maintain our finding for the respondent. Had there been any patient notes confirming the claimant's involvement in such matters when our finding might have been different.

Section 3(f): Skills required. No. 71(31)

108. Under "Caring" the claimant was "dealing with sick and anxious patients attending for investigations, dealing with staff suffering personal or professional emotional issues".

109. We agreed with the respondent that in the reference period the claimant possibly carried out only the occasional pacemaker check and it is not accepted that she came into contact with sick and anxious patients with any frequency.

110. In maintaining our finding for the respondent, we do not find that the claimant never interacted with sick and anxious patients or staff but we do not find that this was done with any great frequency. The claimant would have dealt with such issues if consulted by staff members.

Section 3(f): Skills required. No. 72(31)

111. Under "Coaching" the claimant says that she was "constantly involved in staff development, encouraging patients to walk on treadmill for exercise ECG tests".

112. The respondent's view was that in the reference period the claimant possibly carried out only the occasional pacemaker check and it is not accepted she encouraged patients to walk on a treadmill for exercise ECG tests over that period.

113. In the claimant's witness statement at 72 there is no mention of the claimant being involved in staff development but she does maintain she encouraged patients to walk on a treadmill for ECG tests over the reference period, although the claimant does not state the frequency with which she carried this out. The patient notes do not have any reference to the claimant being involved in such activities. Had there been any positive evidence to corroborate the claimant's claims then we would have found for the claimant, but in the absence of such corroboration we do not.

Section 3(f): Skills required. No. 74(31)

114. Under the heading "Customer Service" the claimant claims that she was involved in "welcoming patients into the department and allaying any fears, dealing with complaints about waiting times".

115. Our finding was in favour of the claimant but very infrequently and in the old premises only "after the move".

116. The respondent's position is that the words "after the move" might reasonably be removed and we are content to remove them, but we do not go beyond this. It would not, in our judgment, be for the Head of the service to be involved in welcoming patients into the department and/or having anything other than infrequent dealings with them.

Section 3(f): Skills required. No. 76(31)

117. Under "Physical" the claimant claimed that she was moving patients and moving boxes. We found that she was not moving patients but that she infrequently might have moved boxes.

118. On reconsideration we are able to accept that the claimant may have assisted patients to move but we cannot accept as a matter of fact that the claimant would have moved patients. We therefore on reconsideration do not change our conclusion.

Section 4: Decision making and judgment. No 79(32) and (33)

119. According to the claimant, "though the consultant team was large (11 and then 13 cardiologists) they each sub-specialised, meaning there were only 2-5 in each of the three sub-specialities, consequently it was not unusual for a consultant with the necessary expert knowledge not to be available to give help/advice".

120. In reconsidering this matter we find the numbering and the matters referred to not easy to follow. The claimant seems to be making a factual statement that it was not unusual for a consultant with the necessary expert knowledge not to be available to give help or advice, but it is not clear what else the claimant claims was part of the job description in relation to this. By way of narrative, we agree with the claimant's statement given that Professor Ray accepted that on occasion no relevant consultants may be available. This narrative finding should therefore replace our finding in favour of the respondent.

Section 4: Decision making and judgment. No 80(33)

121. The claimant says that she "gave guidance on a daily basis to other team members. This would be several times a day. I could be bombarded with questions from cardiac physiologists, doctors on the wards, Consultant Cardiologists, all for knowledge sharing".

122. The respondent did not accept that in the reference period the claimant gave clinical guidance to team members on a daily basis or that she could be bombarded daily with questions from cardiac physiologists, doctors and consultants.

123. We found for the respondent. In reconsidering we still do. The claimant claims she had given guidance on a daily basis, several times a day. Given that she was remotely located from the majority of the department we do not think it likely that she would have given guidance several times a day. Certainly we do not find that the claimant was "bombarded" with questions.

Section 4: Decision making and judgment. No 81(33)

124. The claimant states that she could not seek professional guidance within the respondent because she was the most senior cardiac physiologist employed by the respondent (in that regard comparable for example to the chief nurse).

125. We gave a narrative response to the effect that this depends on what is meant by "most senior", and we remain of this view. Whilst the claimant was under Ms Coombes in the organogram and above everyone else, the claimant was not practising as a cardiac physiologist. The three Leads had much more current experience than the claimant and so the only way in which we could accept the claimant was the most senior cardiac physiologist was by means of her position as manager and her overall years of service.

126. We agreed under this heading with the respondent: that the claimant's role was not comparable to that of the chief nurse. The claimant suggests that her seniority as heading the department was comparable to the chief nurse position within the organisation. Without seeing an overall organogram for the whole of the respondent we can only express our view that the holder of the role of chief nurse would normally be on the senior management team of the Trust. The role of the claimant was below that.

Section 4: Decision making and judgment. No 82(33)

127. The claimant says that "to ensure my own CPD, I spoke to peers in other cardiac centres around the country for their opinions to assist with decision making (but more often they looked to me for advice. I was considered one of the most experienced cardiac physiologists/cardiac physiology service managers in the UK). It was more a question of knowledge sharing than being given an answer. I therefore then made the decision".

128. The respondent did not accept that in the reference period the claimant was considered one of the most experienced cardiac physiologists in the UK. We agreed with the respondent.

129. Whilst not seeing how this relates to a job description, we accept that the claimant had many years' experience initially in practice and latterly in management in cardiac physiology, and she was called upon to attend meetings at the Department of Health. She would therefore have had some form of national reputation. We are content to substitute this brief narrative for our finding for the respondent.

Section 4: Decision making and judgment. No 85(34)

130. Paragraph 85 is a list of eight procedures and tests undertaken by the clinical cardiac physiology staff for which the claimant had professional responsibility. The claimant does not claim in the job description to have carried out any of these tests personally, so by way of narrative response we merely accept on reconsideration that these tests were carried out by the staff within the department managed by the claimant.

Section 4: Decision making and judgment. No 85(34)

131. The claimant maintains that she was "lead cardiac physiologist for clinical education of cardiac physiologists in the North West, this included responsibility for the Undergraduate Clinical Tutor and ultimate responsibility for all elements of cardiac physiology embedded in the Undergraduate, Masters and Doctorate programmes provided by MMU at the university, at the research and training facility at UHSM and at hospitals around the region providing clinical placements in support of the courses".

132. We have already stated above that we did not find the claimant was Lead Cardiac Physiologist for clinical education of cardiac physiologists in the North West. We confirm this finding.

Section 4: Decision making and judgment. No 88(34)

133. According to the claimant, "As detailed in this document I had ultimate responsibility for the training of all staff within my remit and of assuring each individual's CPD ensured optimal patient care and satisfied the respondent's aims and objectives".

134. The respondent said that in the reference period whilst the claimant as the manager had ultimate responsibility for training staff within her remit she did not deliver training. We found for the respondent, adding "save that C may have delivered occasional training sessions".

135. On reconsideration we find for the claimant who may have delivered occasional training sessions. We do this because we accept that she did have overall responsibility for the training and delivered occasional training sessions. In making this finding we are not saying that the claimant was a major trainer of the staff.

Section 4: Decision making and judgment. No 89(35)

136. According to the claimant, "The most common problem would be the clinical decisions that I was required to make. This involved the interpretation of highly complex clinical data to enable us to propose a solution. This happened on a daily basis".

137. The respondent did not accept that in the reference period the claimant was interpreting highly complex clinical data and making clinical decisions on a daily basis.

138. Reconsidering the matters put forward in the submission, we remain of the view that the claimant was not interpreting highly complex clinical data and making clinical decisions on a daily basis. The claimant was not practising on the wards. She was not rostered to do so. In our judgment the clinical decisions made on a daily basis were made by the medical staff and by the practitioners. The claimant has accepted her clinical practice was very limited. There are no clinical decisions made by the claimant recorded on any patient notes.

Section 4: Decision making and judgment. No 90(35)

139. This reference is to, we think, "also, wide range of issues pertaining to undergraduate and postgraduate education. This would include problems with course validation, exam pass marks, lecturers not turning up, accommodation problems, etc.".

140. We agreed with the respondent, which did not accept the claimant dealt with such matters. On reconsideration we have noted above the lack of any corroborative evidence in relation to the claimant's dealings with the university, and looking at her witness statement at paragraph 90 it would appear that the majority of the problems she refers to were dealt with by either Andrea Arnold or Keith Pearce themselves. We therefore do not accept that in the reference period the claimant personally dealt with these issues.

Section 4: Decision making and judgment. No 91(35)

141. According to the claimant, "The most complex problems probably involve the interpretation of data. In instances where there was a divergence of opinion, e.g. between Senior Cardiac Physiologists and/or Cardiologists, I had to make a judgment call often based on data required by another clinician (which is much more difficult) and adviser e.g. about reprogramming an ICD or about suitability of a patient for exercise testing. These were important decisions that impacted on clinical management of the patient and had to be taken often whilst I was in the middle of performing other aspects of my role. This was required: the ability to switch concentration from one task to another whilst under stress to complete both effectively. I did this based on my experience. This was a daily occurrence".

142. The respondent's position was that the claimant did not have responsibility to make ultimate clinical decisions where there was a divergence of opinion between a consultant and a cardiac physiologist and they did not accept that in the reference period she provided clinical advice on a daily basis.

143. On reconsideration we accept, based on the evidence of Professor Ray, Keith Pearce and Janet Fallon, that the claimant may have been called upon to give an opinion, but certainly not on a daily basis, and we agree with the respondent that the claimant did not have responsibility to make decisions. These were decisions to be made via a clinician based upon information provided by the cardiac physiologist. We therefore do not change our finding from one in favour of the respondent.

Section 4: Decision making and judgment. No 93(35)

144. According to the claimant, she was involved with "management of a large, diverse team of cardiac physiologists plus a team of cardiology secretaries all with education, training, clinical development and general personnel needs. Plus ensuring formal clinical education of all cardiac physiologists in the North West reached the required standards".

145. The respondent's case was that the claimant was not responsible for ensuring full clinical education of all cardiac physiologists in the North West reached required standards, and we agree that whilst the claimant may have been responsible for cardiac physiologists employed by the Trust, she was not responsible for those employed elsewhere within the North West. We maintain our finding for the respondent.

Section 4: Decision making and judgment. No 95(35)

146. According to the claimant, "As I have mentioned above in relation to my reference to having 'the highest level of specialist knowledge', there was no level of cardiac physiology in the NHS above that at which I worked".

147. We agreed with the respondent that the claimant did not have the highest level of specialist knowledge in the reference period.

148. We have dealt with this above and we remain of the view that the claimant did not have the highest level of specialist knowledge. She had a very broad knowledge across the whole of the spectrum but in relation to the individual specialities we do not accept that she had the same level of knowledge as the section leaders.

Section 4: Decision making and judgment. No 96(35)

149. The claimant states that, "The service included the most complex and challenging elements of cardiac physiology practice in the NHS including cardiac physiology education and research. It was essential to the role that I had a level of knowledge commensurate with this and had the confidence to challenge consultant medical staff working at the forefront of clinical cardiology and renowned as national or international 'opinion leaders' in their sub-specialist field. The Chart Appendix 2 illustrates where my service sat within the wider NHS structure".

150. The respondent states that the claimant was not at the most senior level in cardiac physiology in the respondent or the NHS. We found for the respondent and noted that medical staff were above the claimant.

151. On reconsideration whilst accepting that the claimant had sufficient knowledge to carry out her role, we maintain our agreement with the respondent that the claimant was not at the most senior level in cardiac physiology in the respondent on the basis of knowledge of individual specialities. In our judgment the knowledge of the Team Leaders in their individual subjects was greater than that of the claimant and indeed the medical staff were arguably above the claimant. We therefore on reconsideration maintain our finding.

Section 4: Decision making and judgment. No 99(35)

152. The claimant says that, "Analysis and interpretation was always required to solve complex clinical problems e.g. why has the patient suffered a deterioration in heart failure after pacemaker implantation? There are many possible reasons and the solution is found in the analysis of data stored in the pacemaker memory together with various testing methodologies. Then selection of the best pacemaker parameters to improve the clinical state of that individual patient (selection of the wrong parameters for a specific patient could worsen their condition which in certain conditions could cause death)".

153. The respondent did not accept that the claimant was solving complex clinical problems in the reference period.

154. The job description completed by the claimant describes how a particular problem might be approached and dealt with without necessarily stating that the claimant did this, or if she did how often.

155. There is no evidence that the claimant was regularly carrying out such skills and no patient notes to the effect that she did. As the claimant would not appear to have been the responsible heart physiologist, we are unable to find that the claimant was responsible for solving complex problems in the reference period and maintain our finding for the respondent.

Section 5: Teamwork, leadership and supervision received. Section 5(a): Leadership and supervision received – Teamwork. No. 100(36)

156. According to the claimant, "A patient with a heart rhythm problem may collapse and be brought into hospital. He would be on the cardiac monitoring unit. Nurses would care for him there; a doctor would request an ECG to get detailed information regarding heart rhythm, we would provide this, data would be collected and analysed by one of my Cardiac Physiologists. They would bring it to me if it appeared very life threatening. I would confirm their interpretation and communicate with the ward staff, I would possibly also discuss with a consultant so that a prompt decision could be made on required treatment. It was very much a team effort".

157. The respondent did not accept that cardiac physiologists would bring ECG data to the claimant if it appeared very life threatening etc. We agreed with the respondent on this.

158. On reconsideration it is pointed out to us that Professor Ray accepted that the claimant's claim is something that could have occurred and was not implausible and

Janet Fallon agreed that this could easily have happened. On the basis of this evidence on reconsideration we find for the claimant.

Section 5: Teamwork, leadership and supervision received. Section 5(b): Leadership and supervision given. No. 101(36)

159. According to the claimant, monthly on-call and weekly duty rosters would be drawn up by team leaders then she would sign them off.

160. We found for the respondent here. In the application for reconsideration the claimant asks that the Tribunal's findings be refined to reflect the acceptance of Ms Fallon that the claimant might make changes if circumstances required. Each Tribunal member has examined their notes and is unable to find any reference to questions on this topic to Ms Fallon, therefore we are not able to refine our finding.

Section 5: Teamwork, leadership and supervision received. Section 5(b): Leadership and supervision given. No. 102(37)

161. Here our finding was "C, but very rarely". The claimant suggests that she received calls for assistance out of hours approximately three times a month and attended the hospital out of hours approximately once per month. In our judgment this is consistent with our finding that such matters happen very rarely.

Section 6: Accountability and Responsibility: Care of Others. No. 104(38)

162. The question here seems to be whether the claimant was autonomously responsible for care of all patients undergoing cardiac investigation. We found that she was not. We accept that the claimant as manager of the department held responsibility although care was provided by others within the department.

Section 6: Accountability and Responsibility: Involvement in the registration, inspection or quality assurance of facilities/service for patients. No. 107(40)

163. This relates to formal peer reviews. We agreed with the respondent who did not accept that the claimant was commissioned by the BCS to perform formal peer reviews in the reference period and that the claimant did not do this as part of her duties in her role at the respondent.

164. Our earlier finding on this question is set out above as item number 6(3). In light of this we confirm our finding for the respondent.

Section 6: Accountability and Responsibility: Involvement in the registration, inspection or quality assurance of facilities/service for patients. No. 108(40)

165. The claimant says that she was commissioned directly by NHS Trusts from around the UK to perform similar reviews and the respondent did not accept that the claimant was so commissioned. We found for the respondent. Again there is no clear corroborative evidence as to when the claimant carried out this work and there are no documents showing even the front pages of the reviews. We do not change our finding.

Section 6: Accountability and Responsibility: Direct involvement in the provision of clinical advice and clinical technical services to patients. No. 109 and 110(40)

166. The claimant in the job description says that one element of her role was involvement in direct patient care performing complex investigations and advising patients. She worked autonomously deciding when medical input was indicated. In the hospital only the Consultant Cardiologist would have as much knowledge as herself and other specialist cardiac physiologists.

167. We found for the respondent at 109 on the basis that save for possibly carrying out an occasional pacemaker check it was not accepted that the claimant in the reference period was involved in direct patient care performing complex investigations and advising patients.

168. We found for the respondent in not accepting that in the reference period the claimant had as much clinical knowledge as the Consultant Cardiologists and Senior Cardiac Physiologists.

169. We have dealt with these matters above. The claimant does not appear anywhere in the respondent's patient records as having carried out such checks and having worked autonomously. Had the claimant been working autonomously then surely she would have been the only person available to make a record in the clinical notes.

170. We have already dealt with the question of the claimant's knowledge. We found that the three team leaders had greater specialist knowledge in their individual areas which is not to detract from the claimant's broad overall general knowledge of all matters within the service. On reconsideration we do not change our finding.

Section 6: Accountability and Responsibility: Organisation and Planning: No. 114(46)

171. According to the job description the claimant arranged courses related to cardiology with other professionals. Such courses were regional as well as national (4-6 courses per year).

172. We agreed with the respondent, particularly in the period leading up to 2009, that it was not accepted that the claimant had done this.

173. The claimant's witness statement in relation to arranging courses says that the frequency fluctuated and her best recollection was 4-6 per year and that the roll-out of services to District General Hospitals was a busy time.

174. We have been referred to various documents with references to training but for instance we note in April 2006 reference to preparation for a presentation on 10 May. A presentation is not a course. There was a reference on 10 May 2006 to a "presentation network, physiologists workshop" preceded by two question marks. The last entry we are referred to had reference to a course but was "for info".

175. On a basis of a reconsideration of the evidence we do not find that in the reference period the claimant arranged 4-6 courses a year related to cardiology

regionally and nationally with other professionals. She may have arranged some courses but if so they were in the earlier years of the reference period.

Section 6: Accountability and Responsibility: Organisation and Planning: No. 115(46)

176. According to the job description the claimant arranged conferences with Heads of Cardiac Physiology Departments via the Cardiac Networks over the years of establishing new cardiac services in the North West (2000 onwards). This occurred approximately three-monthly. We agreed with the respondent in not accepting this.

177. The claimant refers to documentary evidence which supports the claimant's case and that is the "?? HOD meeting MMU on Thursday 10 July 2008 from 13:00 to 14:00". This does not give use any confidence to enable us to find that the claimant arranged this meeting and there is no further evidence of what should have been four meetings a year in the reference period. No minutes or notes of these meetings have been produced. There is no basis upon which to change our view.

Section 6: Accountability and Responsibility: Organisation and Planning: No. 118(47)

178. According to the job description, the claimant "coordinated the training required for the multi centre drug studies by acting as lead adviser to the drug company which involved delegates from across Europe being trained on courses organised by herself in the North West Heart Centre".

179. We found for the respondent, who did not accept that this is what the claimant did. Although the claimant gave clear evidence as to her involvement in her witness statement, we have considered the evidence of Professor Ray in paragraph 20 of his witness and the evidence of Judy Coombes at paragraph 66 of her statement. They are not aware of such matters. Although Keith Pearce said the claimant could well have been involved in such matters, this does not go so far as to state that she was. The claimant has produced no records of these matters which surely would have been documented. Had there been training involving delegates from across Europe on courses in the North West Heart Centre then there would have been papers presented and records of attendees. We have no doubt that the manager, Ms Coombes, would have been aware of such activity within the department had it taken place.

Section 6: Accountability and Responsibility: Organisation and Planning: No. 119(47)

180. From the job description the claimant "also worked with Higher Education Institutes, Education Commissioners, the Strategic Health Authorities and Local/National Clinical Networks to ensure that delivery of education packages was fit for purpose and funding was available to allow student [sic]".

181. The respondent asserted that quality assurance of courses and student funding were not the claimant's responsibility. We found for the respondent.

182. There is clearly a factual dispute between the parties. On the basis that the claimant has not produced any corroborating evidence in respect of her claims to have undertaken such duties or being responsible for such matters, we maintain our

finding for the respondent. Had the claimant carried out such activities as she claimed then we are in no doubt that documentation would have been available to have supported the claimant's contentions.

Section 6: Accountability and Responsibility: Organisation and Planning: No. 123(48) and (49)

183. According to the job description the claimant's role "required her to undertake long-term strategic planning responsibilities with her examples including acting as a consultant on behalf of the DOH regarding the diagnostic service provision for cardiac physiology".

184. The respondent did not accept that in the reference period the claimant was a consultant on behalf of the Department of Health and we agreed with the respondent on this, finding that the claimant had possibly been a consultee rather than a consultant for the Department of Health. The claimant's own witness statement at paragraph 124 explains that she was consulted by the DOH and therefore in such circumstances we do not change our finding on reconsideration.

Section 6: Preparation of Policies and Procedures. No. 126(b)(50)

185. On reconsideration, and noting the acceptance of the respondent, we change this from R to C.

Section 6: Preparation of Policies and Procedures. No. 128(51)

186. According to the claimant she was involved in writing a policy statement setting the standards for Cardiac Physiology and cardiology related testing facilities across the UK and establishing a national policy for echocardiography services across the NHS via a DOH project team.

187. We agreed with the respondent in not accepting that the claimant did this.

188. We are pointed to diary entries in 2006 involving the claimant attending two meetings in London, but if national policies were established we would have expected the claimant would have produced in the bundle copies of those policies and/or any notes or minutes of the meetings that she attended. In the absence of corroboration we maintain out finding for the respondent.

Section 6: Preparation of Policies and Procedures. No. 130(51)

189. According to the claimant, she had autonomous responsibility for developing policies related to the Cardiac Physiology Practice as she was the most senior professional employed by the respondent and not all areas of practice were covered by national policies (typically developed by the Professional Bodies).

190. We agreed with the respondent that the claimant did not have autonomous responsibility for writing and developing such policies.

191. On reconsideration we are prepared to change this from R to C adding the narrative that the claimant had responsibility as the Head of the Department for the

policies produced. We would have expected that in developing the policies the claimant would have had input from colleagues and possibly also from the medical staff.

Section 6: Preparation of Policies and Procedures. No. 133(53)

192. According to the claimant, she developed a policy for the scope of practice of a new role "Cardiac Physiology Assistant Practitioner" which was adopted across the NHS by the Cardiac Networks. She was invited to present a paper on the role at a DOH meeting…

193. We agreed with the respondent in not accepting that the claimant did develop such a policy.

194. We note the evidence of Keith Pearce and Andrea Arnold to the effect that the policy was created and adopted before the reference period. We accept this evidence and maintain our finding for the respondent. Had the claimant produced a copy of the policy with an inception date then our view might have been different.

Section 6: Preparation of Policies and Procedures. No. 135(56)

195. According to the job description the claimant "was asked to review policies and to propose changes to policies used in other departments and other institutions such as nurse led pre-op ECG policy in the respondent and for South Manchester Primary Care Trust and for a stress echo policy for Bury and a physiology led policy for Salford Royal".

196. We found in agreement with the respondent that it was not accepted that the claimant was required as part of her role to propose changes to policies and procedures external to the respondent.

197. On reconsidering this matter, looking at the evidence of Keith Pearce and Professor Ray, we conclude that the claimant was asked to review policies whilst not finding that she was required as part of her role to do this. The claimant in our view could have refused such an invitation.

Section 6: Provision of Advice. No. 136(56)

198. According to the claimant, she acted as sole lead expert for Cardiac Physiology within the respondent and across both WYH and WHC. She was recognised as one of the UK's leading experts in cardiac physiology.

199. We agreed with the respondent that the claimant was not the sole lead expert for cardiac physiology within the respondent over the reference period and we did not accept that she was recognised as one of the UK's leading experts in cardiac physiology.

200. With regard to the latter point, being recognised as a leading expert does not in our judgment relate to a job description. This is a particular characteristic of the person holding the post.

201. Whilst the claimant led the department, we do not find that she was the "sole lead expert for ensuring highest quality of staff to meet service needs". The claimant had three leads who were greater experts in their individual fields in our judgment than was the claimant with her overview. On reconsideration we do not change our finding.

Section 6: Provision of Advice. No. 137(56)

202. According to the claimant, 1-2 times per year she acted as a consultant trainer and assessor for clinical trials conducted in centres in the UK and Europe.

203. We agreed with the respondent in not accepting this.

204. Whilst Mr Pearce accepted that this was something that the claimant could have done without him knowing about it, we are again faced with an assertion by the claimant and a lack of corroborative evidence. If the claimant acted as she claims to have done then in our judgment there would have been documentary evidence to support it. Nothing was provided. On reconsideration we maintain our finding for the respondent.

Section 6: Provision of Advice. No. 138(56)

205. According to the claimant, she advised doctors of all grades from outside of the respondent on cardiac physiology related matters and also on career choices.

206. By way of narrative we note from the claimant's witness statement that she refers to doing this "on many occasions" without giving more specific examples of how many times a year or when it was done. On reconsideration we accept that the claimant may well have spoken to professional colleagues but we remind ourselves of paragraphs 60 and 61 of our Judgment, noting that it was more likely that she would be consulted by her generation of medical staff rather than the next generation.

Section 6: Provision of Advice. No. 141(57)

207. According to the job description, the claimant was called to review to Cardiac Physiology Services around the UK on behalf of the respondent's managers to inform proposals for service developments and/or to assist in staffing issues, by way of example, at Torbay and Barnsley, Leeds.

208. The respondent does not accept that she did and we agreed with the respondent.

209. We have dealt above with the question of the claimant undertaking reviews and we maintain our finding for the respondent, particularly given the lack of any corroborative evidence that such reviews were undertaken.

Section 6: Provision of Advice. No. 143(57)

210. The claimant acted as external expert on panels for cardiac physiology interviews 2-3 times per year. This included interviewing for Cardiac Physiology Service Managers including at hospitals in Salford, Liverpool and Leeds.

211. We did not accept that the claimant did this but on reconsideration we note that in her original job description this task was provided for and so we find in favour of the claimant. We cannot reach any conclusion as to the frequency with which the claimant carried out this activity.

Section 6: Provision of Advice. No. 144(57)

212. The claimant says that she worked on behalf of the SCST and the Cardiologists Professional Body, the BCS, as expert adviser for the official (DOH sanction) reviews of cardiac centres. This required site visits, staff interviews and production of formal written reports with recommendations.

213. We agreed with the respondent in not accepting that the claimant did this. On reconsideration we maintain this view because here the claimant has referred to the production of formal written reports with recommendations yet no such reports have been provided in support of the claimant's contention. We do not change our finding.

Section 6: Quality. No. 147 and 148 (58)

214. According to the claimant, she was responsible for service provided by the Cardiac Physiologists and the cardiology admin staff at both sites and for the quality assurance of these functions, also for the quality of the technical facilities within the Cardiac Investigation Units at both sites. This required her to develop systems for monitoring quality of service, for example:

(i) Having a rolling internal clinical audit programme supplemented by additional audit following introduction of a new ways of working e.g. audit of echocardiogram reports three month and six month following introduction of cardiac physiologist-led echo reporting; and

(ii) Establishing sub-speciality team meetings (e.g. pacing team), critically reviewing complex cases, sharing opinions, supplementing education when indicated, reviewing activity and work practices, making organisational changes as required, etc.

215. It was the contention of the respondent that all services were required to participate in the respondent’s audit programme which was a Trust programme and not the claimant's own initiative. The claimant did not implement in the reference period an additional audit programme following introduction of cardiac physiologist-led echo reporting.

216. On reconsideration by way of narrative and looking at the evidence of Keith Pearce in paragraph 54, we accept that when new services were introduced the claimant would have been involved in the setting up of an appropriate audit

programme, however after the first 12 months this would have become part of the regular ongoing clinical audit.

Section 6: Quality. No. 149(59)

217. According to the claimant, she was "responsible for formulation of action plans for improvements to service on an ongoing basis, five yearly in theory but because her role was in a rapidly evolving clinical service ad hoc developments mid-term were commonplace including those indicated by clinical audit…".

218. According to the respondent five yearly action plans were a requirement of the Trust Board with all managers expected to contribute. It was a Trust programme and not the claimant's initiative.

219. On reconsideration we find for the claimant as to being the person responsible for formulating the actions plans. The plans themselves were a requirement of the Trust.

Section 6: Quality. No. 151(62)

220. According to the claimant she negotiated with other members of the multidisciplinary team around service issues and caseload management, primarily matching staff provision with clinical requirement, engaging outside agencies as necessary.

221. According to the claimant, what this really means is that the claimant would arrange for the attendance of locums if there was insufficient staffing. This is stated in her witness statement to the effect that she would arrange such matters herself.

222. The respondent saw it as a matter of rostering staff.

223. On reconsideration we find that the bringing in of locums was a matter that would have involved the incurring of expenditure and so we are prepared to accept that the claimant would have made such arrangements in the capacity of the leader of the department.

Section 6: Staff. No. 156(64)

224. According to the claimant, she worked autonomously in developing plans for staff retention.

225. We agreed with the respondent that plans for staff retention required input/approval from the directorate manager and HR and that the claimant was not autonomous in developing staff retention plans.

226. For the purpose of reconsideration the claimant contends that the small point is that the claimant had to devise and develop how Cardiac Physiologists were to be retained, that was not something on which HR could give useful input. The claimant they submit worked on that on her own i.e. autonomously.

227. Judy Coombes, in her untested evidence, at paragraph 82 suggests that she would have been involved in such matters as would HR. We find that although the

claimant may have made proposals that they would have been discussed with her manager and HR before any plans were agreed. We maintain our finding for the respondent.

Section 6: Training/Mentoring/Teaching. No. 157(a) and (b) on (64)

228. According to the claimant, the delivery of training and teaching was a significant responsibility. She worked autonomously as Lead Cardiac Physiology Professional.

229. The view of the respondent was that it did not accept in the reference period the claimant had significant responsibility for delivering training and teaching.

230. Dealing with this matter in a narrative way, we accept that as the Head of Department the claimant was responsible for the delivery of training and teaching which is divorced from any finding as to who delivered such training and teaching. We therefore on reconsideration find the claimant did have that responsibility.

231. At item (3) under 157 the respondent stated that whilst the claimant had overall responsibility as the department manager, in the reference period, save for some theoretical teaching on the North West Echo Night School at the beginning of the reference period, she did not organise and deliver training.

232. On reconsideration we are prepared to accept that the claimant did deliver some training during the reference period but we are unable, on the evidence, to make any specific findings as to the extent to which the claimant was involved in the giving of training.

Section 6: Training/Mentoring/Teaching. No. 160(64)

233. According to the claimant, she identified the training needs of individuals and professional groups within the organisation and determined the most appropriate formal or informal training required to meet their needs.

234. We agreed with the respondent in not accepting that the claimant did this.

235. On reconsideration in keeping with our previous findings we are not able to accept the claimant's contentions given the lack of any evidence of training being given. In our judgment if training was given to a member of staff then it would have been done formally and there would be documentation there to support that, whether in the form of content, course notes or the training records of individuals who received the training.

Section 6: Training/Mentoring/Teaching. No. 161(65)

236. The respondent agrees with the claimant’s suggestion that this is a typographical error and we therefore on reconsideration change this from R to C.

Section 6: Training/Mentoring/Teaching. No. 162(66)

237. According to the claimant, she originated the development of the North West Heart Centre as the “clinical training centre for Cardiac Physiology” in the North

West. This required providing employment for the undergraduate clinical tutor and providing her with relevant CPD opportunities, as well as providing mentorship. The claimant supported the tutor in her role by lecturing on the specialist clinical blocks held in each year of the four year BSc Clinical Physiology degree course – which equated to 12 blocks per year and by sourcing other specialist lecturers from around the UK. "I also provided in service training placements within my service and assisted the tutor in identifying clinical placements in other cardiac departments in the North West".

238. Ms Coombes in her witness statement does accept that the claimant was instrumental in developing the Trust's strong reputation although she does not accept that the claimant originated the development of the North West Heart Centre as the clinical training centre for Cardiac Physiology. According to Ms Coombes, other cardiac centres within the North West also train cardiac physiologists.

239. The respondent did provide training but it was not the only one in the North West.

240. The extent to which the claimant taught on the BSc course is accepted by the claimant to have reduced over the years. We are unable to make any findings of fact as to the extent to which the claimant taught on the BSc course or how long this would have taken her in any particular year.

241. As to the other items of training the claimant claims to have done, again we have no evidence of the training and who provided it. If this training amounted to CPD for those who were trained then such evidence should have been available.

Section 6: Training/Mentoring/Teaching. No. 168(a)-(d)(69)

242. The claimant says that she provided training for:

(a) A wide range of healthcare professionals around the UK on all aspects of clinical cardiac physiology;

(b) To senior clinicians and managers at national conferences in Cardiac Physiology Service requirements, staffing numbers and grades and equipment requirements;

(c) Trainees on the BSc Clinical Physiology course at MMU and post graduates on the MSc Cardiac Physiology degree course;

(d) Medical industry on clinical requirements of echo and device follow-up services – generating income for the respondent.

243. We accepted the position of the respondent that the claimant did not over the reference period train the wide range of healthcare professionals around the UK etc.

244. On reconsideration we note from the evidence of Ms Coombes that she did not recall the claimant teaching or lecturing regularly around the UK. Had the claimant been doing it regularly she would have known about it as the claimant would have been regularly absent from work. Her recollection is that the claimant

was rarely out. The claimant claims that some of this work was income generating. The claimant has not produced any documentation to corroborate the carrying out of this training or the receipt of any income as a result of it, so again for lack of any corroborative evidence we do not accept that the claimant carried out such training.

Section 6: Tools/Equipment/Materials. No. 173(70)

245. According to the claimant, she negotiated the purchase of major capital equipment. She had authority under call off order to purchase medical consumables and medical equipment up to a value of approximately £90,000 per annum for each product type.

246. The respondent's position is that in the reference period high value call off orders were authorised at the outset by the Director of Finance and the claimant was authorised to call off products against that previously authorised order. £90,000 was not a ceiling limit above which formal tender processes were required and below which they were not. The claimant did not have personal sign off authority up to £90,000. The claimant did not have sole responsibility for establishing framework agreements for purchases in her department.

247. The claimant submits there is a dispute of evidence and refers us to the evidence of Judy Coombes at 27 and 28. According to Ms Coombes the claimant would be involved in negotiations about purchasing agreements. She would talk to companies about purchase of major capital equipment but the actual authorisation of the purchase, the formal procurement process, was done through the Trust's Purchasing and Supplies Department. The sign-off of anything at the value of £90,000 would have been with the Director of Finance. High value call off orders were authorised at the outset by the director with the claimant being authorised to call off products against the previously authorised order. £90,000 was not a ceiling limit above which formal tender processes were required and below which they were not. The claimant did not have personal sign-off authority up to £90,000. The claimant's limit on purchasing was just a few thousand. The claimant did not establish framework agreements for purchasing. This was done by the Supplies Department. Purely financial factors such as cashflow and technical accounting details would also be part of the purchasing process and this was wholly outside of the claimant's remit.

248. Looking at this by way of narrative, we agree with the claimant, and with Judy Coombes, that the claimant had authority under a pre-existing call off order to purchase medical consumables and/or equipment within the limit specified in the call off order. We remain of the view that the formal tender process involved in the purchasing of equipment would have been undertaken by the Trust's appropriate department and not by the claimant herself.

Section 6: Tools/Equipment/Materials. No. 174(70)

249. The claimant states that on occasions products were required for urgent patient treatment, this would result in great stress when a cardiologist was demanding immediate purchase so the patient could be cared for appropriately, but the claimant knew proceeding with the purchase would be in breach of the respondent's standing financial instructions. Ms Coombes was not always

immediately available to help with these matters and she had to take a decision on average 2-3 times a year in respect of such matters.

250. We accepted the position of the respondent. On reconsideration we again point to the lack of any corroborative evidence from the claimant. In our judgment had the claimant been in breach of the respondent's standing financial instructions then there would have been a paper trail showing communication from the consultant as to the need for the particular piece of equipment within a short timescale and a report from the claimant to her manager showing that she had breached standing financial instructions and the reason why. In such circumstances we do not, on reconsideration, change our response.

Section 6: Tools/Equipment/Materials. No. 175(70)

251. According to the claimant, she was responsible for electrical safety checking on all cardiac test equipment following purchase and prior to use, thereafter on an annual basis. Most equipment was maintained by the suppliers under service contracts. However, some minor equipment was maintained by the respondent's Medical Electronics Team. The claimant says that she performed minor repairs such as replacing a broken lead on an ECG patient cable and un-gelling a printer on an echo machine and maintained and installed equipment and carried out software updates on disc that she or her staff had to install on the appropriate equipment. She was ultimately responsible for ensuring that accuracy standards were met for all pieces of equipment used in the service.

252. By way of narrative, we accept that as Head of the department the claimant would have had ultimate responsibility for the equipment but given the nature of it it is our judgment that the respondent's Medical Electronics Team would have been the people involved in carrying out any work on such equipment.

253. As to updating of software on equipment, given the highly regulated atmosphere in which the claimant was working, again we would have expected that there would have been a document confirming that a software upgrade had been installed, when and by whom. For these reasons we maintain our finding in favour of the respondent.

Section 7: Relations/Contacts. No. 177(72)

254. The claimant says that she had face to face contact on the wards, in the office, email and telephone with the cardiac physiology and cardiology secretarial teams. When in our response to this we said "C does not claim to have worked on the wards on a routine basis" our finding was that the claimant did have daily contact with the secretarial teams and that on occasion this might have been on the wards, although in saying this we note that the claimant was not regularly rostered to work on the wards and indeed when the wards moved downstairs in 2008 the claimant did not move down with them.

Section 7: Relations/Contacts. No. 179(72)

255. According to the claimant, this relates to the cardiac physiology and cardiology secretarial teams and she would negotiate to work overtime to assist with

meeting waiting list targets, providing training in cardiac physiology and use of complex equipment.

256. We found for the respondent in not accepting this. Looking at the claimant's witness statement, paragraph 179, she does not appear to refer to reassuring the secretarial staff in relation to patient death. There is a reference in the statement to staff shortages in the secretariat which on a narrative basis we find the claimant would have been responsible for dealing with.

Section 7: Relations/Contacts. No. 180(72)

257. The claimant maintains that with regard to the wider cardiology team, doctors, consultants, radiographers and nurses, she would estimate she was in contact with them five times a day and that face to face contact was on wards, in the office, email and telephone.

258. The respondent did not accept that in the reference period the claimant worked on the wards. We found in favour of the respondent adding “C not rostered to work on wards”. In our judgment what is important here is that the claimant had contact with the wider team rather than where it took place.

Section 7: Relations/Contacts. No. 181(72)

259. According to the claimant, her contact with the wider cardiology team was in respect of advice on the performance of their functions, interpretation of data, patient complaint and also organisational issues or changes, for example if a doctor wants to add a new clinic and/or make changes in work practices.

260. We agreed with the respondent that it was not the claimant's role to advise junior doctors, consultants, radiographers and nurses on the performance of their functions and she had no responsibility for it. It is not accepted that the claimant advised junior doctors, consultants, radiographers and nurses on the performance of their functions.

261. Whilst remaining content with our finding that it was not the claimant's role to advise junior doctors, consultants, radiographers and nurses on the performance of their functions, as they were not under her management or control, following reconsideration of the evidence of Keith Pearce we accept that the claimant may have been of assistance to people up to five times a day whilst within the department but not necessarily on the wards.

Section 7: Relations/Contacts. No. 182(72)

262. Looking at the way in which a paragraph in the job description is split between 181 and 182, it would appear that when setting out the narrative for 181 this probably should have finished after “patient complaint” leaving the balance as item 182.

263. We agreed with the respondent in not accepting that in the reference period the claimant had the level/type of contact stipulated as regards interpretation of data/clinical matters, patient complaints, organisational issues or changes for example adding new clinics or changing work practices.

264. Whatever contact the claimant may have had we think it more likely that, save in respect of the doctors who gave evidence for the claimant, the three leaders would have been point of contact. The claimant would have been the ultimate person to deal with patient complaints and in our judgments questions of adding new clinics or changing working practices would have been raised at meetings rather than in a chance encounter within the department.

IT Team: 5(73)

265. Page 73 of the claimant's job description is not properly formatted in the fourth column with the reasons for contacting the IT Team being shown as a continuation of the reasons for contacting the Finance Team

266. According to the job description, if we have understood it correctly, the claimant was in contact with the IT team once a week by telephone/email in respect of IT issues, giving as an example that together with the IT team she developed a system for inputting clinical data for pacemaker and ICD follow up.

267. The claimant in her witness statement gives half a page of narrative on her relationship with IT in which she does not suggest she was employed as a systems designer/developer but she worked collaboratively with the IT team to develop systems suitable for local practice.

268. The claimant's reconsideration document refers to the claimant having contact with the IT Team perhaps once every three months. For reasons of formatting we think that this is the frequency claimed for meetings with Finance.

269. From this confusion we deduce that the claimant liaised as necessary with the IT Team. Paragraph 182 5) of the claimant's witness statement seems to be largely historical with no dates being provided so we cannot find that the claimant developed new systems in the reference period.

Research and Development Team (73)

270. By way of clarification, we note the claimant's claim to have received the cardiology alerts from the Clinical Risk team and that Keith Pearce confirms this. We accept that this happened.

Section 7: Management Team WCH

271. On reconsidering we note that we agreed with the respondent that it was not accepted that in the reference period the claimant attended meetings at WCH with any frequency, but upon reconsideration we note that the claimant does not claim to have attended meetings at WCH. If the claimant had a face to face meeting with her management team then it could either have been at WCH or in the claimant's own office. On the basis that no frequency is claimed for these meetings we reconsider this and find in favour of the claimant.

11 Patients and Families

272. The claimant claims that several times daily she had contact with patients and families face to face and on the phone, on the ward, coming into the department and also patients at home who were struggling.

273. The respondent did not accept that in the reference period the claimant had daily contact with patients and families, face to face, on the phone, on the ward, in the department or at their homes, and we agreed with this. On reconsideration we note that the claimant is referring to daily contact with patients and families but the way in which it is worded does not necessarily suggest that each day involved any physical contact, or if it did whether it was on the ward, in the department or elsewhere. By way of narrative, therefore, we accept that the claimant had contact with patients and families, but as to how regular it was and the nature of that contact we are unable to reach any conclusion.

Section 7: Contact with Patients and Families

274. This is a further reference to contact with patients and families but this time in relation to the claimant discussing and explaining procedures and test results with patients.

275. We found for the respondent save in respect of the post implant checks carried out by the claimant, and we maintain this finding particularly given the lack of any trace on the respondent's clinical recording system of any entries by the claimant.

Section 7: Contact with Patients and Families (74)

276. The respondent did not accept that in the reference period the claimant carried out any pacemaker checks with any frequency. We agreed with the respondent. Given the lack of records it is not possible to establish the frequency with which the claimant carried out pacemaker checks.

Section 7: Contact with Patients and Families

277. The next item in section 7 under contact with patients and families seems to relate to whether the claimant was a go to person for advice on data interpretation in relation to junior staff rather than patients and families. We therefore on reconsideration conclude that this point is in the wrong place as it does not relate to patients and families.

Section 7: Contact with Patients and Families

278. The claimant says that she would on occasion receive calls from patients to say their heart was racing and she would talk to them to determine if they needed urgent treatment. She would then make arrangements for them to come to hospital.

279. The respondent was of the view that it was not the claimant's responsibility to determine whether patients needed urgent treatment and it does not accept that

such determinations were made. In the reference period the claimant had no authority to arrange for a patient's admission and it is not accepted that she did so.

280. We agreed with the respondent. The claimant suggests that she had some involvement as stated in her witness statement sufficient to generate contact with patients and families as she suggests.

281. On reconsideration we accept that if she did speak to a patient by telephone she may well have advised them to come in for urgent attention but this did not amount to admitting them.

12 Medical Students(75)

282. According to the claimant, she estimated that approximately once a month she would have contact with a medical student or group of students which could be as short as a 15 minute talk "about where/when we practice particular investigations/procedures… Or could be for 2-3 hours when medical students attended for (informal) tutorials on one or more cardiac physiology investigations/procedures." This could be by telephone, email or face to face.

283. The respondent did not accept that approximately once a month in the reference period the claimant had contact for 2-3 hours with medical students attending for tutorials, and we agreed with this. According to the claimant, the respondent objects to something the claimant did not say.

284. The claimant's wording does say that she could be in contact with medical students attending for informal tutorials for 2-3 hours approximately once a month. The respondent therefore in our judgment does not object to something the claimant does say. We maintain our finding for the respondent.

Medical Students

285. The respondent does not accept that in the reference period the claimant lectured to medical students or mentored medical students.

286. The Tribunal has accepted that the claimant mentored students on an ad hoc basis but we did not accept that she was formally appointed as a mentor to anyone. Keith Pearce accepted that the claimant did lecture students but the extent to which she did this is not something that we can make any finding on. We therefore accept on the basis of Keith Pearce's evidence that the claimant did lecture students but we are not satisfied that this was done with any regularity or frequency.

287. In her narrative relating to the non-clinical staff the claimant made reference to being a consultant with the Department of Health and we found that she was not a consultant but a consultee. According to the claimant that still does not detract from her claimed contact with non-clinical staff which she would ask for it to be noted. It must be right that the claimant did have regular contact with the non-clinical staff in her department.

Contacts: Other Departments and Hospitals (76)

288. The claimant refers to contact with other hospital staff 4-5 times a week at the time of the District General Hospital Catheter Laboratory Developments detailed above.

289. It was the view of the respondent that such developments were not in the reference period and it was not accepted the claimant had contact with other hospital staff 4-5 times a week over the reference period. On reconsideration we change our finding to one for the claimant on the basis that the DGH developments continued into the reference period.

Contacts: Other Departments and Hospitals

290. The claimant refers to contact with mortuary technicians or pathologists enquiring about the removal and disposal of implanted devices post mortem. We found but for the respondent but on reconsideration must accept that the claimant would have had such calls.

Contacts: Higher Education Institutes, Senior Lecturers etc. (76)

291. The claimant claims contact which varied from 2-3 times a week to once a month depending on the time of the academic year. We found for the respondent who did not accept that in the reference period the claimant had the frequency of contact via meetings at MMU/Salford University.

292. On reconsideration it is correct that the claimant does not specify that contact was all by meeting. We must accept this. The amount of contact does not appear unreasonable therefore we find on reconsideration for the claimant.

293. We agreed with the respondent in not accepting that in the reference period the claimant designed courses for cardiac physiology mandatory and post basic education, reviewed exam results and advised on degree awards.

294. We maintain our finding that this was above and beyond the claimant's involvement with MMU, particularly in the later years under consideration.

Section 8: Physical demands and coordination (78)

295. We did not find that once every two months the claimant was called upon to work in a constrained/awkward position for 30-60 minutes a time. We have however accepted that the claimant may have carried out the occasional pacemaker check in the Cath Lab recovery area. We would not have thought a recovery area would have involved ventilators, monitors and dialysis equipment. We do not therefore feel it appropriate to change our finding for the respondent.

Section 8: Driving (79)

296. Having previously found for the respondent that the claimant did not drive with the frequency stipulated, which was 1-2 times per week for anything from 20 minutes to five or six hours, on reconsideration we accept that the claimant may have

undertaken some driving during the course of her employment but that this would have reduced over the reference period. Subject to this narrative we change our conclusion on reconsideration from R to C.

Section 8: Lifting (79)

297. The claimant claims that two times a week she lifted people or equipment as required to transfer the patient or the equipment. It would involve less than a minute's lifting.

298. We found for the respondent in this on the basis that as previously set out we do not accept that the claimant actually lifted patients. The claimant may have assisted patients or moved bits of IT equipment but these would either have been portable or wheeled if large or heavy. Subject to this narrative we maintain our finding for the respondent.

Section: Manual dexterity and use of tools (79)

299. The finding was for the respondent but the claimant asks the Tribunal to clarify whether it is our judgment that the claimant did not undertake the clinical activities referenced but simply that they were undertaken with only limited frequency.

300. We have looked at the job description where the claimant claims to have carried out pacemaker ICD evaluations and to have programmed pacemakers and ICDs. On reconsideration we accept that this may have been done by the claimant occasionally.

Section 8: Smell (79)

301. We agreed with the respondent that the claimant would not have had to smell unpleasant odours from socially deprived or unkempt patients with personal hygiene problems 1-2 times a week. By way of narrative we have found that the claimant carried out occasional checks but given the very limited number of patients she dealt with she would have been unlucky to have carried these out on patients with personal hygiene problems. We do not change this response on the basis that we do not accept the frequency of smells suggested by the claimant.

Section 8: Standing (79)

302. According to the claimant, 3-4 times per week than latterly 1-2 times per week she stood for 10-60 minutes per procedure to check a pacemaker.

303. On reconsideration we must accept that when the claimant carried out such checks she would have been standing over the patient but we are unable to make any finding as to the frequency of the activity particularly given the lack of any medical records featuring the claimant.

Section 8: Touch (80)

304. We found here for the respondent in relation to the claimant's claims that she would touch patients 3-4 times a week then latterly 1-2 times per day for 10-60 minutes per week. In keeping with the previous paragraph, we find in favour of the claimant having the need to touch patients but with no finding as to the frequency or duration.

Section 8: Visual (80)

305. The claimant claimed that on a daily basis for 2-9 hours per day she would use VDUs in order to write reports, data collect, analyse data and prepare presentations. To check devices. There were no specialist visual demands but normal vision was required to promptly visualise clinical data e.g. on pacemaker/ICD programmer monitors, also to sustain long hours using computer monitors to type policy/procedure/business case/complaints/training and other lengthy documents.

306. Although we found for the respondent on the basis that it was not accepted that the claimant checked devices on a daily basis, on reconsideration we accept that this “Visual” category would encompass a normal day’s work using a computer and screen and the reading of paper documents and so we must change our finding to one in favour of the claimant.

Section 8: Sit (80)

307. On reconsideration we accept that the claimant sat at her desk on a daily basis and thus change our finding to one in her favour.

Section 8: Bend, kneel, stretch and crouch (80)

308. We did not accept that the claimant would bend, kneel, stretch and crouch each day to check equipment, plug in or attach leads and retrieve consumables and patient records.

309. On reconsideration we do not find that the claimant was working with equipment five days a week. It may be, however, that she had to kneel to retrieve consumables or patient records. This narrative finding can therefore be substituted for the finding completely in favour of the respondent.

Section 8: Bodily fluids (blood, saliva and on occasion semen)

310. We found for the respondent, not accepting that the claimant personally dealt with such matters, and we have concluded that it was rare that the claimant was dealing with patients in any event. We note the evidence of Keith Pearce that his during his work with patients day in/day out such issues involved probably less than 1% of the patients. Given the number of patients the claimant saw we conclude that it is highly unlikely that she would have been troubled by such matters.

Section 8: Sensory (81)

311. Without stating any frequency, not even occasionally, the claimant said that she would identify subtle changes in patient breathing whilst performing tests. Acute hearing ability and high level of concentration when working in close proximity with cardiologists during high risk manipulations of implanted devices and giving urgent, complex instructions in a soft voice.

312. We found for the respondent on the basis that the claimant was performing very few tests and we are not satisfied that in the reference period the claimant was working with cardiologists during high risk manipulations of implanted devices, etc. We maintain our finding for the respondent.

Section 9: Mental demands – Memory (81)

313. The claimant said that memory was used all day, every day, for all elements of the role "detailed below". "Detailed below" was a large list of items including dealing with equipment and patients.

314. We found against the claimant on the basis that we did not accept that she did all of the work "set out below", but by way of narrative we must accept that the claimant needed to use her memory during the course of her daily work.

Section 9: Mental Demands - Alertness and concentration (81-82)

315. For the reasons given above in respect of memory, we find that it was necessary for the claimant to remain alert and to concentrate during the course of her day's work, but we do not accept that in working she carried out all of the tasks set out on pages 81-82.

Section 9: Mental demands – Deadlines (82)

316. The claimant set out that she had deadlines for completion of business activity/reports, course programmes, lectures, exam questions, marking, reports on service reviews, then patient investigations, research analysis and reports.

317. On reconsideration we must accept that as manager of the department the claimant would have had deadlines for completion of business/activity reports set by the Trust's management and deadlines based on targets set by regulators and/or the Department of Health. We do not accept, particularly, latterly, that the claimant was subject to deadlines for completion of course programmes, lectures, exam questions and marking.

318. On the basis of this narrative we change from R to C.

Section 9: Mental demands – Interruptions (83)

319. The claimant claims to have been interrupted frequently and some days she was subjected to2-3 interruptions every hour. The claimant gives a large narrative paragraph dealing with interruptions from cardiac physiologists, cardiology secretaries/clerical staff, physiologists, business managers, patients and doctors.

320. We found for the respondent save in respect of interruptions from the doctors who gave evidence to the effect that they would go to the claimant if they wished to discuss matters with her.

321. By way of narrative we accept that the claimant would have been contacted by the secretarial team and possibly by members of the public. We do not find that she would have been troubled on a regular basis by the medical staff as the team leads were their go-to people. By way of narrative, therefore, we accept that the claimant was disturbed by people other than certain doctors. This moves the finding from the respondent to the claimant but not to the extent claimed in the job description.

Section 10: Working conditions and emotional demands – working location (85)

322. The claimant claims to have spent 80% of her time in the Cardiac Investigation Unit, part of the Department of Cardiology at WYH (office). 5% of the time in the Cardiac Investigation Unit at the WCH (office). Another 5% in CRU, wards, Outpatient Departments at both WYH and WCH (clinical rooms). The final 10% was external sites, universities, other hospitals meeting rooms, lecture theatres, etc. Finally the claimant records that she worked at home for a minimum of five hours a week extra to her contracted hours.

323. We found in favour of the respondent, noting that the claimant's external visits reduced in the reference period.

324. On reconsideration we conclude that the majority of the time was spent by the claimant in her upstairs office and given our finding as to the limited extent of the clinical work undertaken by the claimant we do not accept that she spent as much time as she claims on the wards. We have noted that external visits were reduced over the time period. We do not on reconsideration change our finding which as the respondent suggests is based on the evidence as a whole.

Section 10: Working conditions and emotional demands – dirt (85)

325. The claimant claims that infrequently 2-3 times per year then latterly 1-2 times per year for approximately 15 minutes on each occasion she was required to deal with faeces and vomit as well as infectious material. She goes on to add a description as to how this came about.

326. Given the limited extent of the claimant's clinical duties we do not find that this would have been the case. In reaching this conclusion we are supported by the evidence of Keith Pearce at paragraph 70. We maintain our finding for the respondent.

Section 10: Working conditions and emotional demands – infection

327. The claimant writes that the theoretically she was at risk of infection each time she made contact with a patient where there is a higher risk or transmission of infection than with contact with the general public, but she did not know how much higher the risk was in real terms. It happened rarely, 2-3 times a year where she

made contact with patients with known infections where risk of transmission was clearly greater.

328. We found for the respondent. On reconsideration given the limited contact the claimant had with patients we are not satisfied that her degree of exposure to infection was different from that of any other member of the Trust's staff save obviously for those involved with infectious patients on a regular basis.

Section 10: Working conditions and emotional demands – odours (87)

329. According to the claimant, several times a week then latterly 1-2 times a week she would be exposed to patients with personal hygiene problems for 10-60 minutes. The claimant includes a reference to visiting patients on the ward.

330. We found in favour of the respondent on the basis that in the reference period the claimant did not visit the wards to perform tests. The comments made above in respect of smells, rather than odours, can also be considered under this heading. We do not change our finding.

Section 10: Working conditions and emotional demands – toxic elements

331. The claimant claims that she was called into the catheter laboratories (x-ray rooms) to help in programming a pacemaker or ICD which could take 10-30 minutes. She was also called into the catheter laboratory to advise a doctor on the choice of device or to deal with a disagreement with the cardiac physiologist.

332. We found for the respondent in this case. The claimant did not have a film badge such as was required to be used by those working with x-rays. The claimant accepted that she only went into the catheter laboratories when the x-ray equipment was not operating, and therefore we do not find that she was exposed to toxic elements. We maintain our finding in favour of the respondent.

Section 10: Working conditions and emotional demands – waste (88)

333. The claimant claims that 2-3 times for approximately 15 minutes she would be in contact with human waste and also that she had handled explanted pacemakers and ICDs received from the mortuary for return to the manufacturer for testing.

334. We agreed with the respondent that the claimant was not required to deal with human waste with the frequency stipulated or that she would have dealt with it personally.

335. We have dealt above with the question of human waste, therefore the same comments apply.

336. As to returned pacemakers, if handled by the claimant then they must by definition have been waste because they were not to be used again.

Section 10: Working conditions and emotional demands – antisocial behaviour (88)

337. For four times a year with a jurisdiction of 10-60 minutes the claimant was exposed to antisocial behaviour in relation to difficult or challenging patients or

families or when communicating unwelcome news. Cardiac disease is common in the elderly where dementia is also common. She was required to inform patients that may need to wait for assessment due to long waiting list constraints which could lead to confrontation, and she had to inform ICD patients who had been discharged that the DVLA required them to refrain from driving for at least six months. Some prisoners from Styal undergoing cardiac services could be challenging.

338. The evidence of Keith Pearce was to the effect that cardiac physiologists do not communicate lifechanging events and DVLA requirements. That is the job of the doctor. Prisoners come with prison officers and would be in attendance other than in the catheter lab where the prison officer would stand outside. In recovery the patient would sometimes be handcuffed to the bed and the prison officer would be there. Mr Pearce had not experienced any abusive behaviour from prisoners.

339. In cross examination he said that if a patient asked about DVLA requirements he would say that they would need to discuss that with the consultant but it could be discussed by the cardiac physiologist. He was never there if or when the claimant discussed DVLA matters with patients. He accepted that someone with dementia may exhibit antisocial behaviour.

340. Given our finding that the claimant had very limited patient contact, we think it highly unlikely that the claimant would have been subjected to antisocial behaviour.

Section 10: Working conditions and emotional demands – emotional attachment (88)

341. According to the claimant, 3-4 times per week then latterly 2-3 times a week for 10-60 minutes the claimant was involved with caring for patients who were terminally ill, with life threatening conditions, dealing with the death of patients and visiting mortuaries to switch off devices formed part of her role. Also testing young adults accompanied by anxious parents, caring for patients with terminal heart failure two required repeated cardiac investigations to aid titration of medications to prolong life and engaging with patients and their families when the prognosis was poor. The claimant was designated to provide emotional support to frontline staff who were distressed and upset as a result of their work and to communicate lifechanging events to patients and staff.

342. The evidence of Keith Pearce was to the effect that physiologists do not communicate lifechanging events as that is the hob of the doctor. The cardiac physiologist would not care for terminally ill patients. They carry out diagnostic tests to assist the clinicians who then care for the patients along with the nursing staff. Whilst Keith Pearce in cross examination confirmed that the situation set out by the claimant could cause emotional scenarios, we are not satisfied that the claimant with her limited patient contact would have been subject to “emotional attachment” 3-4 times a week then latterly 2-3 times a week and therefore we do not find it appropriate on reconsideration to change our finding in favour of the respondent.

Section 10: Working conditions and emotional demands – mental/verbal abuse (89)

343. According to the claimant, occasionally, on average 4-6 times per year then latterly 3-4 times a year for 5-30 minutes the claimant had to deal with drunk patients or relatives of patients with dementia. Having to deal with patients attending from

Styal Prison for cardiac tests who could be aggressive and intimidating. Having to deal with angry exchanges in a calm and professional manner, including by way of example cardiac patients undergoing investigations who were seriously ill and distressed, on occasion became frustrated and angry. Deciding when to seek help from security staff to maintain staff safety whilst not adding to the stress of a patient with a serious heart disorder.

344. We found for the respondent here and on reconsideration we maintain our finding. The prisoners were accompanied by prison staff. We note the evidence of Mr Pearce that such situations did not tend to occur and we also note the absence of any records showing the claimant's patient contact.

Section 10: Working conditions and emotional demands – physical threats

345. The claimant says that she was threatened physically on a few occasions for 2-3 minutes. The son of a patient unhappy with his mother's care stood very close to her and called her some unpleasant names and threatened to thump her. An elderly lady with dementia tried to bite her.

346. We found for the respondent.

347. Given that the claimant does not refer to having been threatened whilst treating patients it may be that in the reference period the claimant was threatened. Therefore we change our finding from respondent to claimant.

Section 10: Working conditions and emotional demands – other stressful situations (90)

348. Without stating the frequency or the length of the occurrences the claimant by way of narrative states that she worked in situations where the application of knowledge and skills of herself and those for whom she had professional responsibility could not only make the difference between a satisfied patient and a dissatisfied patient but could also make a difference in clinical outcome including between survival and death. The claimant goes on to give various examples of situations. Sometimes doctors were referred to her where there was a disagreement with the clinical physiologist. This was extremely stressful when faced with a senior colleague who felt he was best placed to understand the needs of the patient and the risks involved in his proposal. If the claimant allowed a member of her staff to proceed with a test outside of protocol she would be negligent and responsible for the harm caused. Other stressful situations involved dealing with disciplinary issues and grievances raised by staff which could be difficult and stressful.

349. We found for the respondent on the basis that we did not accept, save for an occasional pacemaker check, the claimant undertook clinical work with patients and did not draw up the policy for cardiac physiologist led exercise tolerance testing. Also we noted that the consultants had ultimate responsibility for clinical decisions and not the claimant.

350. On reconsideration we must accept that as the manager of the department the claimant must, from time to time, have been subjected to stressful situations during the course of her normal day-to-day activities. We do not accept the content

of the narrative as a whole but given the nature of the role we do not think it unreasonable that the job was from time to time stressful and therefore on reconsideration we find for the claimant.

Section 11: Any other significant aspects of job not previously covered? – Quality of care (91)

351. The claimant says that she was responsible to lead on seven items and the dispute seems to be in respect of item 7 where the claimant said that she acted as independent assessor for Cardiac Physiology Services in other Trusts required by the BCS, the SCST and the DOH concerning Cardiac Physiology Services in Cardiac Centres across the UK. These assessments included measuring standards of practice, quality, equipment, facilities, safety and the level of training offered to staff.

352. We agreed with the respondent that it was not part of the claimant's role/responsibilities to act as such an independent assessor and they did not accept that in the reference period the claimant was an independent assessor.

353. We have dealt with this above and concluded that there was no evidence brought by the claimant of her having carried out this work and so we maintain our finding for the respondent.

Section 11: Any other significant aspects of job not previously covered? – Computer software

354. According to the claimant, she used and created Excel spreadsheets to analyse and present departmental workload. She used specialised cardiac software to input customised equations to calculate left ventricular function. She manipulated data using spreadsheets, databases or other software. She used information to prepare statistics for analysis and to prepare monthly figures. She used ultrasound scanners with an inbuilt database for calculation of cardiac function etc. She was responsible for installing software updates for specialist equipment and for the quality of data entry in the cardiology database. She was responsible for performing investigations into possible errors in data inputting and for ensuring that cardiology databases had input fields that resulted in a true reflection of a patient’s critical results. She worked with in-house and third party programmers in the development of new databases.

355. We agreed with the respondent that calculations were not produced from customised equations but from the equipment which did the calculations. In any event the claimant did not undertake echo in the reference period. We agreed that the claimant did not install software and did not design follow-up programmes.

356. The respondent looks for clarification of the response.

357. We do not find that the claimant was undertaking echo work in the reference period and the claimant in her witness statement accepts that she did not mean to imply that she was a computer programmer. We do not accept that the claimant was involved in installing software updates for specialist equipment in the department for the reasons set out above.

358. Having said all that, the claimant clearly did use computer software as part of her role and that would have included Excel. This narrative therefore makes some findings in favour of the claimant but not to the extent set out in the job description.

Research and development (92-93)

359. The first item here is the claimant saying that she carried out patient satisfaction surveys one or two times a year and this is confirmed in her witness statement. They were not a part of official Trust audits but just part of her normal activity as the Head of Service. The respondent did not accept that once or twice a year the claimant designed and implemented patient satisfaction surveys.

360. This again is a matter where had such surveys been carried out they would have been available and in the absence of corroboration we are unable to accept that the claimant did carry out such surveys.

361. The claimant claims to have participated in R & D, clinical trials or equipment testing led by others approximately ten times a year, spending approximately 5% of her time undertaking such activities.

362. The respondent did not accept that in the reference period the claimant participated to the extent of 5% of her time on such activities, nor that the claimant participated in completion of investigations or trials of high tech medical equipment prior to launch on the market.

363. Again as a matter of evidence the Tribunal would have expected that proof could have been provided of clinical trials or equipment testing and in the absence of this we maintain our finding for the respondent.

364. As to the claimant being clinical lead for undergraduate and postgraduate cardiac physiology training in the North West, where we found for the respondent we have set out above our judgment on this. We did not find that the claimant was the clinical lead as described. We maintain our finding for the respondent.

365. As to coordinating and implementing R & D programmes/activities around twice a year involving 2% of her time, with a further 2% being for initiation and development of R & D programmes and activities around twice a year.

366. There is some confusion here because there are paragraphs numbered 7 and 8 on page 92, whereas on page 93 it only goes up to number 7. The claimant submits there is no good reason to doubt item 7 on page 93 whilst making reference also to a paragraph 8 which is on 92.

367. Whichever the correct number in our judgment the claimant has not provided anything to corroborate her claims to have been so involved in research and development programmes.

Section 11: Freedom to act (93)

Item 1

368. The claimant claims that she was responsible for autonomous clinical decisions e.g. administration of pacemaker and defibrillation therapies immediately following implantation… This required the highest level of skill and judgment…

369. We agreed with the respondent that the claimant did not have clinical autonomy over the matters set out.

370. Given the claimant's very limited clinical practice as evidenced by her not appearing in clinical notes, we maintain our finding that the claimant was not responsible for autonomous clinical decisions as outlined in the reference period.

Item 2

371. The second item under "freedom to act" is the claimant saying she had responsibility for the evaluation and selection of the most appropriate equipment to be used by herself and by her staff for patients undergoing device implantations, device evaluations, echo study, monitoring and many other cardiac interventions and assessments.

372. Whilst the claimant, together with the medical staff, may have been responsible for deciding which pieces of equipment were to be made available for use on the unit given her lack of recorded clinical practice we do not accept that the claimant had responsibility for the evaluation and selection of equipment in relation to particular patients.

Item 3

373. According to the claimant, she was responsible for ensuring all patients undergoing procedures within the Cardiac Physiology Service received clinical/technical treatment as indicated by their presenting clinical condition…

374. In our judgment although the claimant as head of department had overall responsibility for the Cardiac Physiology Service it was for the medical staff to take responsibility for a patient's treatment. This narrative therefore changes the emphasis of our response in favour of the respondent moving some way towards the claimant but only in terms of overall responsibility as Head of Department.

Item 4

375. The next item is one we are not certain about as on the schedule there is a reference to 5(1) which does not accord with numbering on pages 93 and 94 of the job description. We therefore do not make any further comment on this matter.

Item 7

376. Item 7 is again one where the comment made by the respondent does not seem to relate to item 7 on page 94.

Item 9

377. Item 9 is the claimant saying she was required to take action based on her own interpretation of national policies, legislation and initiatives. As a budget holder she had to interpret national and local standing financial instructions and apply them in connection with purchasing of items costing up to £16,000 each…

378. The respondent's comment is to the effect that local standing financial instructions did not need interpreting and that the financial limits of the claimant's authority were clear. The claimant contends that as explained in her witness statement she continually had to interpret standing financial instructions in her cooperation with suppliers to achieve best value offers. Some offers from suppliers were time sensitive if they were made at the end of a quarter or the end of a year.

379. We find, on reconsideration, that the claimant did have to interpret standing orders as varied from time to time, whether nationally or locally.

Item 11

380. Item 11 related to ensuring that he diagnostics element of the national 18 week targets were met. The respondent maintained that the claimant could not make decisions without the approval of the directorate manager.

381. On reconsideration, as the person directly managing the service we find that this responsibility was with the claimant subject to whatever restrictions might have been imposed upon her by Ms Coombes. We therefore find for the claimant here.

Employment Judge Sherratt

13 March 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
16 March 2020

FOR THE TRIBUNAL OFFICE