IN THE EMPLOYMENT & EQUALITY TRIBUNAL **Case 21/20**

Dr Rosalind Ranson **Complainant**

V

Department of Health & Social Care **Respondent**

Hearing: January 24th, 25th, 26th, 27th, 28th, 31st and February 1st 3rd, 4th and 11th 2022

Chairman: Mr Douglas Stewart
Ms Angela Main-Thompson OBE
Ms Linda Grady

DECISION

The unanimous decision of the Tribunal is that Dr Ranson, having made protected disclosures, was automatically unfairly dismissed and suffered detriments in consequence. She was also unfairly dismissed irrespective of the protected disclosures.

- The Complainant was represented (initially and jointly) by Mr Simon Cheetham QC and Mr Oliver Segal QC of Counsel but, after Day One, by Mr Segal alone, both instructed by Capital Law, solicitors.

- The Respondent was represented by Mr James Boyd of Counsel instructed by Ms Anna Heeley from the Chambers of the Attorney General.

Introduction

1. By a Complaint dated 16th April 2021, Dr Ranson commenced proceedings in this Tribunal. The remedies sought were:

   I. An Order for re-employment and/or an award of compensation for Unfair Dismissal;

   II. A Declaration that she has suffered detriments for making protected disclosures and for compensation;

   III. The original claim seeking an award of 4 weeks' pay for failure to provide Dr Ranson with written particulars of employment was not pursued at this Hearing.

2. **This Decision is not an investigation into the way in which the Manx Government handled the Covid-19 pandemic. Neither is it concerned with the issue or merits of the vaccination programme.**

3. This Hearing was limited to liability issues only. By consent, the issue of remedies, if they were to arise, would be heard subsequently. The basis of the Complaint was fully pleaded but, later, was further particularised and amended. The Respondent entered a comprehensive Response. The main thrust of the Complaint was in dispute.

4. As to the protected disclosures and detriments, they were summarised by Counsel in an agreed Scott Schedule. Ultimately there were seven alleged protected disclosures considered by the Tribunal and some twenty detriments allegedly flowing in consequence. All have been considered individually in this Decision.

5. In writing this Decision, the Tribunal have, inevitably, been unable to recite all relevant evidence or anything close to it. In the interests of proportionality, the approach has been to concentrate only on the most significant elements from the testimony and documentation.

6. In evidence were some six-thousand documents including extensive witness statements plus a further one-thousand pages of transcripts and lengthy legal submissions.

7. The Tribunal regret the length of time taken to publish this Decision but its length and complexity, coupled with waiting to receive all the transcripts, have made this inevitable.

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PART ONE

Background

8. In 2019, Dr Ranson applied to be appointed Medical Director for the Respondent and was successful. Her employment commenced on 27th January 2020 and on the face of the documentation her employment ended on 26th January 2022. This was because the contract was described as a Limited Term Agreement (LTA) for a period of 2 years. However, the case advanced on behalf of Dr Ranson was that, based on the advertisement of the post for which she had applied, there was no such time-limit.

9. There was a further complexity in that although Dr Ranson continued to be employed by the Respondent until 26th January 2022 (by which time this Hearing was under way), the case advanced was that there had in fact been an unfair dismissal in March 2021. This is an unusual situation but not without legal precedent given the long-standing decision of **Hogg v Dover College** decided in 1990.

10. The background to the dispute involved these other two main points (but not only them):

Issue One

Was Dr Ranson unfairly dismissed because she was not transferred from the Respondent to Manx Care when it was formally created from 1st April 2021?

11. It was not in issue that from 1st April 2021 until 26th January 2022 Dr Ranson remained with DHSC with the title of Medical Director. Her case was that she had been expected to transfer to Manx Care. Instead it was alleged she had been left with an empty shell role with the DHSC, compared to that of operational Medical Director as she had been employed since commencement.

Issue Two

Had Dr Ranson not been transferred to Manx Care consequent upon what she alleged had been protected disclosures (whistleblowing)?

12. The background to this was that Dr Ranson alleged that she had made a number of protected disclosures and that among a substantial number of alleged detriments suffered in consequence, one of them was her dismissal by the DHSC when not transferred to Manx Care.

Amendments

13. On Day One, by consent, Dr Ranson was permitted to amend her Complaint to add an additional detriment relating to the Respondent's conduct which allegedly had prevented her being considered for the ongoing role of Medical Director (MD) by the incoming officers of Manx Care. This could not have been pleaded when the Complaint was lodged. Disclosure of documents had commenced in October 2021 and was still (surprisingly) ongoing right up to and even extensively during *and after* this Hearing. This unsatisfactory situation is commented on extensively below.

14. The lengthy and substantive Response had not pleaded a case that the reason why Dr Ranson had not been recommended to be transferred to Manx Care was because of her

performance / lack of capability. On Day One, Mr Boyd asked for leave to amend the Response in order to be able to advance this allegation.

15. It was resisted on Dr Ranson's behalf. Mr Segal submitted that the proposed amendment was in any event a non-starter on the facts and not a genuine reason for what occurred. This is perhaps an appropriate moment also to mention that, as appears in various aspects of this Decision, there was criticism from Mr Segal of other aspects of the pleaded Response compared to the true position and the evidence.

16. The panel adjourned to consider Mr Boyd's application and refused leave to amend on such a substantive point. To be relied upon, this could and should, have been pleaded from the outset. The Tribunal considered that permitting this belated amendment was unreasonable. To have to face this new and significant allegation from Day One of the Hearing would have been prejudicial to Dr Ranson - perhaps even causing the need for an adjournment for many months.

17. From the outset, if she had wanted to run this argument, Miss Kathryn Magson, as the Interim CEO of the DHSC and Dr Ranson's line-manager, had all material documents and personal knowledge sufficient to ensure that the Response pleaded this. She later testified that she had provided the instructions for the Response to the Chambers of the Attorney General.

18. The Tribunal's refusal of leave to amend meant that Mr Boyd was entitled to ask questions about Dr Ranson's work performance but not to run a positive case that it was because of capability / performance that Dr Ranson had not been transferred to Manx Care.

19. During the closing submissions, it was self-evident that Dr Ranson needed to amend a small detail in the Complaint. Even during the Hearing, Miss Magson's evidence had been inconclusive of the dates of meetings she had held with the shadow officers of Manx Care – Mrs Teresa Cope and Mr Andrew Foster. Her evidence had been suggestive of September / October 2020. However, as explained further below, after close of the evidence, a further material document that had not reached the trial bundle evidenced an important meeting in November 2020 regarding Dr Ranson / Manx Care.

20. Accordingly, leave to amend was granted to add reference to November 2020 to the pleaded case relating to input from Miss Magson to Manx Care. In the circumstances, Mr Boyd was in no position to object. Mr Segal invited the Tribunal to draw adverse inferences against the Respondent on the disclosure process in general, including whether Miss Magson had been deliberately vague on dates or had deliberately not mentioned the November meeting. The shortcomings in the entire disclosure process are later considered in depth.

Creation of Manx Care

21. Following the recommendations in the report by Sir Jonathan Michael into the operations of the Island's Health Service (previously run through the DHSC), its operation was instead to be managed by a new statutory board and legal entity called Manx Care. This was to commence as from 1st April 2021.

22. In advance of its commencement, Mrs Teresa Cope was appointed to be CEO and Mr Andrew Foster was appointed as Chairman. They operated in shadow from late 2020 readying the many aspects of the transition of much of the DHSC into Manx Care. A key part of this was appointing members of the Board of Manx Care and (at one point at least) planning to interview key senior DHSC executives expected to transfer. Among them was Dr Ranson.

23. Since being designated as shadow directors in about August / September 2020, Mrs Cope and Mr Foster started from 1st December 2020. However, even before then, they were very active in preparing for 1st April 2021.

24. The magnitude of the problems in creating Manx Care out of the DHSC was increased because of the Covid-19 pandemic which had become of mounting concern from around February 2020 before accelerating from March. Lingering effects were still being felt two years later during this Hearing.

25. It was not in dispute that on 8th December 2020, Miss Magson had told Dr Ranson that she would remain as MD within DHSC and not be transferred to Manx Care on 1st April 2021. Like almost everybody else involved in Health Service operations – doctors, nurses,

ambulance crews and the like, Dr Ranson had always expected to be transferred. Miss Magson, being the Interim CEO, had never been intended to transfer. Mrs Karen Malone, then the Deputy CEO, was also not to transfer because she was needed to run the DHSC and indeed she is now the CEO of the DHSC following the end of Miss Magson's contract.

26. In anticipation of the launch in April 2021, Manx Care advertised for an Interim Medical Director in December 2020, based on the major elements of Dr Ranson's Job Description. The view taken by Dr Ranson was that this should have been her job and so she did not apply. The circumstances surrounding this are expanded upon below.

Disclosure Concerns

27. Ensuring a fair Hearing, whether in this Tribunal or in the High Court depends on the integrity of the disclosure process. It is the duty of opposing litigants each to disclose to the other those documents that are material to the issues whether helpful or a hindrance to their own case.

28. But for the persistence of Dr Ranson in refusing to accept the integrity of the Respondent's disclosure in October 2021, under what is called *standard disclosure*, there might have been a serious miscarriage of justice because so many documents were not produced until she took advantage of the process known as Data Subject Access Request (DSAR). Yet even that process failed to reveal all documents that should have been before this Tribunal.

29. As explained at **paras 790 et seq** below, the Tribunal will hold a special Disclosure Hearing to investigate a number of troubling issues. At least these following issues will be investigated:

- Alleged "concoction" of material documents,
- Selective non-disclosure of documents,
- Late (and extremely late) disclosure of material documents,
- Unavailability through inadvertent destruction of material documents and

- What documents may never have been produced and why / how?

30. Because of prejudice to Dr Ranson regarding the disclosure process, including very belated drip-feeding of documentation even after she had given her evidence, Mr Boyd helpfully agreed:

    - To permit sequential closing submissions and

    - For Dr Ranson to be permitted to introduce a second witness statement on which she would not be cross-examined.

PART TWO

Key Witnesses

About Dr Ranson

31. Dr Ranson, as explained below, was on a limited term agreement (LTA) of two years. However, when she started her employment in January 2020, she had good cause to believe that she would be transferring as MD from the DHSC into Manx Care on 1st April 2021.

32. As to her background, Dr Ranson had been a doctor in the UK since 1988 with an unblemished record. Among her extensive experience, these are some highlights:

    a. General Practitioner 1993 – 2019.
    b. Executive Medical Director 2012-2017 as an Operational MD.
    c. National Professional Advisor – Care Quality Commission 2018 -2020
    d. Regional Medical Director 2018-2019.
    e. Commissioner – Commission on Human Medicines – 2007 – 2012
    f. Council Member – General Medical Council – 1999-2008.
    g. Faculty of Medical Leadership and Management
    h. Royal College of General Practitioners.
    i. Medical Women Federation.

About Miss Magson

33. The position of Miss Magson was different. From early January 2020, she had the essential role as Interim CEO of the DHSC until termination of her fixed-term contract on 7th January 2022. Mr Will Greenhow's evidence, as the Chief Secretary, was that Miss Magson was an employee of the Public Service Commission. Contrastingly, after some hesitation, Miss Magson's evidence on 7th January 2022 was that she remained employed by the NHS in the UK (confirmed by Dr Ranson to Mr Greenhow in an email dated 8th January 2022 - **page Z319**).

34. Miss Magson's evidence was that she had been seconded by the Herts Valley Clinical Commissioning Group, where she was CEO. Whilst not doubting Mr Greenhow's evidence, legally it seemed to be a curious position because Miss Magson had explained that she had retained her UK NHS status for continuity of her pension arrangement. This inferred that she continued to be employed and paid by them whilst seconded. Presumably, Herts Valley was reimbursed by the Manx Treasury. However, nothing turned on this contractual arrangement.

35. Miss Magson also had a distinguished career behind her with particular experience in transformation within the UK's Health Service. The DHSC had need of her considerable experience to lead them through the Island's transformation process. For simplicity, her title will be referred to as CEO although this is an abbreviation of her Interim CEO title.

36. Both in the public and private sector, Miss Magson had gained experience at executive and board level. She had led large operational risk and relationship management teams and because of her experience in Financial Services, she understood strong governance and financial management. Because of her performance and transformation experience, she had worked in a turnaround team at the Mid-Staff Hospital Foundation Trust. She was also the Sustainable Transformation Partnership Lead for SW London in addition to other Deputy CEO and CEO roles.

37. Miss Magson, as CEO, understood from the outset that even during her two-year term, her role would change because of the creation of Manx Care from 1st April 2021. As

approved by the Chief Secretary and the Minister, Miss Magson was to fulfil her role involving flexible working and travelling to the Island three-days per week. In the event, having returned to her home on 13th March 2020 during the early days of Covid-19, she never did return until July 2021. After that, although not entirely clear, presumably Miss Magson returned to her original contractual attendance. Nothing turned on this final period of her secondment anyway.

38. Increasingly, during the latter part of 2020, following the appointment to Manx Care of chairman-designate Mr Andrew Foster and Mrs Teresa Cope as CEO-designate, Miss Magson's role involved the accelerating plans for transition from DHSC to Manx Care.

About Mrs Teresa Cope

39. Prior to her appointment with Manx Care, Mrs Cope had worked at Hull University Teaching Hospitals in the UK. There she had been Chief Operating Officer (COO) since 2018. She was offered the post of CEO of Manx Care on 11th September 2020 but only formally commenced on 1st December 2020. However, along with Mr Foster, she was active from appointment in starting the process of structuring Manx Care. She is believed to have moved to the Island in late December 2020 in readiness for on-site involvement from about January 2021.

About Dr Henrietta Ewart

40. Dr Ewart is the Director of Public Health with over 30 years' experience in various posts and had been the Director on the Island since 2015. As such, although within the DHSC until July 2020, she was not line-managed by the CEO and reported direct to the Minister. She also sat on Gold Command during the pandemic and was a member of the Chief Officers Group. She was employed by the DHSC until the Public Health Directorate was formally transferred to the Cabinet Office in July 2020.

List of Witnesses

41. Identified below are the witnesses whose statements were before the Tribunal. Those in bold type appeared and were cross-examined. The other witnesses did not appear but, consistent with good practice in this Tribunal, such statements are admissible but carry

less weight than if the witness had appeared and been subjected to potential cross-examination:

Dr Ranson's Witnesses

Dr Rosalind Ranson, Mrs Debbie Brayshaw, Dr Rachel Glover, Dr Giovanna Cruz, **Ms Lisa Hall,** Dr Adrian Dashfield, Dr Sivakumar Balasubramanian, Dr Simon Mardel, and Dr Helen Freer.

DHSC's Witnesses

Miss Kathryn Magson, Mr Andrew Foster, Mrs Teresa Cope, The Hon. David Ashford MBE MHK, The Hon Dr Alex Allinson MHK, Mrs Clare Conie, Dr Henrietta Ewart, Mrs Karen Malone, Ms Andrea Manning, Mr Will Greenhow and Mr Daniel Davies.

The Pandemic Backcloth

42. As usual, based on the totality of the evidence, the Tribunal had to assess what weight could be given to testimony of different witnesses, tested in some instances against contemporaneous documentation (and, too often, lack of it). This follows but has to be considered against the backdrop of the pandemic. Indeed, the entire Decision has to be read in the context of the pandemic's perfect storm that ran from March 2020 until Dr Ranson's contract ended in January 2022:

- Miss Magson had commenced secondment as the Interim CEO in early January 2020 on the basis (then) of being on-Island three days per week, with travel from Hertfordshire built in. Covid-19 changed this fundamentally;

- Dr Ranson had commenced as the Medical Director on 27th January 2020;

- During February 2020, there was mounting concern about the threat of a pandemic. This became official when confirmed by the World Health Organisation on 11th / 12th March 2020;

- Prior to the pandemic and its unprecedented issues, the DHSC had embarked on major restructuring with a view to the launch of Manx Care on 1st April 2021. This task would have been challenging enough even without an ongoing pandemic.

43. Mr Segal submitted that, as acknowledged by Mrs Malone, the Deputy CEO, the Island's approach to the pandemic was always going to be problematic. Under pressure, in a novel and unprecedented situation, the medical and clinical advice was being channelled through a command structure to Miss Kathryn Magson, as the CEO and ultimately to the politicians. Although experienced in the health sector, (see below) Miss Magson was not medically trained but a much greater handicap was that, due to Covid-19, she was off-Island from 13th March 2020 until July 2021.

44. Mrs Malone at **MAL/49** (**page 4759**) referred to tension flowing from Miss Magson's "desire for a single version of the truth" and the professional duty of Dr Ranson to ensure that the best advice available from the medical profession reached the politicians. During the pandemic, Dr Ranson, supported by her specially formed groups of the Island's doctors and consultants, felt it necessary to raise serious concerns seeking to protect the health and welfare of the Island's population. The command structure insisted upon by Miss Magson led to fears and concerns that this medical resource and its expert professional advice was not reaching the top political levels. In turn, that led to issues between Miss Magson and Dr Ranson, who was at the vanguard of the professionals and fighting their corner to be heard and of assistance.

Witness Credibility

Dr Ranson

45. Mr Boyd advanced the viewpoint that frequently, Dr Ranson had failed to answer straightforward questions with a straightforward answer – not in the sense that necessarily she was seeking to *dissemble* but rather that she was reluctant to make concessions where concessions could sensibly have been made. He submitted that one of the hallmarks of credible witnesses is answering straightforward questions with straightforward answers and making appropriate concessions.

46. As to this, the Tribunal never had cause to distrust the evidence of Dr Ranson. She presented throughout as truthful. Perhaps too often, her answers were over-long but never did this come across as evasive – rather, it was consistent with something with which this Tribunal is familiar: that of a highly intelligent witness seeing and answering so many sides to a question – but with no intent of obfuscation (or *dissembling* to use the word advanced by Mr Boyd).

47. In passing, Mr Boyd also considered that certain of the witnesses relied upon by Dr Ranson wanted this Hearing to be an opportunity to "settle scores" or to criticise the DHSC. The Tribunal was alert to distinguish evidence which was material to this Decision as against some inputs from some witnesses (not being Dr Ranson) which had smacked of point-scoring against the DHSC and Minister Ashford. This Decision does not rely on any such evidence.

48. Mr Boyd considered that a number of the detriment claims advanced by Dr Ranson were inherently improbable. In some respects, the Tribunal could not uphold certain of Dr Ranson's alleged detriments and protected disclosures. Additionally, some alleged protected disclosures and detriments were not pursued and had been abandoned. Despite the encouragement of Mr Boyd to do so, the Tribunal did not consider that this threw doubt on Dr Ranson's overall credibility.

49. Mr Boyd also considered that Dr Ranson's perception of the Respondent (and the Tribunal took this to mean her opinion of Miss Magson) was so jaundiced that she had alleged "complete non-starters as whistleblowing detriments" until abandoned at "the proverbial 59th minute of the 11th hour." In that respect, the original letter before action and her pleaded case were settled by an eminent Queen's Counsel. To the Tribunal this did not cast doubt on Dr Ranson. It is not unusual for elements of a pleaded case not to be relied upon to an ultimate conclusion. That approach is (in general) better than omitting a very material allegation and belatedly seeking to amend out of time.

50. As an example, at a time when Dr Ranson was enduring considerable unhappiness and torment at work, she jumped to an inappropriate conclusion about an adverse event which had been advanced as a detriment. Dr Ranson's phone had ceased to operate and the entire phone memory had been wiped following advice given by GTS, part of Government Services. Mr Boyd particularly highlighted this in his closing submissions.

51. Taken in isolation, the Tribunal would have agreed with Mr Boyd that pursuit of the allegation on the evidence ultimately available was imprudent. However, put in context, as set out and evidenced below, the criticism carried little weight with the Tribunal. At the time of this event, the Tribunal considered that linking it with the near contemporaneous behaviour of her employer to have been understandable.

52. At that time, Dr Ranson had just suffered what the Tribunal considered to be a pattern of disgraceful behaviour - similar to the satirical manner of making an employee feel not wanted. Having already discovered in December 2020 that her PA had been moved away from Dr Ranson's office without warning or consent, on arrival at Noble's in early January 2021, Dr Ranson discovered that she had now lost her own office. Her belongings had been removed and put in store. She had been re-housed in a junior manager's office with a broken chair, no computer screen and no telephone. Her nameplate no longer appeared on the door.

53. To the Tribunal, it was no surprise that when, over the New Year 2020/21, Dr Ranson stopped receiving text messages and could not make or receive calls on her mobile telephone, she linked this as part of this continuing abhorrent behaviour against her. This was noted by her email of 8th January 2021. Whilst her conclusion was wrong, at that time in that situation, the Tribunal could not agree with Mr Boyd that running this telephone issue as a detriment was an example that tainted Dr Ranson's overall credibility.

54. Contrastingly, Mr Segal advanced his viewpoint that Dr Ranson had been scrupulous when giving evidence. He considered that she had testified only about what she could recall and had indeed made concessions where appropriate. He accepted that the Tribunal did not have to accept her subjective perspective of every event as objectively accurate but overall he invited the Tribunal to conclude that her evidence as to what happened should be accepted as reliable in the absence of contemporaneous documentary evidence to the contrary.

55. The Tribunal had no problem in general with relying on the veracity of Dr Ranson's evidence – in sharp but unfortunate contrast to the evidence of Miss Magson.

Miss Magson and Credibility

56. Mr Boyd commended Miss Magson:

"As a very credible witness. She was always very clear and to the point in her responses. She answered questions in a straightforward manner, and often accepted points that may not be entirely positive towards the Respondent's case."

57. Unfortunately, as will be increasingly evident in much of the Tribunal's Decision, the panel could not agree with Mr Boyd's assessment of Miss Magson and her evidence.

58. In his submissions, Mr Segal highlighted areas of concern about Miss Magson's evidence and, viewed empirically, the Tribunal could only agree. He submitted that she had constructed an inherently implausible narrative that she had, at all times, acted professionally, objectively and supportively of Dr Ranson. In her determination to stick to that narrative in her oral evidence, it had meant that she had refused on one occasion to answer a question, even when put to her three times about what had been "time critical" for discussion during the 4-hour-39 minutes Teams Meeting on 17th November 2020.

59. Mr Segal submitted that Miss Magson had refused to accept any fault even where it was obvious. He alluded to text messages that had emerged between herself and Mrs Malone (**pages 3639 – 3641**). These (as set out later) had been written in unprofessional terms, something Miss Magson would not concede - even although Mrs Malone had been prepared to do so.

60. Additionally, he submitted that Miss Magson had refused to accept that she had misled the Tribunal in setting out in the Response the reasons why Dr Ranson was not transferred to Manx Care. He cited examples of exaggeration in her written evidence. He asserted that there were important points of her evidence contradicted by other witnesses, most particularly by Mrs Cope. He summed up her contradictory evidence as being "inaccurate and self-serving." He also invited the Tribunal to conclude that adverse inferences should be drawn where appropriate because of issues that had emerged relating to clashes in evidence and regarding credibility on disclosure of documents.

61. In closing, Mr Segal submitted that Miss Magson was both a liar and vindictive. For reasons explained involving too many aspects of this Decision, the Tribunal has had to criticise Miss Magson for much of the tribulations and unhappiness that Dr Ranson had to endure.

62. Consistent with the submissions of Mr Segal, the Tribunal, by a considerable margin, preferred the evidence of Dr Ranson to that of Miss Magson. However, the Tribunal must also make the point that, as supported among the thousands of documents, Miss Magson fulfilled her role as CEO in extraordinarily difficult circumstances. From 13th March 2020 until at least July 2021, she was based in Hertfordshire and far removed from the pandemic crisis being faced on-Island. Her Day-Books and the documentation showed that overall, other than relating to Dr Ranson, she did a remarkable job involving an endless diet of major decisions and problems which she had to handle remotely by phone, email, messaging or using Microsoft Teams.

63. From Minister Ashford downwards, the records showed the extraordinary hours put in at the DHSC. This included almost all the medical professionals and all Health Service employees involved in protecting the community. During the pandemic, working beyond midnight and resuming before dawn seemed to become a norm for the Minister, Miss Magson and Dr Ranson (and of course many others).

64. Given that Miss Magson had played a central role in helping to achieve so much including the transition to Manx Care against the backdrop of a pandemic, it is unfortunate that the Tribunal has had to be so critical about:

    - Her dealings with Dr Ranson;
    - Her failings regarding document disclosure and
    - Her credibility on significant aspects of her evidence.

- where otherwise so much else that she had achieved was laudable. At the end of her secondment, there were impressive testimonials provided by senior personnel up to and including at Ministerial level – but the full history of Miss Magson's dealings with Dr Ranson was unlikely to have been known to them at that time.

65. The greatest dis-service that Miss Magson achieved was preventing the Island from the benefit of Dr Ranson's continued employment once Manx Care was operational. That is not to denigrate the new MD appointed. However, such appointment and the added burden of

paying for two Medical Directors from 1st April 2021 until Dr Ranson's employment ended in January 2022 was needless and wasteful.

66. Distilled to its core elements, the evidence turned mainly on the work, behaviour and interaction between Dr Ranson and Miss Magson as evidenced from the volumes of contemporaneous documents. Adverse inferences had to be drawn in certain aspects of the evidence, not least where on certain occasions, Miss Magson's evidence was inconsistent with that of Mrs Cope / Mr Foster, Dr Ranson or others.

67. **Paras 35-37** of Miss Magson's witness statement were second-hand hearsay and contained allegations against Dr Ranson. These allegations had been made to Dr Ewart who must have shared them with Miss Magson. They were irrelevant to the issues and prejudicial. These paragraphs had to be struck out by mutual agreement of Counsel. The original maker of the allegations was not called as a witness.

Mrs Teresa Cope and Credibility

68. In contrast to Mr Segal's observations about Miss Magson, he considered that the evidence of Mrs Cope was "utterly reliable." He considered it to be "balanced, thoughtful, generally though not entirely helpful to the Respondent but always inherently plausible and consistent with contemporaneous documents."

69. The Tribunal accepted that appraisal and regarded Mrs Cope as an excellent and reliable witness.

Dr Ewart and Credibility

70. Mr Segal's submission was that Dr Ewart's evidence in the Tribunal had been "distasteful, if sometimes comedic." He pointed to the way that, despite it being a matter of record, Dr Ewart had denied her initial public health advice on Covid-19. She had denied that she had followed Public Health England's lead on the pandemic and denied that she had said that Covid-19 was mild and similar to flu. (**In this respect, the Tribunal had no interest in the rights or wrongs of any viewpoint but only on the credibility of the testimony of the witness**).

71. Mr Segal pointed to another aspect. On 12th August 2021, (**page Z227)**, Dr Ewart had informed Miss Magson that Dr Ranson had held no licence as a doctor during an earlier part of her career. This was a misconception. Much later, she had then complained to the General Medical Council about the evidence Dr Ranson had given to the Public Accounts Committee in 2021. The GMC had dismissed the complaint because Dr Ranson had been expressing no more than an opinion.

72. In her evidence to the Tribunal, Dr Ewart denied never having goodwill towards Dr Ranson. She denied that she had even become "frustrated" with her. To the Tribunal that was eyebrow-raising evidence. Her witness statement had nothing good to say about Dr Ranson. Other contemporaneous documents also contradicted this oral evidence. A substantial part of Dr Ewart's witness statement, very prejudicial to Dr Ranson and of no probative assistance to the Tribunal, was struck-out by mutual agreement of Counsel.

73. During her evidence, Dr Ewart was questioned about paragraph 26 of her witness statement (**page 4734**). She had complained about Dr Ranson ringing her and her colleagues "***late at night***." When cross-examined, she could not, at first, provide a single example. After a brief adjournment, she then revealed one exchange of previously undisclosed text messages, held on her phone. On Friday 5th September 2020, Dr Ranson had phoned Dr Ewart but with no response. She needed to make contact and so then sent a text message at 21:49 PM asking a question regarding Testing Pathways. The text messages belatedly put in evidence were as follows:

    Dr Ranson: "**Hello Henrietta has CT got a pathway for the scenario we have? I wanted to check because presumably the transport contact should be included in the CT given we don't know when he became positive as he is asymptomatic. KR-R."** (The Tribunal interpreted this as abbreviation for *Kind Regards – Rosalind)*.

    Dr Ewart: "**I've no idea what you are talking about or who you are**."

    Dr Ranson: "**It's Rosalind Ranson**."

    Mr Segal then asked how she replied.

    Dr Ewart: "**I did not reply. At that point I blocked her number from my phone …"**

74. To the Tribunal, Dr Ewart's indignant, proud and defiant tone was astonishing. The panel members could not understand why the response to a question about a Covid-19 situation during the evening warranted such rudeness to a fellow doctor who needed help. It was also extraordinary that Dr Ewart testified that when this message arrived, she professed or had pretended not to know who it was from. Then, when she was told, her reaction was so immediately hostile.

75. By September 2020, to put this exchange in context, Dr Ewart and Dr Ranson had been working together quite closely with many dealings since March. Even so, when phoned mid-evening in September, Dr Ewart had denied knowing her and had made certain she would not be troubled by Dr Ranson again.

76. This was not the first demonstration of Dr Ewart's unpleasant attitude to Dr Ranson. There had been two prior significant incidents at a time when fears of the pandemic crisis and its implications were sweeping through the Government and the medical profession. On the morning of Saturday 21st March 2020, Dr Ranson informed Miss Magson that she had tried to speak to Dr Ewart about the modelling but had been rebuffed – being told by Dr Ewart that "***it was her day off***." **(page 1534).**

77. The following morning, Sunday 22nd March, Dr Ranson was on her way to a Press Conference. She called Dr Ewart for some essential information she needed, pre-Press Conference, about the Island's second Covid-19 case. Dr Ewart's reaction was to shout at her - ***stating that she was not working that day and "to stop badgering her***."

78. On that March Sunday morning, Dr Ewart had only just returned from two weeks' holiday abroad. Dr Ranson recorded this second and inappropriate March incident by email to Miss Magson (**D27 and page 1639)**. Dr Ewart's behaviour was very out of step compared to the evidence in the Tribunal of the long hours, tireless devotion and enormous efforts that were being made within the ranks of the DHSC and from the politicians.

79. In her evidence to the Tribunal, Dr Ewart denied any recollection of any such "badgering" conversation. The Tribunal found little of use to assist the Respondent or the Tribunal in either her witness statement or her evidence in person.

Minister Ashford and Credibility

80. Mr Segal summarised the evidence of the Minister as "practised and diplomatic seemingly guided by the principle of deniability of anything potentially inconvenient unless/until objective evidence was available to the contrary." Mr Segal's written submissions provided examples supporting his observations.

81. In general the approach of the Tribunal was to consider the evidence of the Minister as reflecting his best recollections, albeit not always consistent or easy to support. Because of Miss Magson's determination to apply the rigid command structure (see further below), the Tribunal considered him to have been over-reliant on Miss Magson for his information. In consequence, he may have been misinformed.

PART THREE

THE LAW

Employment Act 2006

- Section 111:
- Section 112
- Section 113:
- Section 115:
- Section 118:
- Section 133
- Section 134
- Section 135
- Section 136
- Section 137
- Part IV – Automatic Unfairness – Protected Disclosures.
- Section 49
- Section 50
- Section 51

- Section 55
- Section 56
- Section 71
- Section 72

Authorities / Cases Cited

- Alcan Extrusions Ltd v Yates (1996) IRLR 327
- Babula v Waltham Forest College (2007) ICR 1026
- Bolton School v Evans (2007) IRLR 140
- British & Beningtons Ltd v NW Cachar Tea Co Ltd (1923)AC 48 HL
- Cavendish Munro PRM Ltd v Geduld (2010) ICR 325
- Chandhok & Anor v Tirkey (2015) IRLR 195
- Chesterton Global Ltd v Nurmohamed (2018) ICR 731
- Commissioner of Police v Keohane (2014) ICR 1073
- Fecitt v NHS Manchester (2011) EWCA Civ 1190 / 2012(ICR 372
- Hogg v Dover College [1990] ICR 39)
- International Petroleum Ltd v Osipov UKEAT/0058/17/DA (unreported)
- Kilraine v London Borough of Wandsworth (2018) ICR 1850
- Korashi v Abertawe Morgannwg University LHB (2012) IRLR 4
- London Borough of Harrow v Knight [2002] UKEAT 0790 01 811
- Martin v Devonshires Solicitors (2011)ICR 352 EAT
- Martin v Lancehawk Ltd (2004) All ER (D) 400
- NHS Trust Dev Authority v Saiger & Others (2018)ICR 297
- Onu v Akwiwu (2013) ICR 1039
- Seide v Gilette Ltd (1980) IRLR 427
- Wilsons Solicitors LLP v Roberts (2018) EWCA Civ 52

Legal Submissions of Counsel

82. By way of explanation, what follows are substantial extracts from the Closing Submissions of both Mr Boyd and Mr Segal. However, both Counsel made further bespoke submissions

on each of the protected disclosure and detriment allegations. These are included at the appropriate parts of this Decision.

83. Besides Closing Submissions running to over one-hundred pages, the Tribunal was much helped by provision of an agreed List of Issues and a Scott Schedule. Mr Boyd placed particular emphasis on the duty of the Tribunal to stick "very closely to the pleaded case in terms of both identifying and determining the issues at the heart of the Complainant's claims."

84. In that respect, he drew attention to the guidance of Mr Justice Langstaff, President of the Employment Appeal Tribunal, in the well-known **Chandhok** decision. Paraphrased, the President recognised that the Tribunal is intended to provide a readily accessible and straightforward forum for speedy and effective justice but that nevertheless, the Tribunal must use, as the base-point, the Complaint as framed to set out the case which the Respondent has to meet. The degree of informality in Tribunals must not become an unbridled licence.

85. The Tribunal was also mindful of the words quoted by Mr Boyd from that decision in his Closing Submissions:

> **"In summary, the system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying so they can properly meet it; so that they can tell if a Tribunal may have lost jurisdiction etc."**

86. Those words reminded the Tribunal of the attempt by Mr Boyd on behalf of the Respondent to advance a very substantially amended argument on Day One that had not been pleaded – and which was refused.

87. In reaching the conclusions below, the Tribunal has endeavoured to follow the **Chandhok** guidance.

88. Mr Boyd submitted that these proceedings felt like "a whistleblowing claim without any actual qualifying disclosures." He considered that the Tribunal was being asked to accept

some general proposition that Dr Ranson had raised a whole host of concerns and as, a result, had suffered detriment and been dismissed.

89. However, Mr Boyd warned that the Tribunal cannot look at the case advanced "in the round" and Dr Ranson could only succeed if she had identified actual specific qualifying disclosures. There had then to be a ***causal link*** to detriments. Mr Boyd was dismissive of the weight of evidence as to how to link detriment in a causative manner from any disclosure. He broke the disclosures into three categories:

    A. Those of which Miss Magson was unaware.

    B. Those about non-controversial matters amongst "a morass of other non-controversial matters" and

    C. Those that post-dated any detrimental treatment and were therefore irrelevant.

90. Concluding from that summation, Mr Boyd submitted that Mr Segal must contend that twenty-one alleged detriments flowed from eight alleged disclosures, which he suggested was a "forlorn and hopeless assertion." The Tribunal respected the valued input from Mr Boyd but could not support him in his assertion that certain disclosures did not qualify as protected and that no detriments had flowed.

91. Mr Boyd pointed to the environment where the nature of an employee's job would mean that they are likely to be making multiple qualifying disclosures every single day. He considered that this was the situation for Dr Ranson as the Medical Director. He added that if an employee has a fraught relationship with their CEO, from the perspective of human nature, it would be the most natural thing for that employee to draw a link between some more of those "qualifying disclosures" and any negative treatment they might perceive to suffer from or actually suffer from. He therefore cautioned the Tribunal that absent the most forensic analysis of the events, any sort of *broad-brush* approach ran a very serious risk of the Tribunal putting 2 and 2 together and making 5.

92. He submitted that the issue of causation would be central to the issues with which the Tribunal had to deal. He submitted that whilst it was easy to point out that the Tribunal will be looking at the "reason why" question – essentially what was in the mind of an actor when they did what they did, it is not always easy to disentangle that from the context of the act. In the **Fecitt** decision, Elias LJ had observed that being a whistleblower was akin to holding a protected characteristic under Equality legislation and so he drew attention to the decision of **Martin**. Thus, in principle, there could be cases where an employer dismissed an employee or subjected him to some other detriment in response to the doing of a protected act but where the employer could say that the reason for the dismissal or detriment was not the complaint as such but some feature of it which could properly be regarded as separable – such as the manner in which the complaint was made. He drew attention to the **Bolton School** decision where the Court of Appeal concluded that the dismissal was because of acts related to the disclosure rather than because of the disclosure itself.

93. The message which Mr Boyd delivered was that the Tribunal needed to focus on "the activating cause" for any treatment to which Dr Ranson was subjected. Again, Mr Boyd referred to Elias LJ in **Fecitt**. In circumstances where a dysfunctional work environment arose through no-fault of the whistleblowers, Elias LJ rejected the notion that there was some kind of inevitability that the whistleblowers being redeployed led to a conclusion of causative detriment. If that were the case, he observed:

> "**The need to resolve a difficult and dysfunctional situation could never provide a lawful explanation for imposing detrimental treatment on an innocent whistleblower. I do not think that can possibly be right. It cannot be the case that the employer is necessarily obliged to ensure that the whistleblowers are not adversely treated in such a situation."**

94. In his submission, Mr Boyd contended that there were very strong pointers against alleged disclosures of information being causatively linked to the detriments or the dismissal claim.

95. Mr Boyd drew attention to some of the detriment claims as being inherently improbable and in fact, some were, ultimately, not advanced.

96. Mr Boyd considered that, as a result of his cross-examination, Dr Ranson had conceded her alleged detriment involving the comments of the Speaker. The Tribunal considered that the convoluted question which was put to Dr Ranson was not properly understood by her (nor by the Tribunal). However as will be seen below, nothing turned on this anyway.

97. Mr Segal's submissions emphasised that there had to be a *disclosure of **information** in Dr Ranson's reasonable belief*. It was for the judgment of the Tribunal to consider whether a specific statement was a discourse of information tending to show one of the matters set out in section 50 (1) (a) to (e). Additionally, the statement had to have "sufficient factual content and specificity" such as is capable of tending to show one of these matters. He went on to point out that statements phrased as allegations can constitute a protected disclosure. For this he relied on the decision in **Kilraine**.

98. Although the Employment Appeal Tribunal in **Cavendish** had suggested there might be a distinction between *information* and *an allegation*, the Court of Appeal made clear in **Kilraine** that they are not mutually exclusive concepts. Based on that summation, the focus of the Tribunal should be on whether a particular statement has met the statutory definition.

99. Mr Segal submitted that judicial guidance pointed to the high relevance of the *context* of the alleged disclosure whenever the Tribunal is determining whether there is a protected disclosure on the facts. In **Kilraine**, Sales LJ had given this example:

> **"If, to adapt to the example given in para 24 in the Cavendish Munro case, the worker brings his manager down to a particular ward in a hospital, gestures to sharps left lying around and says "you are not complying with Health and Safety requirements", the statement would derive force from the context in which it was made and taken in combination with that context would constitute a qualifying disclosure."**

100. Mr Segal emphasised that this requirement of a sufficient level of factual specificity should be read in the context of section 50 as a whole. In the case of Dr Ranson, it only required that she reasonably believed that disclosure of information tended to show one of the matters in that section. In consequence, the practical reality was that if Dr Ranson subjectively believed that the information disclosed did tend to show a listed matter contained in section 51 and, if the statement or disclosure made had a sufficient factual content that is capable of tending to show that listed matter, it is likely that the belief will be reasonable – again, Mr Segal relied on **Kilraine**.

101. To establish a section 111 detriment claim requires that the protected disclosure materially influenced (in the sense of being a more than trivial influence) the employer's treatment of the Complainant – **Fecitt**. Contrastingly, the test under section 118 required that the protected disclosure be the reason, or principal reason, for dismissing the Complainant – **Fecitt**.

102. Turning to the burden of proof, Mr Segal quoted from the judgment of Simler P in the **Osipov** decision (using Westminster statute references):

> **"…. the proper approach to inference drawing and the burden of proof in s.47B ERA 1996 can be summarised as follows:**
>
> **(a) The burden of proof lies on a Claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.**
>
> **(b) By virtue of s48(2) ERA 1996 the employer (or other Respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them – London Borough of Harrow v Knight at para 20.**
>
> **(c) However as with inferences drawn in any discrimination case, inferences drawn by Tribunals in protected disclosure cases must be justified by the facts as found."**

103. Mr Segal added that in practical terms, regardless of the formal position on burden of proof, it may be appropriate to draw an inference from adverse treatment of an innocent whistleblower. He drew attention to the judgment of Elias LJ in **Fecitt**. This is expanded upon in the Conclusions. Closing on this point, Mr Segal indicated that in the present situation, it was "all the more stark where, as here, the adverse treatment is denied and/or no explanation provided for it by the employer."

PART FOUR

THE ISSUES IN DEPTH

Dr Ranson's Contract of Employment

104. After seeing the Respondent's advertisement in 2019 to appoint a Medical Director, Dr Ranson was the successful candidate. As advertised, the role was open-ended and not limited to a two-year term. The job was described as being ***Permanent Full Time*** with an operational MD role. The appointment was described as "Interim." She opted for the Limited Term Agreement (LTA) of two years to receive the increased remuneration. The appointment was set against the background that Dr Ranson knew from the outset that following Sir Jonathan Michael's report, the Respondent would be going through a transition process. She expected a trouble-free transition for her to continue with Manx Care.

105. The Department's case and evidence was that Dr Ranson had entered into an LTA of 2 years expiring on 26th January 2022. In essence, there were two distinct issues – firstly whether Dr Ranson had a reasonable expectation of making a smooth and automatic transition into the role of MD for Manx Care from 1st April 2021 and secondly whether her contract would automatically terminate on 26th January 2022.

106. Dr Ranson commenced her employment on 27th January 2020. Before her contract was agreed, from the evidence available to the Tribunal, it was evident to both sides of the negotiation that the appointee, whoever it was, was expected to transfer from the Respondent to Manx Care. Mrs Conie, the Executive Director of the Office of Human Resources, who led the negotiations, accepted this in her testimony. In evidence also were extensive notes written by Dr Ranson dated 14th October 2019 when Mrs Conie had

informed her that after the launch of Manx Care, she would report to the Manx Care's CEO – pages **Z435** and **Z437**:

> "**Possibly I will report to the CEO and then when Manx Care is formed I would report to a permanent CEO."**

107. Additionally (and inconsistent with an LTA of just two years), Dr Ranson was permitted to have pensionable employment. This, at least, was an indication that her employment was expected to continue beyond January 2022. Contrastingly and perfectly reasonably, Miss Magson had not wanted to switch from her NHS job in England to the Isle of Man on her two-year role because she had wanted to maintain her UK pension continuity and this was a reason why she operated as CEO on a secondment basis only.

108. However, during the negotiations in 2019, Dr Ranson was holding out for a better financial package. Ultimately, she was given a choice of accepting £180,000 per annum on what could be called a rolling-contract basis (and thus having an obvious smooth transition to Manx Care and beyond January 2022) or alternatively £200,000 per annum on an LTA of 2 years. Dr Ranson chose the latter and her contract with the DHSC terminated in the midst of the Hearing on 26th January 2022. In case anyone should consider that the salary was inordinate, when this topic was being considered within the DHSC, Ms Murray emailed on 16th October 2019 (**page 1102**) that a predecessor of Dr Ranson (name withheld by the Tribunal but included in the email) had been paid more than £200,000.

109. On the balance of probabilities, had Dr Ranson transferred on 1st April 2021 to Manx Care, the Tribunal would have expected her employment to have been agreed to continue beyond 26th January 2022. On the evidence, that was not inevitable. That much was clear from documents produced by the Respondent dating back to 2019. The Respondent's internal documents during the negotiations are clear that, given Dr Ranson's wish to be paid £200,000 per annum, this was agreed because it gave flexibility and the opportunity for Manx Care to appoint someone else, perhaps at less expense. The DHSC had taken a deliberate and commercially sound decision to agree to pay more for the limited period of two years to provide flexibility. However, as it turned out, the new Interim Medical

Director for Manx Care commenced on 29th March 2021 on a 12-month contract involving a similar package, although involving clinical duties in addition.

110. Mrs Malone confirmed that an organogram showed that at September 2020, the role of MD for Manx Care had an incumbent (**page 4803**). That contrasted with a number of roles identified on the organogram that Manx Care had yet to fill. That incumbent could only be Dr Ranson given that the advertisement for a new appointee as MD for Manx Care was only placed in December 2020.

111. Yet more convincing in demonstrating that the MD role was moving from DHSC to Manx Care is at **page 571.** This different organogram showed that, after the commencement of Manx Care on 1st April 2021, there was to be no MD in the DHSC. The evidence also confirmed that it was appreciated in February 2021 that the DHSC had no budget to pay for an MD yet Dr Ranson was (through the actions of Miss Magson) destined to remain. During her employment and not as part of disclosure, Dr Ranson was fortunate to obtain a copy of the organogram and was criticised for doing so. Fortunately for her it revealed the truth.

112. Additionally, in December 2020, the "retained list" of those not transferring to Manx Care only identified Mrs Malone (now the CEO of the DHSC) and Miss Magson. By February 2021, the DHSC had retained Dr Ranson against her wishes but had no budget for her to continue as MD.

113. As will be seen below, Mrs Cope's evidence was convincing that she and Dr Ranson could have worked well together, had Dr Ranson been transferred to Manx Care. It was her evidence that they had understood that Dr Ranson had been brought in expecting to become MD of Manx Care.

114. At **page Z253**, Mrs Cope confirmed that the decision that Dr Ranson would not transition had been that of Miss Magson (who at that point was trying to get Mr Foster and Mrs Cope to accept that it had been a "shared decision"). Mrs Cope's recollection was that Miss Magson had indicated that Dr Ranson was moving into formal performance management having been under informal performance management for a number of weeks which was considered to be "a significant concern … at Executive Director level."

In her evidence to the Tribunal, Mrs Cope considered, from what Miss Magson had said, Dr Ranson had been under Stage I of the Capability Procedure and she was moving to Stage 2. A more detailed analysis of this vital evidence appears later in this Decision.

115. On 24th February 2021. Mr Foster emailed various recipients including Mrs Cope. It was evident that Dr Ranson had made a forthright presentation which appeared to underline the "baseline" audit of what the incoming management of Manx Care rather expected to inherit. Mr Foster wrote:

> **"The Messenger (Dr Ranson) is understandably very unhappy. She was brought in last year expecting to become Medical Director of Manx Care but Kathryn decided that she did not have the skills and ability to take on this post, something that Ros strongly disagrees with. I think Teresa has a more balance (sic) view of her too."** (**page Z230**).

116. Mr Segal also pointed to the concession ultimately made by Mrs Conie that Dr Ranson "was already doing the post" of MD of Manx Care.

117. As a distinct issue, the Tribunal decided (see below) the manner of Dr Ranson's treatment, with the fundamental change of role and loss of the main aspects during her employment, meant that she had been unfairly dismissed in March 2021 – even although she continued to work out the two-year contractual term. The Respondent's un-pleaded case was that the reason for Dr Ranson's dismissal was based on allegations of capability. This was never the reason given to Dr Ranson at the time (December 2020) and no due process had been followed procedurally to ensure a fair dismissal anyway.

118. Although the Respondent's case was that an MD was needed within the DHSC after Manx Care started to operate with its own MD, the Tribunal rejected that stance – see the organograms and evidence referred to above and referred to later in this Decision.

119. At **pages 2111 – 2121** prepared by Dr Ranson on 27th May 2020, she presented her paper regarding the role of the MD within Manx Care and what remained with the DHSC. There were over 10 pages defining the role required in Manx Care and one-half page attributed to "DHSC Work." Evidence led on behalf of the Respondent that there was a need to retain

Dr Ranson in the DHSC because of her skill-set involving regulatory and legislative experience was no more than a fig-leaf to cover an unsustainable argument.

120. Until around October and November 2020 when Miss Magson's report to the shadow directors of Manx Care stopped them from taking on Dr Ranson, Dr Ranson had always been expected to make the transition. That said, based on the LTA, the Respondent appreciated that the deal struck gave flexibility to replace Dr Ranson in January 2022, if Manx Care so wished. The full circumstances of why Dr Ranson was singled out by Miss Magson not to be transferred is scrutinised in depth below. Indeed, this was the core issue in this litigation.

121. Dr Ranson was informed on 8th December 2020 by Miss Magson, as her line-manager, that she was to remain in the DHSC. This followed a remote meeting between Miss Magson and Mrs Conie noted in Miss Magson's Day-Book (**page 3850**). Though undated, it was placed by Miss Magson as 1st December. Mrs Conie made no mention of such a meeting saying (wrongly) that the first meeting about Dr Ranson's future was not until 11th February 2021.

122. Miss Magson's note appeared to summarise a discussion and advice from Mrs Conie about how Miss Magson should explain the ongoing role for Dr Ranson within DHSC. The advice seemed to be that Miss Magson should, in effect, accentuate the positives of what Dr Ranson would be doing. However, it bore no resemblance to the hands-on role that had formed a major part of Dr Ranson's agreed job specification.

123. The advice may have provided a veneer of respectability to what would remain of the role of MD for the DHSC. In reality, it was more of a sham. Mrs Conie must or should have been aware that from 1st April 2021, the intent had been to have no MD in DHSC because Dr Ranson would be transferring. Additionally, and to the Tribunal significantly, the note made no mention of Dr Ranson's capability being a factor for her not transferring, nor were the words *performance management* mentioned. At the 8th December 2020 meeting between Miss Magson and Dr Ranson, Dr Ranson's comprehensive contemporaneous notes made no reference to the notion that Miss Magson had blocked

her transfer on capability concerns or because she had been under performance management.

124. In 2019, Dr Ranson had a husband and daughter living in London. Her evidence was that, on being appointed, her intention was to buy a property on the Island once she had found something suitable. Before starting her employment, she had visited the Island to view a property that she was considering buying. At that time, she had informed Miss Magson of this. However, Miss Magson's evidence only referred to Dr Ranson renting. In fact, as her presentation dated February 2021 showed (**page 1052**), Dr Ranson had moved to the Island with her husband and daughter.

125. The Tribunal prefers Dr Ranson's recollection about this. Her plan to buy was because she had never doubted that at the end of the two-year period, she would continue to work in Manx Care after her role had been transferred. In the event, because of the supervening pandemic and lack of time to house-hunt, and then on 8th December being informed that she was to remain with the DHSC, she continued to rent. The Tribunal had no reason to doubt Dr Ranson's evidence on this. Committing to property-ownership was no longer realistic.

126. Even as Dr Ranson commenced her employment, the first global concerns of a possible Covid-19 pandemic were rumbling with confirmed cases arising during January 2020 in France and Italy. The pace accelerated during February and into March 2020. On 11th March, the World Health Organisation announced a global pandemic. Accordingly, from the very start of Dr Ranson's employment, the DHSC had to be alert to the potential of a problem that would almost inevitably strike the Island and which could lead to a demand for hospital beds and medical care beyond the capacity of the Island to meet it. Besides having a challenging role anyway, as per Dr Ranson's Job Description (called in this Decision her "day-job") unexpectedly, she had the additional urgent life or death burdens and decisions created by Covid-19.

127. Dr Ranson stepped into a role which she found faced severe problems irrespective of the impending Covid-19 crisis. Before her arrival, there had been no full-time MD. The role had been fulfilled part-time by Dr Tony Kerruish as the Interim Medical Director but the

challenges to be met certainly required full-time attention – as Dr Ranson described and as set out below.

128. In her February 2021 presentation (**page 1053**), Dr Ranson had an aim to have a well-governed medical workforce fit for purpose and fit to practice in order to deliver high quality safe care. She summarised the challenge on arrival in January 2020 as follows:

- A disillusioned, fragmented medical workforce.
- Reports of bullying were rife.
- A lack of medical management.
- A medical leadership structure that was unworkable, resulting in a sense that those in leadership positions were absolved from any sense of responsibility or accountability.
- A culture of not reporting concerns.
- A culture of not investigating concerns.

129. Because of these fundamental issues, Dr Ranson summarised the consequences. The Tribunal considered that her report (**pages 1054**-**1063)** showed not only the enormity of the problems (some of them alarming in regard to medical neglect) but also Dr Ranson's clear vision of what needed to be achieved from an extraordinarily low base. She concluded by pointing out that what she had highlighted was only "the tip of the iceberg."

130. Her Job Description included this (**pages 2**-**5**):

- **Providing highly visible leadership to the medical profession;**
- **Clinical Policy and service development;**
- **Ensuring the provision of high-quality clinical practice and service delivery;**
- **Acting as the principal expert who advises on all matters in respect of medical practice.**

131. On 8th December 2020, when Miss Magson informed Dr Ranson that she would not be transferring to Manx Care, the plan put together by Mrs Conie and Miss Magson was to emphasise her skills and experience involving regulation and legislation but, in effect,

removing her role as an operational Medical Director dealing with clinical issues. The Job Description had never required regulatory and legislative experience.

132. After advertising in December 2020, Manx Care appointed a new Interim Medical Director with a Job Description being a virtual cut-and-paste from Dr Ranson's own Job Description. Put simply, Dr Ranson was left with an empty shell of the MD's role for which she had been appointed. At **pages 582-584**, Dr Ranson had put in evidence her annual work-plan, as at August 2020, showing the breakdown between her operational responsibilities as against those categorised as work for the DHSC.

133. The Tribunal was satisfied that, consistent with the decision in **Hogg v Dover College,** this was one of the unusual situations where the Complainant was entitled to pursue her complaint for unfair dismissal although she remained in employment until 26th January 2022. Having been informed by Miss Magson on 8th December 2020 that she would not be transferring to Manx Care, Dr Ranson did not leave her employment but continued to fulfil an ever-diminishing and demeaning role (see further below) through January, February and March 2021.

134. After Manx Care formally commenced on 1st April 2021, Dr Ranson's role was fundamentally different. With so much of her contractual role removed and given to the new appointee at Manx Care, the Tribunal was satisfied that this was a repudiation by the Respondent of its contractual obligations to Dr Ranson. The dismissal occurred in March 2021 when she ought to have been transferred to Manx Care, although she had known from 8th December that her role after 1st April would be fundamentally different and diminished.

135. The Complaint had alleged that, contrary to the provisions of section 8 of the Employment Act 2016, Dr Ranson had not been provided with written terms and conditions of her employment. Disclosure of documents quashed any such notion and during this Hearing, the point was not pursued. Indeed, prior to the substantive Hearing, the Respondent had made a strike-out allegation on the section 8 point but when the matter came before the Chairman, the application had been withdrawn.

136. As mentioned above, when Dr Ranson commenced employment, she was not replacing a full-time Medical Director. Previously, Dr Kerruish had been only part-time. Compared with Dr Ranson, he had not got the skill-set and experience for the demands. As Dr Ranson described it, she had arranged for a one-month hand-over from Dr Kerruish but, in fact, he had nothing to hand-over. In particular, she found:

- No Work-Plan.
- No areas identified that needed to be addressed.
- Wholly inadequate support structure for the MD role.
- Inadequate corporate and clinical governance systems.
- Policies applying to doctors were unused and needed revision.
- There was a culture of bullying and distrust of management.

137. Sir Jonathan Michael had been on the panel which had appointed Dr Ranson. He confirmed (**pages 1103/1104**) by email of 15th October 2019 that the recommendation to appoint Dr Ranson had been unanimous. He said this:

> **"Dr Ranson offered Medical Director and clinical experience in both primary and community care settings, as well as important experience working in both professional quality and regulatory organisations. She did not have significant acute hospital Medical Director experience, which is why the Panel also made recommendations to Karen (Malone) about how the Department might structure the Medical Director team to support Dr Ranson with regard to the aspects of the post that involved the Acute Hospital setting."**
>
> He then continued:
>
> **"I would warn against asset stripping the Medical Director's Department and leaving Dr Ranson without appropriate support."**

138. Anyone who has read the report of Sir Jonathan Michael, which led to the separation of the DHSC and the creation of Manx Care can have no doubt that the Island's Health Service was in substantial need of reform. Not least, in Noble's Hospital, there was a

culture of bullying, harassment and an atmosphere of toxicity among the staff. There was also distrust.

139. On Dr Ranson's arrival, she discovered that relationships between the medical staff were fractured, as were relationships between them and executive administrators. Dr Ranson discovered allegations of medical incompetence, cover-ups of medical mistakes and an overarching unhealthy work environment. Some startling examples of potential medical neglect and incompetence were evidenced in the documentation before the Tribunal. This had caused friction and mistrust between the professionals and was a difficult challenge for Dr Ranson.

140. In recent years leading up to 2020, there had been considerable changes in executive management personnel at different levels and, most obviously, in the more senior executive positions. Such problems within Noble's Hospital were well-known to this Tribunal from a number of previous lawsuits involving various serious allegations including medical neglect, bullying and harassment.

141. Based on Sir Jonathan's report, wholesale change was needed and this burden fell particularly on Miss Magson, Ms Murray as the Chief Operating Officer (COO) and on Dr Ranson as the Medical Director. Ms Murray had been employed by the Respondent in a variety of roles and indeed had been the Interim CEO in 2019/ 2020 while awaiting the arrival of Miss Magson.

142. The evidence of Mrs Cope was that Ms Murray, the COO during 2020 and into 2021, was dismissed, a decision that had to be endorsed by Miss Magson because Manx Care had not yet officially started. Ms Murray's date of departure of 8th February 2021 was confirmed by Ms Heeley and was apparently officially by mutual agreement. Mrs Cope's evidence was that she was concerned to find a bullying problem and not just involving Ms Murray.

143. At the outset, Miss Magson confirmed that she and Dr Ranson had a good working relationship but sadly it was not to last. It was to be their unfortunate lot that on top of the many urgent day-job problems identified by Sir Jonathan, for which there was no quick fix, along came Covid-19. Despite the nearly overwhelming demands on time and

energy caused by the pandemic, somehow Miss Magson, Dr Ranson and other executives still had to cope with the routine but demanding day-job tasks.

144. The Tribunal was satisfied that Dr Ranson had a clear vision of what she had to do and was capable of fulfilling her Job Description as Medical Director. Miss Magson, at that early-stage, must have recognised from reports from Dr Ranson (and from their discussions) the scale of the problem. The evidence suggested a mutual concern at what they needed to tackle.

145. The Tribunal was satisfied that had there been no pandemic, Dr Ranson had the correct credentials, vision and determination to make the changes that she had identified. She set about repairing relationships with the doctors and substantially succeeded although not every person could or would be satisfied. Suffice to say, there was ample persuasive evidence that she secured the general respect of the doctors for whom she was responsible. The Tribunal considered that it was a loss to Manx Care that someone of Dr Ranson's ability ended up unemployed from 26th January 2022. How and why this came about is studied in depth below.

146. On 17th November 2020, (**page 2686**) Dr Ranson was nominated for a Covid-19 Care Award for her work during the pandemic. The Tribunal saw the irony in this as it came shortly after the Grantham Meetings where Miss Magson had reported to the shadow directors in such terms that Manx Care could not contemplate employing Dr Ranson. The text of the nomination is detailed later.

147. Having been informed by Miss Magson on 8th December 2020 that Dr Ranson was not transferring to Manx Care, the staff were informed of this. Then, from January until March 2021, she endured a series of demeaning actions taken against her (see in-depth below). This led to confusion and speculation about what was happening to her and also led to her receiving warm and supportive unsolicited letters of support. An example (**page 3064)** is a letter from the Clinical Director of Surgery, Mr Andre Risha. He made plain his regard for Dr Ranson's efforts and the loss that she would be to Manx Care**.** This is but an extract of what Mr Risha wrote on 14th January 2021:

"It was a great honour and pleasure to have worked under your wings, yet I'm terribly sad that your intuitive and supportive expertise faded so shortly and so abruptly after you entrusted me with the job of clinical director of surgery. Your approach was so convincing particularly during the first Covid-19 pandemic where the results and the eradication of the virus were so swift and determinant, where you demonstrated such a high-level of skills, expertise and know-how to such an extent I feel dangerous and risky at this transition of power has occurred amidst the 2nd wave … Afterwards, you developed a well-structured system of hierarchal distribution of responsibilities aiming to unite the medical work powers…"

148. Another message received by Dr Ranson was dated 27th August 2020 (**page 2290**) and was from Dr William Cowley from the Ramsey Group Practice. Here are appropriate extracts:

"**Just to say we really valued your input today. We actually felt we were being listened to and a (sensible) action plan moving forward was generated. We have been going on about the same issues for months (and then watching funding go elsewhere). Hopelessness… The profession is furious (and despondent), if we held a vote of no-confidence in the DHSC, it would be overwhelming in my opinion. We are worried we are being encouraged to resign en masse."**

149. Also in evidence was an email from Dr Gareth Davies dated 14th December 2020. He wrote as follows:

"It was the most incredible year and amazing to see our clinical team pulling together so strongly. It is not lost on me, or my colleagues, that your leadership during March was fundamental to the outcome. Listening to your team, bringing them together and allowing the medical leadership team to provide clear concise advice (albeit painful) to the Exec and the Ministers was pivotal to the safety of the Island.

The vision to step back and stop blindly following Public Health England was part of this. Ensuring Ministers could trust this clinical advice when we had no cases and the UK had effectively done nothing was down to you … and will prove to

be a landmark event in the history of Manx health care. The response without doubt reduced unnecessary deaths, morbidity and allowed the Manx economy to continue. You should rightly feel very proud of the response."

150. Ms Debbie Brayshaw testified (**page 4899 et seq**) that she had been Head of Safeguarding and then the Director of the Children and Families Directorate at the DHSC from 2013 until 31st March 2021. As a Director, she had been an executive member of the Department for seven years. She considered that Dr Ranson's knowledge and expertise were refreshing and that she was professionally candid and honest about issues that needed to be addressed urgently – in contrast to predecessors.

151. Ms Brayshaw's witness statement (**para 31**) summarised her feelings about the role played by Dr Ranson like this:

"In summary, my experience of working alongside Dr Ranson and working with her in the Executive is that she demonstrated what a good Medical Director should be. She worked tirelessly and presented the clinical position throughout the pandemic to ensure clinical safety and integrity and she has worked collaboratively to improve services overall."

152. Such were her feelings about the treatment of Dr Ranson that she wrote to Minister Ashford on her last day of work. Her letter was in evidence and confirmed that Dr Ranson had been the first Medical Director able fully to articulate the risks and concerns in health in an evidence-based and systemic way. Ms Brayshaw was not alone in expressing her support and admiration to a third party. Dr Patricia Crellin also took the trouble to write to Minister Ashford – see further below.

153. Inevitably though, when filling a senior management post during a crisis and in circumstances where substantial changes had to be made to achieve improvement in services and quality, pleasing everybody was never going to be easy. The Tribunal accept that Dr Ranson had her detractors - like Ms Murray (on occasions), Dr Hudson, and Dr Snelling. Some had *bona fide* reasons. Others had their own private agendas that could well have coloured their viewpoint.

Covid-19 - Spring 2020

154. Probably, the seeds of the downward path in the relationship between Miss Magson and Dr Ranson were sown in March 2020 but it was much later during that year that Dr Ranson's proven protected disclosures triggered Miss Magson's detrimental behaviour. While not pursued as protective disclosures leading to detriment, earlier incidents in March, as summarised below, caused differences between them.

155. From before her appointment, Dr Ranson had mentioned that the role of MD meant that she was "the senior doctor" on the Island. This was published in a Press Release. Her Job Description, while not so describing her, defined her role inter alia as: ***providing highly visible leadership to the medical profession*** and as ***principal expert*****.**

156. Dr Henrietta Ewart did not accept Dr Ranson's status as the Island's most senior doctor. Unlike Dr Ranson, Dr Ewart had access to the Minister and sat on Gold in the command structure plus on the Chief Officers Group (COG). The Tribunal was satisfied that the roles of Dr Ewart and Dr Ranson were different.

157. Perhaps without Covid-19, there would have been a more harmonious relationship between Dr Ewart and Dr Ranson. Because of the Covid-19 crisis, demarcation between their roles was always likely to be problematic. There were tensions and at best, their relationship was always uneasy. Dr Ewart's role is much more public-facing, given her responsibility for the health wellbeing of Islanders. She was and is responsible for determining the overall vision and objectives for public health and advised senior officials across Government on the various areas of health to support informed decisions on policy. Having been in post since 2015, she was a well-known figure in Government circles.

158. Naturally, Dr Ranson's Job Description had never anticipated Covid-19. However, Dr Ranson considered that her role, once the pandemic struck, was to lead on giving clinical and medical advice to the Government with input from the wide range of experience from the Island's medical doctors and consultants. Additionally she saw her role was to lead the clinical and medical operational response to ensure safe care was delivered to Island residents including those who would develop Covid-19.

159. Without question, the difficult relationship between Dr Ranson and Dr Ewart created problems for Miss Magson. This was more than just a clash of personalities, although that certainly came across in the evidence. Bearing in mind that immediately before Dr Ranson's arrival, there had been no full-time Medical Director, the arrival of someone assertive with an excellent pedigree for the job, may have been perceived by Dr Ewart as a possible challenge to her previous status.

160. It was unfortunate for the relationship that when the Covid-19 threat was worsening in March 2020, Dr Ewart was abroad on holiday and then had to isolate on her return. In consequence, at two Press Conferences, Dr Ranson appeared on the platform with the Chief Minister. It was even more unfortunate for the relationship, as is developed below, that the pandemic strategy, initially adopted by Dr Ewart of following Public Health England, was rejected by the Island's doctors. As their pinnacle-figure, it was Dr Ranson's role to get their voice heard – inevitably leading to tensions.

11th March 2020

161. Dr Ranson explained that 11th March 2020 was the day when her workload hugely increased with the World Health Organisation declaring the virus to be a pandemic. The urgency of the position was expressed in emails from Dr Ranson including to Miss Magson that day (see for example **pages 1234, 1226, 1229 and 1230**). However, it is beyond the Tribunal's remit to go into further detail on that aspect.

162. That same day, Dr Ranson called an urgent meeting of senior doctors to collate emerging data from across the world and, following analysis, to apply this to the Isle of Man situation. This "modelling" was needed not only fully to understand the impact on the population and on the provision of services but also to ensure that the Island was adequately prepared with sufficient beds, Personal Protective Equipment (PPE) and sufficient Oxygen etc. In the exceptional circumstances now prevailing, Dr Ranson did not have adequate administrative or project management support although her evidence was that this was not a criticism of anyone – just the reality of the emerging situation.

163. A command structure had been created by Miss Magson designed to ensure that the Council of Ministers (CoMin) was not overburdened with data and opinions. The chain

was from Bronze through Silver to Gold and ultimately to CoMin. Dr Ranson sat on both Bronze and Silver. Matters decided in Bronze then went to Silver. Agenda items of merit were then passed to Gold on which, *inter alia*, Miss Magson and Dr Ewart sat.

164. At this time, Dr Ranson had established two medical Groups - the Senior Medical Leadership Team (SMLT) and the Clinical Advisory Group (CAG). Between them, they represented the Island's doctors and consultants. Among these individuals were foreign nationals able to provide input about Covid-19 from experiences involving other jurisdictions. This gave Dr Ranson a broad spectrum of knowledge of the fast-developing international Covid-19 scene. This she took to Bronze, chaired by Ms Angela Murray.

165. The policy of the Government, from the earliest stage, was to follow the strategy of Public Health England (PHE). However, in the Clinical Advisory Group, concerns were expressed that the advice from PHE was flawed and unsuitable for the Isle of Man. Miss Magson was aware of this opinion because on 11th March 2020 (**page 1221**), she wanted Dr Ranson to bring the CAG's input to a strategy meeting on 13th March.

13th March 2020.

166. It is not part of the remit of this Tribunal to debate or investigate whether any particular policy was correct or incorrect regarding the best way to handle the pandemic. Neither is it part of the Decision of this Tribunal to consider the merits of actions, announcements and decisions about fighting Covid-19 as taken by Minister Ashford, the Chief Minister or CoMin. Equally, it is no part of this Tribunal's role to judge the rights or wrongs of advice given to CoMin whether from Gold including input from Miss Magson or Dr Ewart. However, what was relevant to this litigation, were the early seeds of discord planted as between Dr Ranson and Miss Magson.

167. Based on in-depth investigations and discussions in her two Groups, Dr Ranson's presentations were created to brief Ministers. Both Groups urged that a much more robust approach than that of PHE should be taken, including closing the borders. That viewpoint appeared to Dr Ranson not to be welcomed by Miss Magson.

168. This was especially so in Dr Ranson's evidence after an announcement by Minister Ashford on the morning of Friday 13th March 2020 that the Island's policy would follow that of PHE so that the borders were not closed. The ministerial announcement referred to Covid-19 being mild in 90% of cases. There was no reference to advice to contact 111 about testing. There was an indication that self-isolation should be for seven days. The planned strategy was to follow the PHE approach of "***Delay***." This encompassed delaying the spread to buy time to gear up to be better prepared for Covid-19's peak impact.

169. Before Minister Ashford's morning announcement of 13th March, the CAG's presentation, advising closing the borders, had already been provided to Miss Magson. The CAG's issues were broader than closure of the borders. The "Delay" strategy had been pursued against advice from Dr Ranson and the known advice of the CAG.

170. Although some details must be given over the clash between the views of the CAG and the announcement from Minister Ashford, the significance is not to do with how the Covid-19 situation was to be managed. The relevance in these proceedings was that Minister Ashford's announcement was unsupported by medical advice from Dr Ranson's CAG - and indeed conflicted with it.

171. Dr Ranson, through her CAG, believed that the bespoke interests of the Isle of Man were better served by taking decisions tailored to the specific needs of the Islanders rather than relying on Public Health England. As the representative of the Island's medical profession, this put Dr Ranson into an unwanted conflict between trying to support her CEO, Miss Magson - while under pressure from the local medical profession to ensure that their input was *at least* heard and at best considered.

172. Additionally, after Dr Ewart returned, the approach of the Public Health Directorate also clashed with those of the Island's wider medical profession. Dr Ewart preferred to follow the path taken in England, an approach no doubt pleasing to Miss Magson in view of her association with the public stance adopted on 13th March by Minister Ashford.

173. The PHE policy had been to stop Covid-19 community testing and to concentrate on delaying the spread of the virus by strategies designed to buy time to be more ready for the later peak. Dr Ranson's concern at that time was that it was "reckless" to follow that

strategy because it would mean that the spread of infection on the Island would very rapidly be out of control with exponential growth in infection if the public were to follow that advice. Additionally, the comment that 90% of cases were mild was not in keeping with the data from the World Health Organisation which by then had suggested that 20% of cases would need hospital admission.

174. Even by the commencement of this Hearing nearly two years later, Dr Ranson remained unaware whether and if so, to what extent, the Minister had been briefed by Miss Magson about the CAG's advice regarding closing the borders.

175. Through the media and hearings of the Public Accounts Committee, it later became more widely known among the general public that Dr Ranson's CAG had concluded that the best interests of the Island demanded that the borders be shut at once, something agreed upon by the CAG and made known to Miss Magson that day and fed into the command structure through Bronze to Silver.

176. There was a meeting on the afternoon of 13th March 2020. This was of the National Strategy Group (which the Tribunal took to be inter-departmental at CEO level and a forerunner to Gold once the new command structure was in place). In evidence at the meeting was the CAG's presentation, including the modelling. This showed that Group's fears and advice. In an unmitigated spread of infection scenario, their modelling showed that the Island would reach ITU capacity within 6 weeks of the first case. However, Miss Magson steered the meeting to ratify what Minister Ashford had already announced. Later that afternoon, Miss Magson returned to the UK and did not come back to the Isle of Man until July 2021.

177. At 15:25 PM on 13th March 2020, Dr Ranson emailed Minister Ashford attaching the presentation. This was Covid-19 data modelling. She wrote as follows (**page 1288**):

> **"This is the presentation that you requested. We only had this presentation ready for the strategic meeting this afternoon and worked through the night to do it. We have a window of opportunity at the moment and the message needs to be that we should grasp that opportunity and learn from the errors of other countries. I am happy to talk it through because we are keen that you**

understand the critical message it conveys, given our limited ITU beds and the duration required to ventilate each patient. It is likely that we will quickly reach a situation where we are choosing who should be ventilated."

178. Dr Ranson had been aware that Miss Magson had been unhappy about two matters. Firstly, she did not approve that Dr Ranson had insisted that the National Strategy Meeting heard the presentation. Secondly, Miss Magson did not like that Dr Ranson had expressed concern that switching off community testing was the wrong approach. In that context, Dr Ranson was not surprised to receive an email from Miss Magson's PA that same day requiring Dr Ranson to speak to Miss Magson after her return to the UK (**page 1316)**.

179. In a subsequent call to Dr Ranson's private phone later that day, Miss Magson expressed her unhappiness at what had occurred at the meeting (to the extent of a reprimand, in Dr Ranson's opinion). To the Tribunal, it appeared that Dr Ranson had a duty to represent the views of the Island's medical profession and to do her best to ensure that politicians and others beyond CoMin had an opportunity to consider the advice being given.

180. According to Dr Ranson, Miss Magson was unreceptive. She was not interested in receiving advice but was concerned to assert her authority as CEO. However, Dr Ranson felt it her duty, as representing the medical professionals, to ensure that the politicians made their decisions armed with the best and fullest medical advice. She testified that she understood that politicians had to decide what steps to take but she saw her role being to ensure that they took decisions *on an informed basis* having been provided with the best medical advice. The Tribunal considered that Miss Magson was herself in a difficult position, balancing medical input and representing the DHSC while being alert to the views and political influences from other Ministerial Departments.

181. The difficulty for Dr Ranson was that the evidence during 2020 showed that Miss Magson perceived Dr Ranson as challenging her and her authority. However, the Tribunal concluded that Dr Ranson had a duty to assert the considered opinions that she was receiving and which the CAG wanted to be available to those developing the final Covid-19 response.

15th – 24th March 2020

182. At 10:34 AM on 15th March 2020 (**page 1347**), Dr Ranson emailed Miss Magson about "Public health advice today" and she enquired:

> **"Who is providing public health advice? I have organised an urgent meeting with Senior medical team this afternoon and I would like PH attendance and input because we will need questions answered on modelling the trajectory. Containment measures are going to be critical with an impending clinical emergency."**

183. Despite this, it is clear that Dr Ranson did not know the answer later in the day before the important meeting because she wrote to Dr Ewart and Ms Dunn at 13:22 PM (**page 1348**) as follows:

> **"Dear Henrietta and Jacqui**
> **We need urgent public health advice for a meeting this afternoon at Noble's. Please can you contact me."**

184. To the knowledge of Miss Magson, Dr Ranson called an Extraordinary SMLT meeting on Sunday 15th March. She explained why she was calling it. Miss Magson took the view that Dr Ranson was "panicking," an attitude which worried Dr Ranson because she felt that the importance of the medical message would not reach CoMin. Dr Ranson texted Miss Magson on 16th March (**page 3618**) to confirm that the SMLT members were not panicking:

> **"Just a friendly note please convey with passion the views of the clinicians that are going to be treating these people this is not panicking but they need to hear that they are being listened to and our role is to represent the DHSC it is for others to represent their …"** (sic)

185. The SMLT meeting called for reversing the decision to stop community testing and to close the borders for all but essential travel. Dr Ranson reported this to Miss Magson but she felt that Miss Magson did not appreciate the urgency (**page 1397**).

186. Just after midnight, Dr Ranson sent the PowerPoint presentation to Miss Magson for use at CoMin in the morning, 16th March. However, unknown to Dr Ranson (until this litigation), Miss Magson had not used the SMLT's 16th March presentation. Minister Ashford confirmed in evidence that this was so.

187. The Tribunal was satisfied that Miss Magson had suppressed or had failed to pass on material evidence relating to the health and welfare of the Island. This prevented it from being considered. Had the CoMin meeting had the opportunity to be aware of this advice they would have read that the SMLT's view was that:

> **"The tipping of the balance – to delay – means that we have an impending major clinical emergency that could overwhelm our health and social care services."**

188. Dr Ranson's evidence was that if the SMLT advice had been followed, there would have been fewer cases which may well have been contained – thus resulting in fewer or perhaps no deaths and certainly a shortened period of lockdown. However, it bears repetition that the Tribunal is not concerned to test or assess that viewpoint. It is only interested in the path leading to ultimate detriments and to the damage to Dr Ranson's career.

189. Unaware that the SMLT advice had not gone to CoMin, Dr Ranson was worried that the clear advice from the clinicians and doctors had not led to all the recommended changes being implemented. Accordingly, efforts continued in the following weeks to seek to persuade the Government, through Miss Magson, to introduce the necessary recommended measures.

190. In a fast-moving Covid-19 situation, further updated modelling was provided to Miss Magson on 20th and 21st March (**pages 1534, 1551-1567**). Additionally, Dr Ranson discussed the fears of the medical professionals with Minister Ashford on 21st March and pointed out a chart which explained that, without significant controls being in place, health and social care services might reach capacity in 22 days.

191. Notwithstanding the lack of support from Dr Ewart, Dr Ranson was able to meet Miss Magson's requirement for updated modelling for use at the National Strategy Group.

Following further consideration by the SMLT, yet further guidance was provided to Miss Magson on Sunday 22nd March that the consensus view was "total lockdown now." Of course, throughout this period, the context had to be understood that Dr Ranson had no reason to believe that the highly significant report of 16th March had not been considered by CoMin. She thought that the information now being provided was simply building on what had already been provided for Ministers.

192. It was evident to the Tribunal, from the documents revealed through DSAR and standard disclosure, that perfectly reasonably, CoMin had to assess the weight of conflicting issues arising from the pandemic. Taking just one simple example, an immediate closure of the border would impact the situation of the Island's students studying in the UK.

193. It seemed likely that at Gold, which involved Miss Magson, Dr Ewart and CEOs from other Departments, what may have been sound advice from the medical profession *in a vacuum*, was regarded by others as premature. For example, Minister Allinson's evidence to the Tribunal was of his Education Department's concern for the welfare of students in England who would be unable to return if the borders closed at once. There was evidence of viewpoints from other Departments why, from their standpoint, closure of the border was premature or impractical at that time.

194. However, the Tribunal had to be alert to Dr Ranson doing her job of ensuring that the professionals' advice was being properly considered - even if it meant appearing to be challenging Miss Magson, Dr Ewart or perhaps even Minister Ashford.

195. On Sunday 22nd March 2020, the Chief Minister announced that, on clinical advice, as from 09:00 the following morning, the borders would be shut to non-residents.

196. On 24th March, there was a Press Briefing. The then Chief Minister, Mr Howard Quayle, was asked why the Island had not gone down the "lockdown" route. His response was to the effect that he took advice from medical experts and that he had yet to receive that advice. Dr Ranson had been listening to this broadcast. Aware that both Minister Ashford personally and Miss Magson had previously received advice to close the borders and enter lockdown, Dr Ranson, and members of the CAG and the SMLT had been concerned that

their previous medical advice was not reaching the Chief Minister. The comment from the Chief Minister had not been reassuring.

197. However, the evidence available to the Tribunal seemed to show that their advice *had* advanced (at least to some extent) through the command structure. Why, or on what basis, the Chief Minister had made the quoted comment was not part of the evidence before this Tribunal.

198. What is clear is that had Dr Ranson and her Groups been informed about what had happened to their advice between leaving Silver and the Chief Minister's comment, then at least they *might* have been assured that their voice had been heard and duly considered. As it was, concern that the Chief Minister had never got their advice, caused concern / pressure to be put on Dr Ranson to get her Groups' evidence across.

25th and 26th March 2020

199. Dr Ranson's email of 25th March 2020 timed at 01:46 (**page 1653**) was, in Mr Segal's submission, significant even though not advanced as a protected disclosure. Despite the force of the concerns raised, Mr Segal accepted that because in her email Dr Ranson had asked Miss Magson to "***please confirm***," that the listed items had reached the Minister, this took the email outside of the statutory requirement to provide ***information***. Otherwise, he explained that the email would have been relied on as a protected disclosure. However, he submitted, that to Miss Magson, this email was an implicit challenge.

200. The email confirmed Dr Ranson's disappointment with what had been said by the Chief Minister regarding having received no advice from the medics about closing the borders. As the Chief Minister chairs CoMin, Dr Ranson had cause for concern because advice to this effect ***had*** been given. The documents referred to in this email were:

    I. **Presentation on Friday 13th March at the Covid-19 strategy group.**
    II. **Presentation on Sunday 15th March/early 16th March with list of actions recommended by the Senior Medical Leadership Team.**
    III. **The list of actions requested by the Clinical Board on Friday 20th March.**

IV. Covid-19 presentation to the National Strategy Group – 22nd March.

V. Letter to Chief Minister from Dr Ewart and Dr Ranson Re: timescale to capacity.

VI. Document from the epidemiologist who had provided 5 days advice – entitled "Lockdown Advice" taken to Execs on 24th March. Dr Ewart had specifically indicated no objection.

201. These six key documents reflected Dr Ranson's concerns and uncertainty about what Miss Magson had previously passed on to the National Strategy Group and to CoMin. Not knowing what had happened up the command structure, Dr Ranson also had to consider the other possibility that Minister Ashford was not giving their advice to the Chief Minister.

202. Miss Magson's response to Dr Ranson's 25th March email was a formal letter dated 3rd April 2020 referring back to it but also covering other topics. Her expressed reaction was that it was a challenge to her credibility and showed lack of trust in her (**pages 1777-8**). Dr Ranson had then spoken with Miss Magson and had denied that it was a challenge - pointing out that her concern had been the comment from the Chief Minister.

203. In cross-examination, Mr Segal asked whether Miss Magson had interpreted this email as being a challenge to her personal credibility. Her contradictory evidence was:

> **"No – I took this and Will Greenhow took (this) – as her trying to cover (herself) and protect her (position). Not as a challenge."**

204. Mr Segal considered this evidence as "most unconvincing" because he then took her to the passage in her 3rd April letter where she had written:

> **"I explained that I felt there was a lack of trust and a challenge of my credibility by you."**

205. Miss Magson would not accept that this evidence was inconsistent. However, her Day-Book entry for the evening of 25th March (**page D 50**) (a belated disclosure during the Hearing) records her telling Dr Ranson:

"I feel like she is challenging my credibility."

206. In her witness statement, Mrs Conie (**paras 65-66**) made some observations based on her considerable experience in HR. She considered that the type of strained relationship which had arisen between Miss Magson and Dr Ranson could arise from different communication styles and preferences – but perhaps more significantly "when parties feel their professional expertise or competence is being questioned."

207. Miss Magson never did answer the request in the email for confirmation that the six items had been passed to Minister Ashford and to CoMin. What Miss Magson said was that she had "***pushed the clinical voice hard"*** and that this had been heard but the politicians made the decisions as elected members. She considered that the Ministers had responded to everything "**we have asked whilst also trying to ensure that the wider implications are considered and prepared for**."

208. The Tribunal accept that, just because Dr Ranson has not been able to pursue her email of 25th March as a protected disclosure, that did not mean that being challenged (as Miss Magson viewed it) had not coloured her subsequent attitude towards Dr Ranson. Justified and reasonable challenges that Dr Ranson was obliged to make were not well received.

209. Dr Ranson's email of 16th March to Miss Magson (**page 1400**) confirmed the importance of the attached 18-page slide presentation as representing the overwhelming views from twelve doctors. The Tribunal concluded from the evidence of Minister Ashford in the Tribunal that at least some of Dr Ranson's concerns were justified with at least some of the Groups' information not reaching the Minister. In cross-examination, Minister Ashford confirmed that he did not believe that he had been given the full 16th March 2020 presentation (**1403 FF**) until Dr Ranson had sent it to him after the event**.** It had not come through the command structure – consistent, as the Tribunal so considered, with the concerns that the medical profession's collective voice was being blocked.

210. According to Miss Magson's witness statement, Dr Ewart had not supported the input in its entirety due to lack of evidence. Miss Magson was due to identify the location of Dr Ewart's viewpoint in the trial-bundles but she never did. According to Miss Magson, only *some part* of this input went to CoMin – again unsatisfactorily never defined by page

reference. The Tribunal had no evidence as to how little or how much of this important presentation or of the full list of data provided in the above list had ever reached CoMin.

211. At about 14:00 PM. on 25th March, Miss Magson asked Dr Ranson for the latest modelling because she would be presenting to CoMin and needed it at once. This data was on an interactive Excel spreadsheet and so could not be emailed. It was held on a Mac computer belonging to Mr Ian Wright, an Island orthopaedic consultant. The best that could be achieved at such short notice was a basic summary emailed by him.

212. Shortly afterwards, Ms Liz Aelberry, Head of Corporate Communications, telephoned to ask Dr Ranson to appear at the afternoon Press Conference because the Chief Minister was going to make a lockdown announcement and Dr Ranson was required to make a statement to the public. Together with Mr Wright, Dr Ranson went to Government Office so that the modelling graph on the computer could be shown to CoMin if so wished.

213. Four minutes before the Press Conference was due to start, Dr Ranson was informed that she was not required. In the Tribunal, no explanation was ever given as to who had made this decision. To the Tribunal, this was significant. An explanation was warranted. Miss Magson had not admitted that she had stopped Dr Ranson appearing on 25th March. Her evidence rather suggested that it had to be a decision from someone above her. The Tribunal assumed this meant the Cabinet Secretary or at Minister level. It was not Minister Ashford (and there was no evidence on this from Mr Greenhow in his witness statement or from the Chief Minister). Miss Magson's evidence did not preclude that she had, or may have, expressed a hope or preference to influence (at least) that Dr Ranson did not appear. Why she did not appear was never explained to Dr Ranson.

214. After the Press Conference, Dr Ranson was seated in the anteroom with Ms Aelberry when the Chief Minister and Minister Ashford appeared. Using a whiteboard, based on the latest modelling, Dr Ranson explained to them the effect a lockdown would have on the spread of infection. These two Ministers then invited Dr Ranson to do a live presentation the following day. However, later, when talking to the technicians responsible for filming for the next day, it transpired that there was no whiteboard

available for use in the Press Conference room and so it was agreed to pre-record Dr Ranson's input the following morning.

215. In his oral evidence, regarding para 40 of his witness statement, Minister Ashford said that the night before the 25th March Press Conference, Miss Magson had expressed concern about the welfare of both Dr Ewart and Dr Ranson and suggested that they needed downtime. However, "**it had been hard to judge**" Dr Ranson on that when she had made her whiteboard presentation.

216. Mr Segal questioned the Minister about this – given that he and the Chief Minister had just agreed that Dr Ranson was needed to appear on the following day (**page 69 of the Transcript of 3rd February 2022**) as follows:

> **MR SEGAL:**
>
> **"And nobody had any concern, you didn't have any concern at that time around 5.00 pm, no one else in the room had any concern did they that Dr Ranson appeared to be too exhausted or unwell to be able to do that?"**
>
> **MR ASHFORD:**
>
> **"Not at that point no."**

217. On 31st January 2022, a week into the Hearing, the Tribunal was provided with a batch of belated disclosures. These eighty-eight documents were identified as **KM1-88**. Other belated batches that emerged were numbered **D1-D50 and A1-22 –** some 160 documents.

218. Dr Ranson's email of 25th March had been sent in the early hours. At **KM49**, now belatedly in evidence, was a chain of emails that day passing between Ms Murray as the COO and Miss Magson. Ms Murray's email timed at 17:14 PM is simply headed "**where is Rosaling**?"(sic). Miss Magson replied one minute later:

> **"Don't know – have tried to call her just now – no answer, so sent her a text asking her to call me this evening. Just spoken to CC as well and we have agreed**

plan. I have insisted Rosalind is off tomorrow. But she hasn't confirmed this as yet, but it will have to be a must do not, a possible." (sic)

219. Not entirely clear from this message is what Miss Magson had known of Dr Ranson's planned appearance at the Press Conference and being pulled at the last moment. The quoted message above is consistent with her knowing *something* of what had been happening, because by this time, Dr Magson had already started planning with Mrs Conie how to prevent Dr Ranson from working the following day – for trumped-up reasons that the Tribunal did not accept – see below.

220. Ms Murray then replied that she has spoken to Cath (Quilliam) (Director of Nursing) and "they were worried about Rosalind who had been called to CoMin." To the Tribunal, this suggested concern about message, not messenger. At 18:03pm, Miss Magson replied as follows:

> **"OK thanks, have left a message to call. Have found her, she is here working on a presentation for press briefing tomorrow based on the modelling. Her husband is with her here. We don't know what the presentation says and we are going to have to look at it. We are in danger of DHSC being undermined by all this, and that will be worse for us all. Will keep trying her."**

To the Tribunal, this message was somewhat puzzling because it reads as if Miss Magson was in the same place as Dr Ranson, whereas she was in the UK. There is no indication as to who "we" is or are.

221. Miss Magson emailed the Minister one-minute later at 18:04 PM (**page D40)**, wondering if he had seen Dr Ranson:

> **"Just wondered if you have seen Rosalind at all? She has been mandated to go on rest day tomorrow, as everyone is very worried about her, and understand she is currently writing a presentation for tomorrow? Just wondered if you have asked her to do anything?"**

222. What Miss Magson told the Minister was untrue. Dr Ranson had not been informed nor had she agreed to take 26th March off to rest. The Tribunal reject the notion that

"everyone is very worried about her" as self-serving and part of the Magson-Conie plan to silence Dr Ranson. Dr Ranson's rest day was scheduled for 27th March. "Everyone" did not include Minister Ashford, the Chief Minister or Ms Aelberry – who had just been with her.

223. Minister Ashford replied at 18:06 pm that Dr Ranson was lined up to do a presentation at 16:00 PM the next day (Thursday) and he wanted to see the presentation in advance.

224. Miss Magson then replied enquiring whether there was any chance that Dr Ranson:

> "**… could do it on Friday. She really has to take tomorrow off – it's causing so many issues for the Exec team as well as myself… HR have been involved now. Other worry she had so much to do back at the ranch that is slipping on the shop floor, with leadership needed back at the ranch. Is there any way we can push on a bit, and allow the actions to settle?"**

225. Dr Ranson confirmed in a message to Ms Murray that Miss Magson had sent her what **"sounds like a rather stern message so I am expecting a big telling off … she wants to speak at 7 PM**." Miss Magson later also sent a text message to Dr Ranson (**page 3701**) timed at 18:41PM.

226. By text message to Ms Murray at 18:51 PM, Dr Ranson explained to her that Ms Aelberry had earlier told her that:

> " … **they wanted me to do my stuff and speak after the Chief's announcement today and give the public a stern message. I went racing over. They then changed their mind at the last minute and asked me to do a statement to the public tomorrow with a bit of a presentation**."

227. Based on Miss Magson's above messages, the Tribunal concluded that Miss Magson was concerned at the prospect of Dr Ranson appearing and expressing views that had seemed to be acceptable to the Chief Minister, Minister Ashford and Ms Aelberry – but which did not fit in with the message that she (and perhaps Dr Ewart) wanted the DHSC to put into the public arena – or indeed to CoMin. Dr Ranson's Groups had been taking a different line from Public Health.

228. To ensure consistency of message and "***to prevent it being worse for us all,***" the Tribunal considered that part of Miss Magson's agreed plan was to force Dr Ranson to take the next day off. The plan may also have included peddling concerns about Dr Ranson's health welfare and risk of burn-out – see below. However, the conversation quoted above when Miss Magson contacted Minister Ashford was not based on welfare or burn-out but was concerned about the message and the difficulties that was causing "*for the Exec team and us all*."

229. Neither the Chief Minister nor Ms Aelberry nor Minister Ashford had formed an adverse impression regarding Dr Ranson's health or behaviour when she ran through her whiteboard presentation. Neither had they wanted to silence her message. On the contrary, they had wanted her presentation live at the Press Conference on the following day.

230. That same evening Miss Magson texted Dr Ranson and then phoned to explain that she was ***very worried about her behaviour*** and warned her that she was not following the structures. Miss Magson told her to take the next day off to rest, although this was unscheduled. To the Tribunal, Miss Magson's actions suggested that what Dr Ranson had testified was correct – that her impression from this phone conversation was that Miss Magson had not wanted her to appear on 25th March (or by inference get close to CoMin) and wanted to ensure that she did not appear on the following day by insisting she took the day off.

231. Dr Ranson would not agree because she was due for her planned day-off on Friday 27th March anyway and next morning pre-recorded the video. At 12:40 PM on 26th March, Dr Ranson confirmed to Minister Ashford as follows:

> **"Following our discussion yesterday about the statement that I would make today following your statement at 4PM, the comms team and the IT teams decided it would be better if I did a pre-recorded statement. I did this this morning. They will then stream this as soon as you finish your bit so maybe you could introduce along the lines that you feel suitable. If you still wish (sic) to come then please let me know."**

232. The video was never shown. The Tribunal can imagine the strength of Miss Magson's feelings when her plan and instruction to take the 26th off had been defied. However, Dr Ranson was complying with the request from the Chief Minister and Minister Ashford. The Tribunal could not accept that Dr Ranson needed to be pulled from the 25th or 26th March Press Conference because of any supposed health issue as emerged as the excuse. Rather, it appeared to be linked with Miss Magson being concerned that Dr Ranson's Groups' views differed from Dr Ewart's Public Health approach.

233. In contrast to what he had testified in cross-examination, Minister Ashford's written evidence was that Dr Ranson had not appeared on 25th March at the press conference because of concerns for her welfare (**para 41 – page 4633**). This was the written testimony of the Minister:

> **"It is true that a decision was made that Dr Ranson would not appear at a press conference that she had been scheduled to attend. However the reason for this was rooted in her welfare and was absolutely nothing to do with any issues that she may have raised. Concerns were raised (I believe from Kathryn, the Director of Public Health, Henrietta Ewart, and some of Dr Ranson's medical colleagues) that Dr Ranson was not taking any breaks and was becoming more and more tired with each passing day. It was an incredibly busy time for everyone involved but Dr Ranson in particular did not seem to be able to take any downtime and did not appear to be coping well with the pressure that the pandemic was putting on her. The decision to remove her from this particular press conference was purely as a result of concerns for her welfare and wanting to give her a break."**

234. That evidence was silent on who and why she was "removed" from the 25th March appearance. Minister Ashford was unaware of Miss Magson's knowledge that Dr Ranson was due to take downtime on 27th March.

235. The Minister's evidence also sits uncomfortably with an email he sent at 18:14 PM (**page Z197**) to the Chief Minister, Mr Greenhow and Ms Aelberry. He had by then spoken to

Miss Magson and the message now subtly changed from Miss Magson's concern about the *message* to her concern about the *messenger*:

> **"There are concerns in the Department with Dr Ranson doing the presentation tomorrow. It would be preferred that she does it on Friday. She has actually been mandated to go on a rest day tomorrow as there is concerns about her burning herself out with the amount she is doing. I have spoken to Kathryn (who is copied in) and there are serious concerns that she does need to take tomorrow off to rest and recuperate or we have an incapacitated Medical Director."**

236. To the Tribunal, the message the Minister passed on to the Chief Minister, Mr Greenhow and Ms Aelberry eliminated any mention of the difficulty for his Department / for Miss Magson and for Execs. The Tribunal's expectation was that the natural reaction from the Minister to Miss Magson's telephoned suggestion that Dr Ranson was at risk of burn-out would have been to say that he, the Chief Minister and Ms Aelberry had been impressed with the whiteboard presentation and that there was no sign of any problems or cause for concern with Dr Ranson's behaviour or health.

237. The above quoted extract from the witness statement was unconvincing, not only on the face of it but also in the context of the Minister's email suggesting to the recipients who had just seen the presentation that Dr Ranson was, in effect, unfit to appear. That seems inconsistent with the Minister's other evidence that Dr Ranson had been removed from the 25th March press conference because of her health – see above. If that had been correct, the Chief Minister and Ms Aelberry would have known that for themselves. There would be no need for this email to be sent at all.

238. If Dr Ranson had been removed from appearing on 25th March because of concerns for her welfare and because she was not coping well with the pressure, then why, before or after the press briefing, did nobody tell Dr Ranson that she should go home and rest rather than give them a whiteboard presentation?

239. It has to be remembered that the modelling that was shared that afternoon by Dr Ranson with the Chief Minister/Minister Ashford was the considered latest thinking from the medical profession on the Island.

240. Dr Ranson had twice before appeared on the public platform and the three who invited Dr Ranson to re-appear the next day were in a good position to judge whether she would be able to present well from that past experience and from this meeting.

241. On what basis Miss Magson could judge better than the Ministers and Ms Aelberry, who had been dealing with Dr Ranson face-to-face, about Dr Ranson not coping with the pressure was never clear to the Tribunal. Rather, the Tribunal considered that this was Miss Magson interfering with the requirements of the Chief Minister and Minister Ashford and of Ms Aelberry because it did not suit the DHSC message that Miss Magson wanted Ministers and the public to hear.

242. The Tribunal's opinion on this was fortified by the fact that, at about 14:00 PM that day, when Miss Magson wanted urgent assistance from Dr Ranson regarding modelling needed for Miss Magson's meeting with CoMin, she was perfectly happy to lean on Dr Ranson for immediacy and was not concerned then about any alleged burn-out. On the contrary, she wanted the matter handled urgently and this Dr Ranson managed, despite the obvious logistical difficulties. There then followed racing to Government Office, organising suitable attire and prepping to appear at a Press Conference at short notice. There was no evidence at any time that day of any appearance of burn-out.

243. This was a problem that appears to have been dreamed up and exaggerated by Miss Magson alone or jointly with others. During the Disclosure Hearing on 7th January 2022, under cross-examination, Miss Magson accepted that she did not know whether Dr Ranson was suffering from burn-out at 14:00 PM. Nor could she know that Dr Ranson was suffering from burn-out at 16:00 PM, the time for the Press Conference.

244. Throughout the Hearing, it was plain that Miss Magson never wanted anything to reach CoMin except going through the command structure and, additionally, she did not want Dr Ranson dealing with Ministers. To get the views of the medical profession heard, through Dr Ranson, she required that they had to pass through Gold involving Miss Magson and Dr Ewart.

Spiking the Video

245. Even before creation of the video by Dr Ranson on the morning of 26th March, Miss Magson had been at work in other ways (as then unknown to Dr Ranson) to spike it being used. Now, known from evidence in this Tribunal, Miss Magson had started, with Minister Ashford to get out the message that Dr Ranson was "burnt-out" or close to it. Given that Dr Ranson was able to record the video (which was well-received by those who saw it), this false message was demonstrably incorrect and merely part of a plan to silence her.

246. Minister Ashford's above-quoted email at **page Z197** started the spread of the *burn-out* message consistent with his conversation on 25th March with Miss Magson and consistent with her plan with Mrs Conie to prevent Dr Ranson appearing the next day. By the following morning, despite the video now existing, the plan not to use it had moved on - **Pages 1664-1665.** This was an email from Minister Ashford of 26th March at 10:53 AM replying to Peter Boxer (Executive Director - Crown & External Relations Directorate):

> **"I don't know if there will be a supporting actor today. We need to be planning these a week in advance at least and changing if necessary if something changes, as the clinicians are under huge pressure now and can't just drop things any more. Rosalind is booked for her presentation tomorrow, but she is an example of this where she's close to burnout with having to do the presentation and media stuff as well as the day-job and it is now impacting our frontline response."**

247. From this, it is evident that the Minister was going along with Miss Magson's plan of postponing use of the video. The burn-out allegations were unfounded. Far more probable was that it was the message that the Island's doctors wanted delivered that had to be delayed or spiked – at least until Miss Magson had checked the message. Support for that is on belated disclosure **page KM49** where Miss Magson wrote: "**We are in danger of DHSC being undermined by all this and that will be worse for us all."**

248. This comment supports Dr Ranson's earlier fears that the views of the Island's medical professionals had somehow not been getting through – consistent with the confirmation that she had asked for in her 25th March email.

249. The video was never used. The steps taken by Miss Magson leading up to and surrounding the video being spiked included:

a. Ordering Dr Ranson to take the 26th March off for a rest.

b. Creating and implementing a plan to prevent Dr Ranson appearing despite ministerial wishes.

c. Misleading Minister Ashford that 26th March was a scheduled mandated rest day at a time when it was not.

d. Starting fears and false allegations of burn-out.

e. Making clear to the Minister that it was not good for her / Execs that Dr Ranson appear (implicitly with an inconvenient message).

f. Offering no explanation why (or by whom) Dr Ranson was pulled at the 11th hour of 25th March.

g. Falsely asserting that Dr Ranson was seeking the limelight – see below.

h. Falsely asserting that Dr Ranson was hungry for power – see below.

Closing Observations on 25th / 26th March 2020 situation

250. The Tribunal concluded that Dr Ranson's 25th March email had been perceived by Miss Magson as an unwelcome challenge. Added to that was Dr Ranson not taking the day off and also proceeding to make a video. As defiance of her order, this must have been even more infuriating for Miss Magson, particularly because it defeated her plan agreed with Mrs Conie. Putting off showing the video until Friday was consistent with Miss Magson buying time to ensure it was never used.

251. A further unpleasant and unjustified rumour / allegation peddled by Miss Magson was that Dr Ranson was motivated by a desire to be ***in the limelight and that she was hungry for power.*** Given that the invitation to appear at the Press Briefing on 25th March came from Ms Aelberry and the second invitation came jointly from the Chief Minister and Minister Ashford, the allegation was unpleasant and unsustainable. This was not Dr

Ranson pushing herself into the limelight. As to hunger for power, Miss Magson appeared to have misunderstood Dr Ranson's ***duty***, in her Job Description, to represent publicly the Island's medical professionals.

252. After query by Dr Ranson, Miss Magson's explanation on 28th March was that the video had to go through the approved command structures before being shown. The command structure was sensible but the Tribunal did not consider that it had to be sacrosanct when the invitation for Dr Ranson's involvement on both days had come from the very top.

253. Additionally, had Miss Magson's explanation not differed from that of Minister Ashford, it would have carried more credibility. Both versions cannot be correct. According to Minister Ashford "matters overtook us" and "something more important had come along" so that the video was unused. If that were true, why was that not explained to Dr Ranson at the time rather than emerging in belated undisclosed documents? It also contradicted what Miss Magson told Dr Ranson on 28th March.

254. Dr Ranson had no idea that Miss Magson had been making unfounded allegations of burn-out or of her wanting to be *in the limelight or being hungry for power*. She was unaware that Miss Magson, from the afternoon of 25th March, had been pursuing a plan to prevent a message, approved after the whiteboard presentation, from getting air-time because it had not gone through her command structure. It was the Tribunal's view that it seemed unlikely that it ever would get through to CoMin given that the Island's professionals were at odds with Dr Ewart's approach.

255. An internal note from Dr Ranson (**page 1683)** complained about the rigid command structure being stifling. This view was supported by Dr Rachel Glover at **para 7** of her statement. From March 2020, Dr Glover had been assisting the DHSC, personally and through her company Taxa Genomics Limited, with advice on genomics. She had past experience of successful Gold-Silver-Bronze structures but the Manx one was not working efficiently. Dr Glover also suspected that "information blockage" came from Miss Magson. In consequence she had been driven to operate outside the structure and deal with MHKs and Ministers direct.

256. Dr Glover had expressed her concerns about this privately to Minister Ashford by email on 15th May 2020 and in person on 2nd September 2020. The Minister had assured her that the meeting was entirely confidential but Dr Glover had evidence that showed that Miss Magson had become aware of it but the Minister denied leakage.

257. Additionally, because the video was not broadcast on 26th March as expected, Dr Ranson had sent it direct to Minister Ashford that night. No doubt, Miss Magson would have regarded that as an act of defiance being direct contact with the Minister. He replied that he had not seen the video but that he would "**ask why it didn't go out."** He never did provide any explanation at the time.

258. Dr Ranson's note also stated that Miss Magson had indicated that the recording "had not been approved" because "it was agreed by junior member of comms." As Dr Ranson's note confirmed, it had been asked for by "Peter and Liz" - meaning Peter Boxer and Ms Liz Aelberry, far from junior members.

259. The surrounding circumstances satisfied the Tribunal as to the lengths to which Miss Magson would go to ensure that her wishes were implemented even if it meant misleading others and damaging Dr Ranson to achieve this. The Tribunal was also satisfied that the overall circumstances of the email and video amounted to a challenge to which Miss Magson reacted badly - even having to deny in cross-examination that she had seen Dr Ranson's behaviour as a challenge.

260. That said, the Tribunal considered that the aggravated situation was caused less by the 25th March email and rather more by the message that Dr Ranson had been invited to deliver. That message, in Miss Magson's opinion, was inconvenient to the Department. Starting with the email, the entire episode created an uncomfortable situation for Miss Magson starting with the implicit challenge, as she saw it, in the email followed by Dr Ranson refusing to take the day off on 26th March and instead making the video.

261. The Tribunal was being invited by Mr Segal to draw the inference that Miss Magson had pulled the video. The Tribunal make no finding of fact on this but it certainly seemed plausible that she ensured that the Minister no longer wanted it used.

262. Though the email was not advanced as a protected disclosure causing later detriment, Mr Boyd made this point:

> **"Of course, the irony is that if a certain inference were to be drawn, it would mean that Miss Magson was treating Dr Ranson detrimentally for reasons wholly unconnected to any potential qualifying disclosure – which would cast in doubt any causal link between later detrimental treatment and qualifying disclosure(s)."**

263. Despite the warning-shot quoted above from Mr Boyd, the Tribunal preferred the approach of Mr Segal. He submitted that Mr Boyd was contending that, because Dr Ranson's case was that some treatment of her by Miss Magson was caused in part by her challenge of 25th March 2020, somehow that undermined Dr Ranson's case that subsequent detriments were in part caused by the protected disclosures from 25th April 2020 onwards.

264. Mr Segal considered that approach to be "misconceived." He pointed out that the evidence was that Miss Magson reacted and reacts badly to being challenged and all the more so when the challenge was well-founded. The 25th March email (**page 1653**) was the first significant and well-founded challenge by Dr Ranson and Miss Magson reacted by subjecting Dr Ranson to detriments including subsequently accusing her without justification of being ***hungry for power*** and of ***seeking the limelight***. The Tribunal also noted that Miss Magson, to bolster her stance, had falsely asserted that 26th March was a rest day for Dr Ranson when this was not so and had never been contemplated, let alone agreed. As Dr Ranson put it at (**RR43 page 4857**) this "set the pattern to a large extent of what would happen in the coming months."

265. In fact, though not submitted as part of Dr Ranson's arguments, the Tribunal considered that Dr Ranson, by making the video for broadcast, was in effect seeking to take a stand akin to a protected disclosure, when she refused to take the day off so that she could deliver a public health message required by the Island's medical professionals.

266. Mr Segal contended that later protected disclosures which *were* relied upon were further well-founded challenges to Miss Magson and, severally and cumulatively, they were, at

the very lowest, a *non-trivial influence* on Miss Magson's behaviour towards Dr Ranson. In the end, as he submitted, they culminated in her misleading Mrs Cope and Mr Foster such that Dr Ranson lost the ongoing Medical Director role at Manx Care.

PART FIVE

The (alleged) Protected Disclosures

General Observations

267. A point that has been made in this Tribunal previously is that the framework of the legislation in the Employment Act 2006 (and in other informal guidelines) as to the process for making whistleblowing disclosures, does not require the whistleblower to make clear to the recipient of the information that he/she is making a whistleblowing protected disclosure. It can be oral or in writing – giving rise rather often to evidential and interpretation difficulties.

268. Accordingly, the recipient of the information may not treat what he or she is being told with the degree of seriousness that the maker of the allegations intends to get across. All too frequently in this Tribunal, this situation is encountered. It would save time and expense if the recipient was made aware that the information being provided was to be received as a whistleblow. For now, the Tribunal can only apply the law as laid down in statute.

April 25th 2020 – Alleged Protected Disclosure to Dr Allinson

269. This is the pleaded disclosure:

> **"That on 25th April 2020, Dr Ranson spoke to Minister Allinson by telephone and told him that she reasonably believed that Miss Magson had failed to pass on crucial information to the Minister and the Council of Ministers. The information that Miss Magson had failed to pass on concerned the impending medical emergency. She was obliged to pass on that information because it was clearly in the public interest to do so and if she did not, then Ministers and others would**

be making critical decisions in the absence of key information. Dr Ranson told the Minister that this had placed people at risk and it was in the public interest for her to do so."

270. This conversation on 25th April, when Dr Ranson spoke to Dr Allinson, was the second of two conversations. The first had been on 10th April 2020 and had been initiated by Dr Allinson, not in his capacity as the Minister for Education but as a medical doctor. His evidence was that he had been informed that Dr Ranson was feeling somewhat isolated and so he had made the initial move by text on 9th April, this leading to the first discussion. In effect, Dr Allinson was making a supportive gesture to a medical colleague. The Tribunal considered that by 9th April, Dr Ranson had cause to feel that way because of her belief that her voice and that of both the CAG and the SMLT had not been heard in the terms they had wanted or believed were in the best interests of the health and safety of the population.

271. If any disclosure is about the CEO (and in this case, Miss Magson was also Dr Ranson's direct line-manager), then disclosure should be to Minister Ashford, rather than to a Minister from a different Department. However, Mr Boyd did not contend that Dr Allinson, the Minister for Education, was not a proper recipient of a protected disclosure. The Tribunal considered that any such disclosure was outside the provisions of section 51 because that had to be made to an employer**.**

272. Dr Allinson was a Minister in a different Department and so not an employer. However, under section 55(1)(a) there is a wider definition that could embrace disclosure to Dr Allinson. Additionally, under section 56, if the disclosure is of an *exceptionally serious nature,* Dr Allinson would be appropriate. The Tribunal considered that if the fuller version of what Dr Ranson had pleaded had got across to Dr Allinson and then to Minister Ashford, the conditions in section 56(1) as well as under section 55 (1)(a) were met. Rightly, there was no challenge to Dr Ranson having a reasonable belief in what she passed on.

273. In the first discussion on 10th April, Dr Ranson was cautious about how much she should say about her concerns. She informed Dr Allinson that Miss Magson being based in the UK did not work. This was because she was in Gold Command and the sole conduit to

Minister Ashford, the National Steering Group, CoMin and the Chief Officers Group. After this conversation, Dr Ranson had considered Dr Allinson to be sympathetic. It was agreed they would speak again.

274. There then followed the subsequent conversation on 25th April 2020. This was advanced as being a protected disclosure. Dr Ranson decided that Dr Allinson was an appropriate person to hear her concerns including about Public Health. Dr Ranson's evidence was that she did not believe Miss Magson had passed on SMLT's presentation of 16th March to the Minister and she explained her reason for this belief. She informed Dr Allinson that Miss Magson had been resistant to her communicating with any politicians – as confirmed in Dr Ranson's notes at **pages 3718-9,** although the evidence of Minister Ashford was that she was free to contact him about her March 2020 issue **(para 34 - page 4632)**.

275. Dr Ranson had wanted her concern about lack of access raised with Minister Ashford. Dr Allinson agreed to suggest to the Minister that he should receive information directly from her, among others.

276. The Tribunal was satisfied that Miss Magson would have been displeased had Dr Ranson gone direct to Minister Ashford on the March (or any) issues. Equally the Tribunal was satisfied that Minister Ashford did not want or expect to hear directly from Dr Ranson (or from anyone other than through the command structure).

277. Dr Allinson took the opportunity to speak to the Minister after a CoMin meeting. His evidence was that Minister Ashford made clear that he would not hear from Dr Ranson direct. He would only hear from Miss Magson, coming through the command structure. Minister Ashford, in his evidence to the Tribunal, did not deny that there could have been a brief discussion like this but he had no recollection of it. He said that he would not challenge whatever Minister Allinson had said of the discussion. Significantly though, he added that he would not have divulged a Minister-to-Minister discussion to Miss Magson.

278. In issue was whether the message, as passed on by Dr Allinson, was just about the need for Dr Ranson to have direct access to the Minister. Alternatively, had he raised this concern in the express context of the risk to the Islanders' health? Had Dr Allinson received the pleaded message from Dr Ranson that Miss Magson was preventing

Ministers from getting medical advice at the risk to public health? If the message received by Dr Allinson was just about direct access, then he was not receiving *information*. If Dr Ranson had got across the fuller message, then that was *information* and capable of being a protected disclosure.

279. The Tribunal concluded that, based on Dr Ranson's evidence, it was likely that she had got across to Dr Allinson information because she had explained why she wanted direct access in the context to decisions being made without input from SMLT. Whether Dr Allinson took the full message on board and relayed it in full informational terms to the Minister is less certain given his exchange with Minister Ashford. The evidence suggested that Dr Allinson had asked about direct access and that this request had been refused.

280. However, the crux issue is that there was no evidence that Minister Ashford had passed on the message to Miss Magson. At that time, all Ministers had so much to wrestle with. The Tribunal could not conclude that the message passed on by Dr Allinson in that informal manner was in such terms as inevitably to cause Minister Ashford to raise it with Miss Magson. Despite Mr Segal's invitation to draw an inference from the close working relationship between the Minister and Miss Magson, the Tribunal felt unable to do so.

281. Mr Boyd submitted that Dr Ranson's pleaded case was that the message passed to Dr Allinson was that ***people had been placed at risk*** but her evidence had not substantiated that. He submitted that Dr Ranson's evidence had not established that she was providing information (despite her pleaded case) or that her disclosure tended to show that a person had failed to comply with a legal obligation or that the health and safety of any individual was being endangered.

282. That apart, Mr Boyd said that with no evidence that iany message had reached Miss Magson, it could not be causative of any alleged detriments including dismissal.

283. Mr Segal considered that the message that was imparted was that important advice on how to fight Covid-19 was not being fully presented to Ministers – this being advice from the Senior Medical Leadership Team of 16th March 2020. The Tribunal did not need persuading that on this or any of the protected disclosures, Dr Ranson had a reasonable belief in her contention. However, given the evidence of Minister Ashford, the Tribunal

were not able to draw the inference that he had passed on Dr Allinson's message to Miss Magson even although the Tribunal accepted the evidence that Miss Magson and Minister Ashford were in regular contact - even sometimes two or three times in one day.

284. Given the finding that Minister Ashford had not raised this discussion with Miss Magson, so that no subsequent detriments could flow anyway, whether or not information had been adequately passed on by Dr Allinson, was really academic.

May 12th 2020 – Alleged Protected Disclosure to Miss Magson

285. Dr Ranson had not been the initial prime-mover of the following allegation. What happened started with an approach from a GP called Dr Rankin who wrote to her and to Miss Magson as follows (**page 2066**):

> **"I am writing to warn you that I have performed an analysis of the information released by the government based on the advice of their clinical advisers. My analysis concluded that there were grave errors and that these errors have been in the public domain without correction for so long that the advisers have not been giving reliable information. I checked my analysis with a maths teacher – this is the teachers reply, redacted only to remove PID. (The corrections advised have been made to the enclosed PDF). In my opinion you should warn the government that there are serious flaws in the data on which they have been making decisions."**
>
> The attachment appears at **page 2067** and it is not necessary to recite it.

286. GPs have to deal with patients on a front-line basis. If patients, as part of the general public / electorate, are being provided with information which is flawed, the Tribunal accept that this may lead to pressure from constituents on MHKs and Ministers to soften the impact in their daily lives if the displayed risks underplayed the pandemic situation.

287. Dr Ranson had a duty to consider Dr Rankin's concern. Sensibly, in the opinion of the Tribunal, she took this up on 11th May 2020 by email with Mr Ian Wright, a consultant orthopaedic surgeon at the hospital. She investigated the data and assumptions behind this model and a particular graph (**page 2041**) that was being used at press conferences.

The graphs had been prepared by Mr Wright in conjunction with Government Technology Services.

288. Like Dr Rankin, Dr Ranson considered that the publicly used graph seriously underestimated the reality of an "unmitigated scenario." The response from Mr Wright was scarcely reassuring about the conclusions that could be drawn from the graph. Mr Wright wrote (**page 2043**):

> **"The graphs on the Government website were generated in part to look pretty, for public consumption, and were generated from the spreadsheet with simple inputs to avoid the more complex shapes we were getting from having different growth values."**

289. Consequently, Dr Ranson emailed Miss Magson on 12th May 2020 (**page 2064**) warning that a graph being used in Press Briefings gave a misleading impression of the reality of the risk of an uncontrolled spread of the virus. The graph showed that such a scenario would only involve about 3% of the population. Dr Ranson's reasonable and justified concern was that somebody, and in particular Ministers, might conclude from it that societal measures such as border controls could be lifted. Dr Ranson wrote, inter-alia, to Miss Magson as follows:

> **"My concern about Ian's graph, which the Ministers refer to almost daily, and which appears on the website, is that if anyone were to actually look at it properly and follow what it indicates, they would conclude that we could lift all measures immediately. This I believe would be very dangerous and would contradict the advice given to date. My advice is that the Minister needs to be informed of this and I suggest the graphs are removed from the public website. Obviously, the graph showing the actual data should be capped."**

290. This is the pleaded protected disclosure:

> **On 12th May 2020, Dr Ranson emailed Miss Magson about the graph being used by Ministers to inform the public and the conclusions that would be drawn from**

it and she wrote: "This I believe would be very dangerous and would contradict the advice given to date."

291. Taken at face value, Dr Ranson considered that the graph could be read by the public and influence their behaviour. The graph could be read and interpreted by the public as supporting restrictions being lifted on a false premise. Dr Rankin's concern, endorsed forcefully by Dr Ranson, was of the danger to public health from the information displayed in the flawed and inaccurate graph impacting on health and safety.

292. However, Mr Boyd considered that the email was only a reflection of Dr Ranson's *opinion* and was not providing *information*. Mr Boyd's point was that significantly more than reliance upon a single graph would have been used by decision-makers before any decision would have been taken to lift the measures in place and thereby create danger to health and safety.

293. Mr Boyd rejected Dr Ranson's argument that the way that Miss Magson closed down the disclosure by a communication with Mr Wright (**page 2077**) supported Dr Ranson's view that there was a danger to public health. Mr Boyd's point was that Miss Magson was dealing with the details provided as a *difference of opinion* between two colleagues. Even if it were a protected disclosure, Mr Boyd submitted that Miss Magson's reaction to what she was told on 12th May could never have led to the subsequent detriments. It was, in his submission "**simply one very many operational matters that reared their heads and were dealt with by Miss Magson with a minimum of fuss**."

294. As was pointed out by Mr Segal, the purpose of the graph and the modelling behind it was to allow the DHSC to ensure that adequate preparations were made to manage an outbreak of Covid-19 on the Island. As such, it indicated the likely number of individuals who might become infected. At a 3% figure, Dr Ranson (and indeed Dr Rankin) considered that the graph significantly underestimated the likely infection levels in an unmitigated scenario.

295. Mr Segal rejected Mr Boyd's submission that the message given on 12th May was merely an opinion expressed by Dr Ranson. He urged that, consistent with the guidance provided in **Kilraine**, there was *sufficient factual content and specificity*. He submitted that the

message contained information that the graph was inaccurate and flawed and also the consequence that could flow from it. That her concern was genuine was evidenced from the fact that Dr Ranson had troubled to investigate the rationale of the graph directly with Mr Wright before writing to Miss Magson. His answer had confirmed her concerns.

296. Mr Segal considered that the evidence pointed to Miss Magson not being happy about Dr Ranson raising this issue on 12th May. After being copied into another email sent by Dr Ranson to Mr Wright, Miss Magson's reply made Dr Ranson think that it was designed to prevent her from taking the issue any further. He pointed out that Miss Magson did not seek to obtain the information that Dr Ranson felt was needed from Mr Wright. Instead, Miss Magson's response to Mr Wright had been an email (**page 2071**) thanking him for what he had done and telling him that the matter *was "**closed and re-closed***." She informed Dr Ranson that Minister Ashford was "wedded to the graph."

297. The Tribunal considered that the vehemence of Miss Magson's feelings about the stance being taken by Dr Ranson came across in the way that she shut down the point (or at least hoped and intended to do so). The words "closed and reclosed" displayed her irritation with Dr Ranson for pressing the issue.

298. The Tribunal agreed with Mr Segal that even just the use of the word "flawed" constituted a disclosure of information. The logical conclusion from its use was that a particular piece of scientific modelling was inaccurate. Additionally, the Tribunal accepted the submission of Mr Segal that viewers of the graph could conclude that measures could be lifted immediately – a statement that had to be read within the proper context consistent with paragraph 14 of **Kilraine**. The Tribunal accepted that the message being delivered was therefore not only the inaccuracy of the graph but also the likely levels of infection in an unmitigated scenario and of the dangers that Dr Ranson foresaw from it continuing to being displayed.

299. The Tribunal accepted that Dr Ranson was entitled to this belief which was reasonable in the overall circumstances. Later, Dr Ranson's concerns were more than amply supported by a leading global expert. On 15th July 2020, her fears were endorsed by Professor Adam Kucharski who confirmed that in an unmitigated scenario, the peak incidence would be

800 to 900 symptomatic cases per day (**page 2218**) whereas the flawed modelling suggested only 118 cases per day.

300. That Mr Wright himself had already downplayed the modelling behind his graph as quoted above also supported why Dr Ranson had reasonable cause for concern and her belief.

301. Minister Ashford's view was that there would be no graph on which everyone could agree. It was designed to show various scenarios if measures were not taken reflecting a range of opinions rather than being delivered as a fact (**paras 19- 25 page 4631-2**). He was aware there would always be voices questioning things. To the Tribunal, that begged the question why he was wedded to the graph (as explained by Miss Magson) when his CEO had information that it was flawed and dangerous. It could have been taken down or a different graph used.

302. The Tribunal did not doubt Dr Ranson's reasonable belief in what she was stating. Minister Ashford's witness statement did not say whether he was ever made aware of Prof Kucharski's opinion – as opposed to the concerns that Dr Ranson had advanced on 12th May.

303. The Kucharski information was provided by Dr Ranson to the SMLT (which by now had undergone a name change to the Senior Clinical Leadership Team) (SCLT). In July, Dr Ranson emailed Miss Magson with the new presentation (**page 2227**) but again she had not seemed receptive. The information demonstrated the risk of a "second spike" and that the current model was incorrect.

304. Nevertheless, Miss Magson made clear that the presentation would not go anywhere. In short, Dr Ranson was troubled because the Minister did not have all the relevant information about her concern for public health. She ultimately decided to take her concerns directly to Sir Jonathan Michael, he being a doctor besides the author of the report into the DHSC.

305. Continued publication of the graph from 12th May, and especially even after the evidence of Professor Kucharski became available, plus the input from the SCLT demonstrated the seriousness of what Dr Rankin and Dr Ranson had initially raised.

306. The Tribunal considered that Dr Ranson, doggedly and consistently making her point, whether defined in law as a protected disclosure or not, added to an ultimately negative balance-sheet in the deteriorating relationship between Miss Magson and Dr Ranson. In fact, the Tribunal considered this was a protected disclosure.

307. The Tribunal considered that Miss Magson's immediate approach to the 12th May email had been both rather dismissive and sarcastic. She later portrayed Dr Ranson to Minister Ashford as someone who believed *that only she could save the Island* (something she also alleged in her witness statement). Dr Ranson considered that she had the role and responsibility to ensure that the views of senior clinicians and later of a world expert were obtained and shared. She had wanted to ensure that political decisions were made in the light of the most accurate and up-to-date medical and clinical information and opinion.

308. The Tribunal concluded that Dr Ranson had a reasonable belief in the information disclosed. Even Mr Wright himself had a similar view of the graph and the Tribunal concluded that the public was being misled. The Tribunal was satisfied that this was a protected disclosure and was an ongoing issue for substantially longer.

July 31st 2020 – Alleged Protected Disclosure to Sir Jonathan Michael

309. By an email (**pages Z461/Z462**) to Sir Jonathan Michael, Dr Ranson raised this concern, now alleged to be a protected disclosure:

"On 31st July 2020, Dr Ranson emailed Sir Jonathan Michael to explain why she had been advising that: "The DHSC modelling was fundamentally flawed and how she had been treated as a result of giving that advice. In what might be seen as a telling response Sir Jonathan Michael told Dr Ranson that "you will lose if it comes to a major fight."

310. The Tribunal could understand why Dr Ranson felt constrained to turn to Sir Jonathan to raise her concerns. She had an open invitation from him to do so on a confidential basis. He was a highly respected figure who had recommended the fundamental reforms that

were to be implemented in 2020 /2021. He was a medical doctor who could be expected to understand the points that Dr Ranson was making. However, on the evidence available to the Tribunal, Sir Jonathan was not employed by the Respondent but it seemed to be clear that he had an ongoing role in some type of consultative capacity – perhaps through the Cabinet Office.

311. The Tribunal accept that the contents of the 31st July email amounted to disclosure of information and had been provided in reasonable belief of what she was reporting to him. Indeed the Respondent's Response at **para 45** (**G4231**) did not contend otherwise. Dr Ranson was informing Sir Jonathan that the new modelling from Professor Adam Kucharski (**15th July 2020 – page 2218**) showed that, in an unmitigated situation, the number of Island cases would be 800-900, compared to the (flawed) modelling figure of 118 cases.

312. As already indicated, this flowed from Miss Magson's dismissive approach to the 12th May protected disclosure and what happened after that. Dr Ranson was entitled to continue to seek to bring about a change of attitude from Miss Magson and the Kucharski Report was reasonably believed to emphasise the reality of the flaws. However, even that Report had not changed Miss Magson's attitude.

313. For whatever reason, Miss Magson had wanted to suppress the existence of this information and close down this modelling issue. Miss Magson instructed Dr Ranson that the SCLT presentation, based on the Professor's modelling, "**must not go anywhere else**." That comment alone was suggestive that Miss Magson was most unlikely to have passed this information to Minister Ashford, although the Tribunal could not rule out that Miss Magson had done so.

314. The independent advice from a renowned expert like Professor Kucharski deserved to be taken into consideration at the highest levels including at CoMin. Due to Miss Magson this significant concern, first raised on 12th May but then, as fortified by Professor Kucharski and the SCLT, was never permitted to commence a journey through the command structure from Bronze through to Gold and upwards. It had received initial support from Bronze but was then blocked by Miss Magson.

315. Based on her previous understanding and experience of how Miss Magson operated, Dr Ranson knew that Miss Magson had not passed on other information from CAG / SCLT and had not taken kindly to what she appears to have regarded as Dr Ranson rocking the boat.

316. Sir Jonathan's response (**pages Z460 – Z461**) discouraged any further action. He warned Dr Ranson that she would lose if it came to a major fight because of the respect for Miss Magson among the politicians.

317. The Tribunal did not think that Sir Jonathan fell within the category of people to whom Dr Ranson could make a protected disclosure under section 50(1)(d). The Response at para 45 (**G4231**) challenged that Sir Jonathan fell within the category of *prescribed person* under section 51**.**

318. Mr Segal submitted that Sir Jonathan fell within this category because he could be regarded as an employer even though not an employee. This was because he formed part of the corporate structure as an adviser to CoMin, to the Chief Minister and to the Chief Secretary (see **RR 91 – page 4869**). Sir Jonathan's readiness to communicate regularly with Miss Magson (and Dr Ranson knowing that she could speak to Sir Jonathan monthly in confidence), suggested, in Mr Segal's submission that Sir Jonathan was part of the fabric in the advance towards establishment of Manx Care. However, in the opinion of the Tribunal, that still did not meet the strict statutory requirement of section 51.

319. The Tribunal ultimately concluded that Dr Ranson's disclosure also failed under section 55 because of the provision of section 55(3)(a) which required disclosure to an internal figure with a view to improving communication within the Respondent. Just as it was a stretch to regard Sir Jonathan as an employer, so equally it was a stretch to consider him to be an internal figure. He was most likely to have had the status of an ***external consultant*** retained to help the Respondent through the transformation process.

320. However, the Tribunal concluded that Sir Jonathan did come within the ambit of section 56. This requires that the disclosure be made in good faith and must concern matters of ***an exceptionally serious nature***. Sir Jonathan fell within the definition of section 56(1)(e) as someone to whom a protected disclosure could then be made. With other avenues for

a whistleblowing disclosure not realistically available or suitable to be used by Dr Ranson, Sir Jonathan was somebody to whom Dr Ranson could turn to make a disclosure under section 56.

321. The Tribunal had no difficulty in concluding that the information being divulged was of an *exceptionally serious nature*. It concerned a failure and refusal to pass on expert evidence and modelling that demonstrated the serious flaw in Government modelling. The adverse probable effects on the provision of health services was indeed serious. The implications to a doctor, and especially one like Sir Jonathan, familiar with the scale of the Manx Health Service facilities, would or should have been clear.

322. The problem for Dr Ranson was that there was no witness statement from Sir Jonathan. Mr Segal suggested this absence was rather telling. The Tribunal had no evidence as to what Sir Jonathan did, wrote or said with the information disclosed to him.

323. From the outset, Dr Ranson's warning had deserved to be passed on by Miss Magson for a decision to be made at a suitable political level with such decisions then being taken on the spectrum of advice available rather than blocked by a non-medically qualified CEO.

324. Miss Magson denied any knowledge that Sir Jonathon had received this information. Mr Segal invited the Tribunal to reject that denial as self-serving. He pointed out that she had been in contact with Sir Jonathon "throughout." The Tribunal have, in a number of respects, preferred the evidence of others over that of Miss Magson for a variety of reasons which the Tribunal considered powerful and cogent.

325. However, tempting though it was to agree with this invitation, the Tribunal could not go that far. Dr Ranson's entitlement was to speak to Sir Jonathan in confidence. He had not been invited by Dr Ranson to take action or to confirm that he had done so. Not least because he replied to Dr Ranson to drop the issue because she would be the loser, the Tribunal could not be satisfied that he would have broken that trust and confidence by speaking to Miss Magson when knowing that to do so would or well might cause harm to Dr Ranson.

326. Mr Segal's suggestion that he could have had a diplomatic quiet word with Miss Magson does not quite stack up because had he done so, there would have been a heavier burden on Miss Magson to ensure that the new modelling in line with Professor Kucharski was passed on and there was no evidence of that.

327. Mr Boyd's submission was succinct and covered just these points:

    a. Dr Ranson had not identified and explained whether the disclosure concerned failure regarding a legal obligation or endangerment to health and

    b. Dr Ranson had not set out the legal basis on which Sir Jonathan was someone suitable to receive whistleblowing information within the statute and

    c. There was no evidence that Miss Magson had received the information from Sir Jonathon and in conclusion there could be no causative link to any detriment.

328. The Tribunal disagreed with Mr Boyd as to points (a) and (b). The Tribunal concluded there was a disclosure of serious risk to health given the concealment of Professor Kucharski's figures which showed the flaws and dangers arising from showing the previous graph.

329. The Tribunal considered there was insufficient evidence to suggest that Sir Jonathan had passed on the information to Miss Magson. That said, in her fight for the position to be rectified, the persistent challenges made to Miss Magson since Dr Ranson had first raised this on 12th May (and continuing until the end of July), were undoubtedly an irritation growing into a festering sore for Miss Magson during these many weeks.

330. This was a protected disclosure but on balance, Miss Magson was not aware of it and in isolation, was not causative of any detriment..

September 7th 2020 - Alleged Protected Disclosure to Miss Magson

331. The disclosure alleged was that Dr Ranson became aware that there had been a change to the "Testing Pathway" made or authorised by Miss Magson. Dr Ranson considered this change to be unsafe and raised this with Miss Magson during a Microsoft Teams meeting on 7th September 2020 - (**page 4212**). It was not in writing, nor did it need to be under the

statute. The disclosure was made at an Executive Meeting. For example, a Pathway would set out how often an arriving Essential Worker had to test for Covid-19 and for how long that individual had to isolate.

332. The Pathways had been designed specifically around a risk / benefit analysis to get essential health service workers back into the workplace. The original Pathway had involved a Day 1 test on arrival and a further test on Day 7. In the meantime, the worker had to isolate. If both tests were negative, then the individual could work immediately but, until Day Fourteen, had to wear full PPE.

333. In early September 2020, Dr Ranson was informed by Dr Khan, a Consultant Microbiologist, that an essential worker had tested positive on Day 7. However he explained that this person had not had a test on Day 1 because the Pathway had been amended so that this was no longer needed. Previously, all Pathways had been developed in the CAG and had involved Dr Khan and Dr Ranson.

334. Dr Khan did not know how this change to the Pathway had come about – and neither did Dr Ranson. By this date, Covid-19 had been eliminated on the Island and life was back to normal. However that depended on arriving essential workers testing and isolating in accordance with the designated Pathway. Dr Ranson's concern was the implication for critical staffing levels within the health service. If the worker tested positive, then isolation would have to be for 14 days with such a person not being at work. If such a worker, if positive, were not tested until Day 7, as opposed to on Day 1 then the practical consequences were that such a worker would have to spend about twice as long in isolation and away from work.

335. Dr Ranson's manuscript notes are at pages **Z478 – Z479**. Dr Ranson explained her position at paras 100-105 of her statement (**page K4872**). Her notes recorded that she was told by Miss Magson that "Rizwan (Dr Khan) was supposed to change Pathways and decision was made on Silver while I was away." That answer begged the question as to Miss Magson's own role which was neither formally admitted nor denied.

336. Dr Ranson considered that any changes to the Pathways created a risk because keeping Covid-19 at bay would only continue if arriving essential workers tested and isolated in

accordance with the designated Pathways. Neither she nor Dr Khan had been consulted. The CAG had not been involved. Dr Ranson's particular concern was about the knock-on impact that the change would have on what were sometimes critical staffing levels within the health service.

337. On the following day, Dr Ranson's note of a conversation with Dr Khan (**page 3728**) was as follows:

> **"KM changed the Pathway not Rizwan. Vicki Knox emailed SD 27th August and asked Steve if he was aware of the change of Pathway."**
>
> The same note added:
>
> "**Henrietta (Dr Ewart) has told Rizwan and that we (DHSC) should have nothing to do … it."**

338. SD is Steve Doyle, Pathology Department Manager. Dr Ranson's contention was that she had said at the Teams meeting that she considered the change to be unsafe and alleged that Miss Magson's response to her disclosure suggested that she did not like Dr Ranson raising this matter.

339. Dr Ranson doubted the truth of Miss Magson's denial of involvement when she had shifted the responsibility to Dr Khan who was not present at the meeting. She also doubted that the decision had been taken in Silver, as alleged, because Silver was not a clinical decision-making Group that would change a Pathway.

340. However, Mr Boyd said that Dr Ranson's live testimony was different. He quoted from her re-examination by Mr Segal as follows:

> **Mr Segal: "The Pathway change – you were asked what it might be about what you had said or done that would amount to a qualifying disclosure – that contributed to Miss Magson acting in the way complained of and you said *I was challenging her*…"**

Dr Ranson: "I was questioning her as to what had happened. I was questioning her answers as to how something had happened."

341. Mr Boyd submitted that simply questioning Miss Magson as to how something had happened cannot amount to a qualifying disclosure because it was not disclosure of information. He therefore submitted that it was a "complete non-starter" which had no kind of causative link to any detriment.

342. As an alternative, and in case his submission was not accepted, Mr Boyd pointed out that Miss Magson's general view of the Pathway matter seemed clear and that once again this was a matter that was entirely uncontroversial, entirely commonplace and entirely routine (**page 2293** - **2294**: "**Really not looking to create a massive industry of this – and will respond back to Henrietta (Ewart) with a view to close it down**."

343. Mr Boyd did not refer to something Miss Magson said in her email to Ms Murray and Dr Ranson (**page 2293**): **"Steve was fully part of all these discussions …"**

344. On the same page Miss Magson, referring to the discussions also mentioned**: "I can't actually remember who brought it up – think it was Ginette in the capacity planning piece and ensuring we are using our testing and swabbing capacity wisely…"**

345. See further below on Steve Doyle's knowledge and that of Ginette.

346. The Tribunal noted that of further significance was that Dr Ewart was at least irritated, if not angered, that the change had been made without her knowledge either. In the Tribunal's opinion, Dr Ewart's attitude to being ignored reinforced precisely why Dr Ranson had on other past occasions been concerned when she and the advice of the CAG and the SMLT had been side-lined or not heeded.

347. Dr Ewart blamed Miss Magson for the decision. She wrote to Miss Magson on 8th September 2020 as follows (**page 2294**):

"I understand that you have recently altered Pathway 2 for essential healthcare workers to remove the need for a test on day of arrival as well as one on Day 7. I would be grateful if you would confirm whether that is the case and if so on

what basis you made the decision. How and when was the change communicated to relevant staff (Covid-19 – 111 TNS, lab etc)?"

348. The same day, Miss Magson responded (**page 2294)** that the decision "had been taken at Silver many weeks ago …".

349. Rather later, on 22nd October 2020 (**pages 2419 and 2420**), Miss Magson wrote with regard to the question of testing strategy the following contradictory explanations:

> **"… we have been asked this morning at CoMin to produce a wider presentation which to be honest includes resolving the changes CoMin made a few weeks ago without any reference to advice from anyone re 7 day Pathway."**
>
> **"We are all conscious that the decision to remove 7 day testing was not any recommendation from anywhere a few weeks ago…"**

350. Nevertheless, Dr Ewart wrote again (**page 2294**) on 9th September reiterating that**:**

> **The decision route for Essential Worker Pathways was through Testing Strategy Group/SCLT/ Bronze/Silver and that due process has not been followed in making the change. "The change had not been communicated. Covid-19 111/CT/lab had not been made aware. Our recommendation is that the Essential Worker Pathway 2 should not be modified."**

351. Support from Dr Ewart was a solid indication that Dr Ranson was correct to be concerned about the decision but also about the way that the decision had been reached. Summarising thus far, Miss Magson's contradictory explanations were as follows:

    a. Dr Rizwan Khan was responsible.
    b. It had been a decision taken in Silver many weeks ago.
    c. Steve Doyle was fully part of the discussions.
    d. The decision was not a recommendation from anywhere.
    e. The changes were made a few weeks ago by CoMin without any reference to advice.
    f. I can't actually remember who brought it up – think it was Ginette.

g. Miss Magson herself had not made the change.

Important but Unacceptably Late Disclosed Emails on this Issue

352. A significant and important email exchange that should have been produced in October 2021 only emerged on **18th February 2022 -** a week ***after*** oral Closing Submissions. The significance was that it cast doubt on the evidence of Miss Magson. The Clerk had received these emails from Ms Heeley because of concern expressed by the Chairman during closing submissions, about at least one email that had been referred to but which was not in evidence.

353. The documents were an exchange of emails between Ms Vicki Lee / aka Knox and Mr Steve Doyle, both employees of the Respondent. The exchange took place on 27th August 2020 and concerned the change of Pathway 2. Ms Lee had written:

> **"Kathryn has changed Pathway 2 to a 7 day Pathway, no PCR on arrival and test on day 7. Is this something that you are aware of, Ginette wasn't and just wanted me to check with you?"**
>
> Mr Doyle responded:
>
> **"No, I wasn't aware that this was going to be changed. It is something that makes sense and is in the Minister's plans for border control, but it's come as a bit of a surprise."**

354. This unsatisfactory situation of non-disclosure is covered when dealing with all the Disclosure concerns in the Conclusions.

355. Whether Ms Lee / Knox was accurate in her assertion that it was Miss Magson that changed the Pathway could never be tested during the Hearing. Had these emails been produced when they should have been, undoubtedly Miss Magson would have been challenged. Taken at its face value, this extra belated evidence throws serious doubt on the credibility of Miss Magson's denial of responsibility.

356. The email evidence is clearly in conflict with Miss Magson's assertions that Mr Doyle and Ginette were involved. Additionally, it placed responsibility four-square on Miss Magson who had provided a variety of vague and differing explanations to distance herself. Passing the buck to others emerged during this Hearing as a familiar route for Miss Magson to adopt – as will be seen in various later parts of this Decision.

357. Taking account of the overall circumstances and the lack of any credible explanation by Miss Magson as to who had actually taken the decision, the Tribunal reject Miss Magson's evidence (a) that Dr Khan had changed the Pathway (or that he should have done so) or (b) that the change had been decided in Silver. No minutes or notes from Silver were in evidence to corroborate that unconvincing explanation. Dr Ewart blamed Miss Magson.

358. Dr Ranson's concern was why this decision had been taken without advice from her or from Dr Khan. As such, Mr Segal submitted that this was ***information*** tending to show that decisions in the management of the pandemic were being taken without proper medical advice which gave rise to self-evident risks to public health.

359. Dr Ranson had indicated that she had considered the change to be "unsafe" and this alone in Mr Segal's submission was sufficient to be a disclosure of information. She was conveying her professional opinion as the MD on the risk inherent in failing to follow proper process in determining a key component in the Island's Covid-19 response measures.

360. Mr Segal pointed out that Miss Magson had accepted that Dr Ranson had raised her concern (**KM statement 140**). To meet the point raised by Mr Boyd that merely ***questioning*** the change was not supplying information, Mr Segal made this point - when read in its proper context in line with the guidance in **Kilraine,** Dr Ranson's query about the change in Pathways, must be and would have been understood as a statement that the Pathway had been changed without medical advice.

361. The Tribunal agreed with that submission. In the context of the change to the Pathway, the Tribunal considered that, at its lowest, if it were regarded as a question, it could still disclose information that due process had not been followed and was a challenge to Miss

Magson to explain how such a situation had been permitted to risk public health. That Dr Ranson had a reasonable belief of risk to public health was ratified by Dr Ewart.

362. Mr Segal submitted that this was a disclosure made in accordance with section 50(1)(d). Dr Ranson had reasonably believed that the information tended to show that there was a risk to public health.

363. If Dr Ewart, Dr Khan, Mr Doyle, Ginette and Dr Ranson were all unaware as to how and why the Pathway had been changed (except by pointing at Miss Magson), that suggested that the change had been taken without proper medical advice/due process. There was no evidence before the Tribunal confirming that other medical advice had been taken.

364. The Tribunal considered that being challenged by Dr Ranson in an Executive Meeting would have not been taken kindly by Miss Magson. Coming on top of the 12th May disclosure and Dr Ranson's ongoing persistence about the flawed modelling, Miss Magson was publicly being pushed into a corner. Somehow, Miss Magson had to meet and justify a challenge when she knew that the decision had been taken without reference to Dr Ranson, Dr Ewart or to Dr Khan – and so she publicly blamed Dr Khan who was not present and had no chance to deny it

365. The Tribunal considered that this was a protected disclosure, and an embarrassment for Miss Magson, which was why she obfuscated in her conflicting explanations at the time.

366. Miss Magson knew the vulnerability of her situation and had every reason, in her mind, to blame Dr Ranson for her public challenge to her credibility. It is entirely consistent with the blame for this resting with Miss Magson that, as quoted above, she wrote: "**Really not looking to create a massive industry of this**." That self-serving comment seemed hardly surprising. She had every reason to want to quash any debate about the change.

367. This disclosure about the Testing Pathway, as is explained below, was something of an ongoing problem for Miss Magson. It led on to the next disclosure and to subsequent detriment. Dr Ranson's evidence was that Miss Magson behaved in an increasingly aggressive and unreasonable manner with her and further restricted her access to

politicians and clinicians. Following the 12th May disclosure, Dr Ranson had also described Miss Magson's detrimental and sometimes contradictory behaviour towards her in her 31st July disclosure to Sir Jonathan Michael.

October 23rd 2020 Alleged Protected Disclosure to Miss Magson

368. On 23rd October 2020, Dr Ranson had emailed Miss Magson asserting that the Chief Minister and Minister Ashford had answered questions in Tynwald:

> **"… attributing comments to advice from medics (me as MD) which has not come from me or the Clinical Group. There is a serious governance issue here as officers of DHSC are working in CABO and I as MD (and responsible for Rizwan) have no visibility of what advice is being sought, or given and no visibility of the outputs of that advice. No Pathway should be advised upon outside a governed process – but Rizwan has told me that this has been happening outside the proper process. I propose that a solution to this is that all PH requests for medical input from DHSC come through me. As I wrote in my previous emails testing is not a strategy in itself. It is one means of delivering the Island overarching Covid-19 strategy. Testing also delivers safe services within DHSC protecting staff and patients alike and in the broader sense the health of everyone by keeping services open by avoiding Community transmission. This approach would strengthen the governance around DHSC advice and ensure that Execs are sighted on the issue."** (**page 2454**).

369. Dr Ranson also refers to a distilled version in her witness statement at **page 4871** in similar terms. As summarised in the Scott Schedule, Dr Ranson had raised concerns of "serious governance issues" as follows:

> **"Dr Ranson raised with Miss Magson by email concerns that there was "a serious governance issue" as she, as Medical Director, had no visibility of what advice was being sought or given and no visibility of the outputs of that advice. She said that politicians in Tynwald were attributing their answers to advice from "medics" when these answers had not come from Dr Ranson (as Medical**

Director) or the Clinical Group. In the same email, Dr Ranson also raised the concern that (testing) Pathways were being altered outside any proper process."

370. Mr Segal advanced this disclosure as being consistent with section 50(1)(d). He submitted that facts were being conveyed which suggested that politicians did not have an accurate picture of the relevant clinical advice and that these were circumstances that gave rise to a self-evident public health risk. Also, consistent with the previous protected disclosure in September 2020, Dr Ranson was emphasising that her understanding from Dr Khan was that advice on Pathways had been given "outside the proper process."

371. The Tribunal was urged to accept that Dr Ranson's belief was reasonable given that she was the MD and was in an excellent position to comment on what was or what was not the advice of her Clinical Group. There appeared to be no response to this email. The Tribunal considered this disclosure was at least in part linked to the disclosure of 7th September 2020 when Miss Magson had been confronted at the Teams Exec Meeting about the change to the Testing Pathway - a topic which she had wanted to close down.

372. On 22nd October, Miss Magson had written an email to various recipients including Dr Ewart and Mr Greenhow (**pages 2469 – 70**). Miss Magson made this observation (**page 2470**):

"We are all conscious that the decision to remove 7 day testing was not any recommendation from anywhere a few weeks ago and we are being asked to provide a review on what was approved several months ago of which a collective view was given, back in July if I remember correctly."

373. Miss Magson's likely reaction to the implication that she had misled Ministers as to clinical/medical advice, together with the repeated challenges about changing the Pathway without proper process, may well be imagined. In the Tribunal's opinion, Miss Magson was sitting on previously denied allegations of her role in changing the Pathway – a denial that the Tribunal has already rejected. Additionally, Mr Segal reminded the Tribunal that the "catty" text exchanges about Dr Ranson passing between Miss Magson and Mrs Malone took place at much the same time – **pages 3639 ff**." These are now set out:

The Text Exchanges

374. These texts were between Mrs Malone and Miss Magson on or about Friday 23rd October 2020. The first entry from Mrs Malone timed at 12:11 pm (**page 3639**) deals with the forthcoming CoMin Workshop on Wednesday. Much more of the Workshop issue is dealt with when the Tribunal is considering detriments. Mrs Malone commented that she was:

> **"… getting noises that Rosalind has cancelled her leave and wants to know when the CoMin Workshop is.… I know it is Wednesday. But I assume you will be attending only and HE will be there too."**

Miss Magson then replied:

> **Dr Ranson "invited herself … God knows why she cancelled her leave."**

Mrs Malone then replied (**page 3640**):

> **"RR also invited herself to the breast cancer charity governors reception on Friday last week too. Chief Minister was there. But I didn't see her bend his ear. If you need anything from me… Just ask. K.x take care xx"**

Inter-alia, Miss Magson then commented:

> "**How did she do that?… going to work on the presentation this weekend for Will**."

Mrs Malone replied:

> **"There was a presentation at Noble's in the afternoon with dignitaries … charity people so guess she managed to get in. I think she wasn't invited … FYI… It was Minister Allinson that RR spent time with on Friday night at Governors House.…"**

375. Of course, until disclosed in these proceedings, Dr Ranson was unaware of these text messages. The Tribunal considered them significant. They demonstrated that Mrs Malone was aware that Miss Magson would want alerting about to whom Dr Ranson was speaking at Government House. If, though as the Tribunal considered it unproven, Minister Ashford *had* alerted Miss Magson about Dr Allinson's message after the CoMin meeting, then Miss

Magson would have been particularly interested to know that Dr Ranson had been speaking to Dr Allinson.

376. Of particular interest, besides the seeming close interest about what Dr Ranson was doing (and by inference *ought not to have been doing),* was the clear evidence that the date for the CoMin Workshop was now known to both Mrs Malone and to Miss Magson. It demonstrates subsequent bad faith towards Dr Ranson, a subject to be returned to below.

377. Mrs Malone had no sound basis for speculating that Dr Ranson had no invitation to be at Government House. In fact, she had been invited by personal invitation from the Lt-Governor as confirmed by email (**page Z407)**.

378. Mr Boyd submitted that he did not consider it immediately clear how the words, even taking the full text of the 23rd October email, amounted to a disclosure of information relating to lack of compliance with a legal obligation or of health and safety being endangered.

379. The Tribunal could not agree with that standpoint. The Tribunal point to the wording in the email as the source of the protected disclosure and consider that this wording was the disclosure of information that due process was not being followed in governance so that there was a risk to the public's health. The information was consistent with Dr Ranson's reasonable belief that the politicians did not have an accurate picture as to the relevant clinical advice. The Tribunal had no evidence of any reply from Miss Magson.

380. On the previous day, Dr Ranson had written a constructive letter on the same topic to Dr Ewart (**pages 2456-7**) to which Dr Ewart replied on the same day (**pages 2451 – 2**). Dr Khan had also written to Miss Magson copying in both Ms Murray and Dr Ranson on 22nd October involving the same theme which the Tribunal interpreted as concerning good governance (**pages 2467 – 8**).

381. The Tribunal was satisfied that this was a protected disclosure made in a reasonable belief of what Dr Ranson was saying. In consequence, this was yet another challenge to Miss Magson as Dr Ranson's line-manager. This was not the first occasion that Miss Magson

had not responded immediately to Dr Ranson when doing her job and trying to ensure that, through her, the medical profession had a voice. It was a challenge to Miss Magson. The previous occasion had been back in March 2020. That had ultimately led to the formal reprimand letter of 3rd April.

382. Mr Boyd considered that the wording of the email did not disclose information – nor did it tend to show that anyone had failed to comply with a legal obligation or that health and safety was being endangered. However, the Tribunal concluded that this wording was sufficient when read in context of the role of the MD and Dr Khan hitherto:

> **"… have no visibility of what advice is being sought, or given and no visibility of the outputs of that advice. No Pathway should be advised upon outside a governed process – but Rizwan has told me that this has been happening outside the proper process."**

383. Mr Segal submitted that the disclosure conveyed facts that comments attributed by politicians to medics had not in fact originated, from the appropriate bodies providing clinical advice. In his submission, that ***information*** suggested that politicians did not have an accurate picture of the relevant clinical advice - circumstances that again gave rise to self-evident public health risk.

384. Dr Khan (a Consultant Microbiologist) had informed Dr Ranson that a medical member of staff / health-care worker had tested positive on a Day 7 test but had never had a Day 1 arrival test because the rules regarding the Pathway had been changed (**Dr Ranson's statement paras 100-101**). He informed Dr Ranson that he did not know how the rules had come to be changed. Dr Ranson realised that the Pathway must have been altered outside the proper process and the Tribunal accepted that Dr Ranson's belief was reasonable. As MD, she was well able to know and to comment upon what was and was not, advice from the clinicians.

385. The Tribunal concluded that this was a protected disclosure. Additionally, when she read this email, Miss Magson did not welcome what she was being told. In effect, she was being reminded of the prior disclosure of 7th September. This was another factor leading to detriment.

Feb 8th 2021 – Alleged Protected Disclosure to Mrs Cope et al.

386. Dr Ranson sent an email on 8th February 2021 to Mrs Cope, Mr Foster and Miss Magson listing many concerns including those relating to patient safety. Miss Magson forwarded the email with attachments to Minister Ashford the same day.

387. Mr Segal's closing submission made no mention of this protected disclosure – probably, as the Tribunal assumed, it was not pursued because the significant detriments on which Dr Ranson relied had occurred before this disclosure.

388. As pointed out by Mr Boyd, there was a long gap between the previous October 2020 disclosure and this one in February 2021. He reminded the Tribunal that this disclosure cannot have played any part in any prior detriments. The Tribunal took that as self-evident.

4th March 2021 - Alleged Protected Disclosure to Minister Ashford

389. This was not included in the Scott Schedule nor in Mr Segal's closing submissions. Mr Boyd did refer to it but pointed out that no detriments followed the date of the disclosure. The Tribunal concluded that Mr Segal was also not pursuing this any further.

PART SIX

(Alleged) DETRIMENTS

General Observations

390. In general, the Tribunal considered that as 2020 moved forward, the drip-drip of challenges and of certain protected disclosures made by Dr Ranson had led to Miss Magson becoming increasingly frustrated and irritated with Dr Ranson. That had manifested itself in her actions and deliberate behaviour towards Dr Ranson which led to certain detriments in consequence.

391. The Tribunal had an agreed Scott Schedule itemising those detriments that were live issues at close of evidence. The Tribunal's observations now deal with the detriments as itemised.

30th July – 20th October 2020 - The Speaker of Tynwald

392. This is the detriment alleged in para (i) of the Amended Particulars of Complaint:

"On 30th July 2020, Miss Magson instructed the Complainant not to respond to the Speaker of Tynwald when he had written to her asking her about advice she had given. This resulted in the Speaker saying publicly that she (the Complainant) had not responded, causing the Complainant professional harm and personal embarrassment."

393. Due to this, Dr Ranson alleged she was left feeling marginalised, bullied and treated with disrespect and complete disdain. Her reputation with politicians and clinicians on the Isle of Man was damaged. She considered that this was a decision of Miss Magson which unreasonably had prevented her from replying so that her reputation was publicly damaged. She saw it as part of Miss Magson preventing her from communicating with politicians.

394. The Tribunal could see that the question from the Speaker was sensitive and that this was why Miss Magson took control of the position but that does not explain why Dr Ranson was not allowed to confirm that she was passing the question to the CEO for a response. In fact, the email was also copied into Miss Magson. The Speaker's email of 30th July read as follows:

> **"You may be aware of the queries that were raised last week in Tynwald regarding the current borders policy. The Chief Minister stated that "the medics" were content with the current policy. I presume this means you as principal medical adviser to the Department of Health and Social Care. In that regard I would appreciate your confirmation that you are happy with the following:**
>
> **"That people living with returning residents (including patient transfers) are under no obligation to self-isolate/home quarantine. (While it is *recommended***

that the returning resident self-isolate within the home, this will not always be possible and is not a requirement).”

395. On 20th October 2020, the Speaker said this in a three-part question in Tynwald involving returning to the Island during Covid-19 (**Hansard para 355 – page Z420**):

> **“ … is the Chief Minister aware that I have been trying to get an answer to that question since 30th July and that I have not been able to get one, despite contacting the Medical Director …”**

396. The evidence of Dr Ranson had been supported by Minister Ashford during the Hearing. Whilst it was proper for Miss Magson to “take over” the query when made by the Speaker direct to Dr Ranson, he confirmed that the normal procedure would be that Miss Magson should have written to the Speaker confirming that Dr Ranson would not be replying but that she would do so – or alternatively that Miss Magson should have permitted Dr Ranson to write saying that. Minister Ashford had not known that neither of those things had happened and he accepted that Dr Ranson would have been embarrassed at the criticism of her by the Speaker in Tynwald.

397. The Tribunal did not accept the interpretation which Mr Boyd submitted on behalf of the Respondent that Dr Ranson had conceded this detriment to the extent of withdrawing her claim. None of the panel considered that the exchange between Mr Boyd and Dr Ranson during cross-examination meant that she was abandoning her argument that there was a detriment. Here is the passage relied on by Mr Boyd:

> **Mr Boyd: Yes, and I would have assumed that you would not have advanced as an extremely intelligent individual an allegation of such seriousness if it had not been properly thought through. Now, do you maintain or not that Miss Magson instructed you not to respond to the Speaker when he had written to you asking about advice which resulted in the Speaker saying publicly you had not responded which caused you embarrassment and harm etc that Miss Magson did that because you blew the whistle? Do you maintain that yes or no?**
>
> **Dr Ranson: No don’t think so no.**

Mr Boyd: you don't maintain that?

Dr Ranson: No.

398. At the time, all the panel members were uncertain whether the rather convoluted question had been understood. Anyway, it was Dr Ranson's inability to be permitted ***to explain*** why she was not responding, which caused the adverse reaction subsequently from the Speaker.

399. In consequence, as Dr Ranson confirmed in her witness statement at para 110 (**page 4873**) not only did those attending the Court hear this but she was also criticised on social media.

400. Mr Boyd suggested that the situation concerning the Speaker involved a very significant disconnect based on a warped perspective of events. He attributed this to "confirmation bias." His submission was that Dr Ranson had clearly reflected upon what she felt was poor treatment and decided that the reason for this must be whistleblowing. She had then recreated the world as she believed it must have been in order to fit that narrative.

401. In Mr Segal's submissions, he noted the answer from Miss Magson to a question from the Chairman to the effect that "I believe I had written to him (the Speaker) to explain." Not unreasonably, Mr Segal submitted that this must be rejected in the absence of the document. In fact, not referred to during the Hearing, the Tribunal spotted that, very belatedly on 14th September 2020 (**page 2306**), Miss Magson had written to the Speaker and did inform him that "**the delay in responding is not due to Dr Ranson…"**

402. Preventing Dr Ranson from even explaining that she was not permitted to reply was reasonable only if Miss Magson ensured that Dr Ranson was protected by promptly responding to such a prominent politician on her behalf – as Minister Ashford agreed. In reality, Miss Magson's email was too late in one sense but soon enough in another. There would have been no issue if Dr Ranson had been able to answer the question almost immediately (or if Miss Magson had informed the Speaker that she had the question in hand). Alternatively, there would have been no problem if Dr Ranson had been permitted to explain why she was not permitted to respond. That said, the Speaker *had* been alerted

on 14th September that the fault was not that of Dr Ranson and so blaming her in the Court of Tynwald was somewhat unfortunate.

403. The Tribunal concluded that the time-lag between the proven protected disclosure of 12th May 2020 and Miss Magson's failure adequately to protect Dr Ranson's reputation was too much of a stretch to be linked as a detriment**.**

24th September 2020 - The Teams Meeting

404. The allegation numbered (xii) on the Amended Particulars of Claim (**G4216**) was as follows:

> **"On 24th September 2020 Dr Ranson was in a Teams call with Miss Magson and others. Dr Ranson asked if she could leave the meeting at 13:55 so as to allow her to chair her next meeting in Noble's Hospital Boardroom. Miss Magson refused. Dr Ranson said that she needed to use the toilet and Miss Magson repeated her refusal."**

405. Due to this, Dr Ranson alleged she was left feeling marginalised, bullied and treated with disrespect and complete disdain. Her reputation with clinicians on the Isle of Man was damaged.

406. The Tribunal accepted Dr Ranson's evidence that what she said occurred, had indeed happened (**page K4880**). Following the meeting, she had written up a note of what had just taken place - **page 3730**. The Tribunal preferred her evidence of this unnecessary and avoidable incident to that of Miss Magson.

407. The Tribunal accepted that so close to the end of a meeting, Dr Ranson could scarcely just leave and never return without comment – a different situation to say midway through a meeting when she could have slipped out momentarily and then returned. Given the short time left in the meeting, to someone like Dr Ranson who had sensitivities and held perhaps more traditional values than some (not eating on camera during Teams meetings for example), it would have appeared rude to leave and not return. It was polite to ask. It was churlish to refuse.

408. The Tribunal was unimpressed with Miss Magson's first line of defence that Dr Ranson had no other meeting to attend, something which was untrue. Immediately afterwards, Dr Ranson had to chair a meeting with clinicians. Miss Magson's witness statement dealt with this incident at paras 298 – 307 (**pages I-4554 I-4555**). No particular evidence of value was contained in it so far as the Tribunal was concerned. Rather, Miss Magson took the opportunity to attack what she saw as Dr Ranson's track-record on criticising the Government or challenging policy or ensuring a better chance that a meeting would not end on time. These attacks on Dr Ranson were a diversion from the serious issues alleged against Miss Magson.

409. The evidence of Ms Brayshaw (**para 17 – page 4901**) regarding meetings that she attended (Silver and the Executive) were tightly managed to time by Miss Magson. Contrary to Miss Magson's evidence, Ms Brayshaw's evidence was that meetings did not over-run because of Dr Ranson. Ms Brayshaw's take on meetings was that Miss Magson often seemed to be in a rush to get to CoMin. In consequence, she was either not listening to her professional advisers (being the Directors) or she had predetermined the outcome she wanted from the Executive. She also recalled that Miss Magson had prevented the Executive from seeing a full presentation prepared by Dr Ranson relating to the impact of the spread of the pandemic.

410. Mr Boyd pointed out that Miss Magson's evidence was that she could not remember the meeting "with any particular clarity." However, he sought to persuade the Tribunal that it would have been a "most reckless step" on her part if what she had intended to do was to somehow punish Dr Ranson for being a whistleblower.

411. Although the Tribunal would not describe this incident as an occasion when Miss Magson intended to "punish" Dr Ranson, the Tribunal was satisfied that it was an incident where, at that moment, her simmering irritations regarding Dr Ranson manifested themselves in a way which seemed most unlikely to have happened with another senior executive. It was needless to have acted publicly in this way. The Tribunal considered it demonstrated, and was entirely consistent with, the level of frustration felt by Miss Magson because of Dr Ranson's challenges to her.

412. As Mr Segal pointed out, "no innocent explanation" for Miss Magson's behaviour had been suggested. The Tribunal was not surprised that Dr Ranson had been so shocked that she had made a specific note about the incident. The Tribunal accept that this was a detriment flowing from the disclosure of 7th September 2020, a situation which was still festering as an unwelcome problem from Dr Ranson for Miss Magson right through until the subsequent protected disclosure of 23rd October

Excessive Workload

413. The allegation combined paragraphs vi and xiii of the Amended Particulars of Complaint as follows:

"The Complainant's workload was continuously excessive. Miss Magson added significantly to the Complainant's workload, including by the Complainant being required to spend hours every day briefing Miss Magson on Teams during which Miss Magson insisted that the Complainant remain at all times with her video on and by Miss Magson frequently requesting meetings or calls at the end of the day. Critically, requests and attempts by the Complainant to have proper staffing to whom she could delegate tasks to support and deliver this enormous workload were thwarted and/or refused by Miss Magson."

414. In consequence, it was alleged that Dr Ranson was left feeling marginalised, bullied and treated with disrespect and complete disdain.

415. At first blush, given the abundant evidence before this Tribunal about the efforts made, and the workloads carried, by so many people in the DHSC to deal with the impact of Covid-19, complaining about excess, when taken in isolation, appeared rather trite. However, mining down into the actual facts as they emerged, showed to the satisfaction of the Tribunal that, even set against a background of long working hours which people experienced, Dr Ranson did in fact have good cause to feel picked on unnecessarily and unfairly to her detriment.

416. At **page 1866**, and dated 22nd April 2020, Dr Ranson recorded the type of situation she faced. Dr Ranson's undisputed evidence was that she had shown the draft email to Ms

Murray who had advised that it should not be sent. However, as a document created at that time and shown to the COO, extracts are now quoted:

> **"I have shown 100% commitment to this job and to serving the people of the Island. I have moved to the Isle of Man with my family to do this job. I work very long hours and on the one hand you say that you are concerned that I'm not taking a break but on the other hand you text me or call me early in the mornings or late in the evenings, you organise meetings in the evenings and this evening you scheduled a meeting for 6:30 PM. I had promised my family today that I would try and have some time with them in the evening … I'm often still working up to midnight."**
>
> **At page 1867**:
>
> "**I have had many, many messages of support from colleagues, texts, emails …. thanking me for the work I'm doing. The only criticism I have had from anyone, is from you. I feel that you are looking for reasons to criticise me. I do not know why. I have in mind also your letter of 3rd April 2020. I appreciate how difficult it is for you not being here but I can assure you that we are all doing our best to keep you in the loop**."

417. A simple example showed the unreasonable attitude of Miss Magson towards Dr Ranson including making excessive demands. Dr Ranson had chaired regular weekly evening meetings with the GPs, although she had a Deputy. These meetings could often last over two hours. Dr Ranson asked Miss Magson to permit her Deputy to chair the meetings so that she could attend and share the pleasure of her role in an orchestra as part of her relaxation. To the Tribunal, rather astonishingly, Miss Magson refused to permit Dr Ranson's Deputy to handle these meetings.

418. Miss Magson also refused Dr Ranson's alternative request that the evening of the meeting be changed so that it did not clash with the orchestra. No apparent reason for refusal was given. The Tribunal considered this double-refusal to be vindictive and unreasonable given the very long hours that Dr Ranson had been devoting to the fight against Covid-19 while still fulfilling her day-job.

419. Bearing in mind the history of unwarranted criticisms by Miss Magson about Dr Ranson apparently struggling or failing to cope with her workload, this stance came across as spiteful. The Tribunal were also mindful, from elsewhere in the evidence, that on another occasion Miss Magson had adopted a reverse-stance. On that occasion, Miss Magson was only too happy for Dr Ranson to be represented by a Deputy when Dr Ranson wished to appear at an event in person – see further below.

420. The Tribunal accepted that it was necessary for Dr Ranson to spend considerable time briefing Miss Magson on Teams because she was not on-Island. Dr Ranson considered that regular two-hour Teams meetings to brief Miss Magson because she was off-Island, was a particular needless burden. Face-to-face meetings would have saved time but that was not possible with Miss Magson being in England. That part of the allegation did not seem impressive.

421. As to meetings being deliberately lengthy at the instigation of Miss Magson, Mr Boyd pointed out that it was illogical that someone operating as the CEO would deliberately waste time in over-long discussions with Dr Ranson. The Tribunal considered it was plausible that their meetings were protracted because Dr Ranson had, far too often, to fight her corner on the many issues of disagreement and to support her Groups against an unreceptive Miss Magson.

422. In general though, the Tribunal was not supportive of the argument that Miss Magson had deliberately prolonged evening or other calls. However, the Tribunal does return to a separate alleged detriment concerning the excessively long call of 17th November 2020.

423. The Tribunal did not accept as a general proposition that the many hours spent briefing Miss Magson were linked to the qualifying disclosures. Dr Ranson felt that she was picked on for being required to leave her video on when she had asked for it to be switched off - so that she was operating on sound-only. Part of the issue was that Dr Ranson was not comfortable with consuming food with video on but she was not permitted to turn it off. This had been noted by Dr Ranson on 27th April 2020 (**page Z444**). The note recorded:

> **"KEM - Asked me to switch on my video as she couldn't see me (I was eating a sandwich and explained)."**

424. Miss Magson's attitude was that she wanted videos on as a basic policy. She accepted that she had prevented Dr Ranson from switching off – an unreasonable demand when Dr Ranson was not speaking during the call but whether Miss Magson picked on Dr Ranson alone was less clear. The Tribunal could not accept this part of her contention as a detriment.

425. In her evidence Dr Ranson referred to a couple of Teams meetings – the much-highlighted one of 17th November 2020 which went on for 4 hours 39 minutes and another which lasted over two hours. The Tribunal could not accept that either meeting was a deliberate action on the part of Miss Magson to punish Dr Ranson in the sense of stringing out either meeting needlessly to cause humiliation or distress or as an act of bullying. However, the Tribunal return later to the question of the over-long call of 17th November 2020 but viewed from a different perspective.

426. Summarising, the Tribunal did not feel that, in the context of the pandemic and with so many day-job issues with which to cope in addition, Miss Magson was deliberately targeting Dr Ranson for calls in the evening as some form of punishment or in any way to "get at" her. Long hours and calls at unsocial hours were inevitable. The demands on the CEO in dealing with various committees and reporting to CoMin were important and time-consuming for her when days of the week or time of day were secondary to public welfare.

427. In his closing submissions, Mr Segal indicated that by far the most important element of this detriment was the role of Miss Magson in preventing or seeking to prevent Dr Ranson from having the necessary personnel to support her or to obtain staff. The unchallenged evidence was that Dr Ranson would still be working in the hospital almost every evening after other Directors had left because they had supporting teams working for them.

428. Due to sympathetic support from Ms Debbie Brayshaw (and not from Miss Magson), Dr Ranson had assistance from Ms Lisa Hall on three days per week. The pleaded case at paragraph 83 (a) of the Response (**page 4236**) was that extra support was brought in to assist but it was "inefficiently consumed" because of the way which the Complainant chose to work. This was denied by Dr Ranson.

429. The extent Miss Magson was influenced by Ms Angela Murray alleging, as hearsay evidence, that, every day, time was being wasted by Dr Ranson, Ms Hall and Ms Anne Corkill behind a closed-door, remained unclear at the end of the evidence. Miss Magson inferred that Dr Ranson was not delegating properly. Ms Murray could not have known what was happening behind the closed door.

430. Ms Corkill was not called to give evidence to support Miss Magson's pleaded Response. Dr Ranson said that, together the three of them worked effectively as a team. if Ms Murray had alleged wasted time, then that was untrue. There were no such daily meetings. For a start, Ms Corkill only worked two days per week. There would be a regular catch-up meeting for the three of them either once or sometimes twice in a week. The Tribunal accept the evidence of Dr Ranson and of Ms Hall about the value of the work they were doing together. Further evidence of the effectiveness of Dr Ranson's work methods is provided later (**paras 605 et seq below).**

431. On support staffing, the attitude of Miss Magson, which the Tribunal found rather surprising, was to seek to remove Ms Hall from providing assistance. There was no evidence that she had investigated what Ms Hall had been doing or that she had discussed this with Dr Ranson to see whether she could be spared. Ms Brayshaw confirmed that it was Miss Magson who sought to remove Ms Hall (para 21 - **page 4902**). No reason had been given to her for this and Ms Brayshaw had resisted for as long as the need was there for support with nothing else being provided from elsewhere.

432. The Tribunal was satisfied that Ms Hall's help was valuable and essential.

433. Part of the overarching issue in this respect was that Miss Magson appeared to be of the opinion that Dr Ranson was not keeping up with her day-job. The Tribunal had the advantage of looking at the substantial list of ongoing work that Dr Ranson was undertaking in addition to the urgent challenges of Covid-19. The documentary evidence showed how she had prioritised that work using colour charts. The Tribunal was unimpressed with Miss Magson's evidence that Dr Ranson was not coping with her multiple tasks in a reasonable manner, especially given the lack of support staff. The

Tribunal also took account of the 360 Colleague Feedback Summary – **see paras 605 et seq below**.

434. As mentioned much earlier in this Decision, on arrival Dr Ranson had inherited a raft of problems. Even in the few weeks before the pandemic, she had set about tackling them. It appeared to be common ground between her and Miss Magson just how serious and severe the problems were at Noble's at the start of 2020. It was also in evidence that right up to the date of this Hearing, the latest appraisal of the Noble's situation by Sir Jonathan Michael was just how much still remained to be achieved regarding historic problems. That was not down to Dr Ranson alone.

435. Paragraph 83(b) of the Response (**page 4236**) pleaded that additional support had been offered to Dr Ranson by the Transformation Team but that she had refused it. It was not that simple. Dr Ranson explained that, at the end of May 2020, she had *accepted* an offer of support from that Team. She had prepared an impressive list of tasks where they could assist her. However, following a call with Professor Kingsland, such support was effectively declined by him. He said that he "***wasn't a doer,***" – which was what Dr Ranson needed.

436. In her email of 14th October 2020 **(page 2405)**, Dr Ranson covered a number of matters. She referred to a recent one-to-one meeting and the tasks that she was having to undertake and the time needed to complete them. She confirmed that she had insufficient time to deliver the workload and that it was unsustainable to continue working the long hours into the evening.

437. Dr Ranson was having to do the interviews in order to create her support structure - the outcome of which would be to help provide the solution of the workload in the Medical Directorate. Despite this, Miss Magson was unhappy that Dr Ranson had tendered apologies to an Executive Team Meeting because of these pressures. As to this, Dr Ranson concluded:

> **"Obviously time is limited and if this is your priority I will attend Execs and prepare for the meetings. This does take time and other priorities will be**

adjusted accordingly. I would just remind you that the Minister also had a priority of the section 76."

438. As soon as Ms Murray had signed off (Autumn 2020) on the support structure that Dr Ranson had wanted for a Medical Leadership Team including a Portfolio Manager and an Executive Officer (admin), Dr Ranson had done everything reasonable to achieve that.

439. Although largely successful, some of the essential roles could not be filled because the necessary funding had not been made available.

440. To the Tribunal, it appeared that Dr Ranson was being placed by Miss Magson in a *lose-lose* situation – the support she had through Ms Hall, Miss Magson wanted removed. (Then in February 2021, Dr Ranson was also to lose her PA without any formality, notice or consultation). When Dr Ranson had set about securing support, she was then subjected to different criticism when undertaking an interview. Miss Magson complained that, instead, Dr Ranson should have been chairing a meeting with clinicians. The Tribunal considered that Dr Ranson was being picked on unreasonably.

441. Mr Segal submitted that the patterns regarding the excessive workload and lack of support had not been evident in respect of other executives, who had been able to leave the hospital before Dr Ranson. Miss Magson, as referred to in her evidence was unhappy with how Dr Ranson performed her work ("***the how"***) rather than what she was doing ("***the what***"). Again, the 360 Colleague Feedback puts Miss Magson's criticisms into a substantially different light.

442. Lack of support had been identified by Dr Ranson back in March 2020 but none was provided other than Ms Hall, part time on three days' per week – provided from a sympathetic Ms Brayshaw.

443. To the extent that Dr Ranson was short of support, Mr Segal pointed out that Miss Magson did not deal with this in her witness statement although it was dealt with in the Response, prepared by Miss Magson, (**paragraph 83)**.

444. While therefore the Tribunal did not uphold every element of this detriment, significant parts were consistent with Dr Ranson being unfairly picked on. In the case of the refusal

to assist so that Dr Ranson could have some evening time off, this was deliberate and vindictive. The Tribunal considered this was a detriment flowing from protected disclosures.

Serious Incident Report – s 76 Mental Health Act 1998.

445. The detriment alleged was as follows and was contained in (vii) of the Amended Particulars of Complaint and was summarised in the Scott Schedule:

> **"On or around 9th October 2020, the Complainant was asked by Minister Ashford for an update on a Serious Incident Report. Miss Magson gave the Minister the (misleading) impression that the Complainant had failed to complete the tasks in a timely manner leading to the Minister reprimanding the Complainant and saying this was "unacceptable." Miss Magson did not clarify that the Complainant was not at fault."**

446. Due to this, Dr Ranson alleged she was left feeling marginalised, bullied and treated with disrespect and complete disdain and her reputation both with politicians and clinicians on the Isle of Man was damaged.

447. In the Tribunal's opinion, of singular significance was that the section 76 Report had to be completed before politicians could communicate with affected persons. Intended recipients were entitled (and anxious) to know the truth as to what had happened. This created public pressure at a political level. Understandably, it was essential to avoid delay in publishing the Report. The history is now explained.

448. A Serious Incident had been declared on 2nd March 2020 by Dr Ranson because of potential breaches of Manx legislation involving the unlawful detention of patients. Approximately sixty patients should have been timeously referred to the Mental Health Review Tribunal. Once there has been a declaration of a Serious Incident, there must be an investigation by a panel set up for that purpose with a normal timescale of sixty working days. However, the clock stops running if the matter is referred to the police – as this was. Additionally, the matter was also referred to an External Independent Investigator for his report. The final very substantive Serious Incident Report which Dr

Ranson was instructed to prepare with a panel, was in evidence at **page 2746 ff**. Chaired by Dr Ranson the panel's Report was ultimately concluded and dated 10th November 2020.

449. At **page 2761** is confirmation that on 24th September, after the external investigations, the matter was ready to go back to Dr Ranson's panel. Miss Magson then held a special meeting on 30th September followed by her report to CoMin on 1st October (**page 2762**).

450. At paragraphs 31 – 33 of her second witness statement, Dr Ranson identified that her role resumed on 1st October 2020, as confirmed by email from Dr Ranson to Minister Ashford (**page 2506)**.

451. Miss Magson had prepared a document for CoMin which said that:

> **"A serious incident review panel has been established … this panel was halted due to a police investigation but has now to be restarted following confirmation that the police matters been closed…"**

452. At the end of September / start of October, or thereabouts, Miss Magson sought consent from CoMin to start a planned communications programme with affected families. Mr Segal submitted that in effect she had informed Minister Ashford that he could prepare for a press conference to announce the results/tell the families of patients in short order whereas to Dr Ranson and her two other Executives (Ms Murray and Ms Quilliam) preparing the Report, this was an over-promise –see further below (**page 2337**) and ought never to have been made.

453. According to Dr Ranson's witness statement, at a departmental meeting on the morning of Friday 9th October, Minister Ashford was pressing for an update about the Report. According to Dr Ranson, present were Minister Ashford, MHKs and other executives. Dr Ranson's evidence was that Miss Magson had assured Minister Ashford that Dr Ranson would have the report by the end of that week – or words to that effect. That would have meant that the panel would have had at most eight days to complete it, including the previous weekend. On a different interpretation of the evidence, it was going to be due one further week ahead.

454. Unsurprisingly, when blamed by the Minister for what he thought was her delay, Dr Ranson then had publicly to admit to the Minister that the Report would not be available and that the timescale was impossible. According to Dr Ranson, the Minister was "visibly angry." He had told her that this was "unacceptable" given that the matter had been outstanding for many months.

455. In cross-examination, Minister Ashford accepted that, at the beginning of October, he had been given to believe by Miss Magson that he would be able to announce the results of the enquiry to the families "soon". He also accepted that on 9th October he had said at the departmental meeting that the delay was unacceptable. In his witness statement, the Minister did not quite accept that he was visibly angry. He merely testified that he was "very clear" that he operated the DHSC as if he was on a private board. That meant that deadlines needed to be met or realistic indications had to be given as to when work would be done. Minister Ashford testified that it was no good to say that something was being done with no end date in sight.

456. Miss Magson's note of 9th October is at **KM 73** and in her statement at page **I-4549**. Her manuscript note simply said: "**Minister pushed S 76 – 2 weeks and must be done**." That obviously is not a complete record given that Dr Ranson had to explain that the Report was not ready – evidence that the Tribunal accepted. Neither did it cover what Minister Ashford had testified that he had said. As to the formal note cited below, the Tribunal concluded that it too was incomplete. The formal note (belatedly disclosed) is at **KM 75 as follows**:

> **"DA reaffirmed the requirement and request that patients and families are informed without further delay and expecting progress within the next 2 weeks. Reassurance was given that things are progressing, but that this is very technical."**

457. On the evidence, there was an issue as to whether the promise was for Dr Ranson to deliver the report that week (ie within hours) or within two weeks but in effect nothing turned on that as such. At this meeting, Miss Magson assured those present, being the Minister, MHKs and other executives that Dr Ranson "would have the Report by the end

of the week" – see Dr Ranson's statement **RR 122**. The listeners, including Minister Ashford had been given the wrong impression that Dr Ranson had allowed the important work to be unnecessarily delayed. That resulted from the original over-promise as compounded by Miss Magson's silence and unwillingness to take the blame in front of this meeting.

458. It was noteworthy to the Tribunal that the Minister considered that "*realistic indications*" needed to be given. The *unrealistic indications* had been down to Miss Magson. She had raised the Minister's expectation - not Dr Ranson. Yet somehow, as his written evidence confirmed, the Minister then considered that he had not been misled by Miss Magson and that the delays had been down to Dr Ranson.

459. The Tribunal asked itself on what basis the Minister could blame Dr Ranson publicly on 9th October when she had never given any timescale? On his own evidence, the Minister knew that it was Miss Magson who had raised his expectation about informing those affected about the outcome. Dr Ranson's coherent and explanatory email at **pages 2506 – 2507** made clear that the SI process informs the decision as to communications with those affected.

460. As confirmed by emails on **page 2337**, the Tribunal accepted that the view of Ms Murray, Ms Quilliam and Dr Ranson was to the effect that Miss Magson had acted "***over-the-top***" regarding timescale. Ms Murray had actually expressed their viewpoint on timescale as far back as around 24th/25th September (confirmed by her email of Friday 25th September).

461. In consequence, Mr Greenhow had planned to speak to Miss Magson the following week and intended to get back to Ms Murray. In her testimony, Miss Magson denied that she had ever been spoken to about this by Mr Greenhow. Mr Greenhow was not called to give evidence. Tellingly, his witness statement was silent on this topic. Even so, the over-promise had been made on 1st October without Miss Magson checking timescale with Dr Ranson.

462. Mr Segal cross-examined Miss Magson with reference to **page 2337** on the basis that Miss Magson had over-promised:

Segal: "I say to you that you over-promised – "over-the-top now etc"… She is out of control with it – the "she" is you?"

Miss Magson: "I have not seen that (document) before and Will Greenhow did not speak to me."

Segal: "You over-promised and you hung her out to dry."

463. Despite Miss Magson's evidence in cross-examination that Dr Ranson had been at fault in not progressing the Report more quickly, the Tribunal could not accept that version. Dr Ranson had contested this in her original written evidence at **paras 122 – 124**.

464. Miss Magson denied that she had tried to put the blame on Dr Ranson but that denial was not accepted by the Tribunal. She had every chance to protect Dr Ranson on the spot by explaining the true facts – namely that she had over-promised and had raised expectations and that Dr Ranson had delayed nothing. Mr Segal submitted Miss Magson had done nothing to clarify the position with the Minister and the assembled gathering.

465. Despite the submissions of Mr Boyd, the Tribunal was satisfied that Dr Ranson was blamed in public because of Miss Magson's original over-promise, as confirmed by the 25th September email. Mr Boyd was silent on this in his submissions and it was not included in his chronology set out at **para 96**.

466. Miss Magson should have publicly taken the blame but she preferred to let the Minister's anger or frustration land on Dr Ranson – yet knowing it was not her fault. This was consistent with other examples in this Decision of Miss Magson protecting herself by blaming others or deflecting the blame away from herself. This was a typical instance where she had pinned the blame on (or sheltered behind) someone else and permitted them to take the flak.

467. That apart, the Tribunal considered Miss Magson's other observation on this 9th October meeting to be unsatisfactory when she said:

"We all wanted it sorted as soon as possible – but no – we had talked about preparing for inviting individuals to attend a meeting – it was not intention to hold any of those without informing patients and families first."

468. In summary, Mr Boyd submitted that, even if there were over-promising, it would not get Dr Ranson any closer to establishing a causative link between qualifying disclosures and the alleged detriment. This was because on his hypothesis, the actual detriment would be because Miss Magson had been trying to deflect blame from herself and not because of whistleblowing.

469. Mr Segal countered that point by submitting that it was not Miss Magson's attempt to save face that was the detrimental issue but rather that she had permitted Dr Ranson to take the blame, by her failure to explain the true position. Mr Segal urged that this was something that Miss Magson would not have done with any other Director and the inferred reason was in part because of the protected disclosures that were causative of this detriment.

470. Mr Segal considered that letting Dr Ranson take the blame for what had been Miss Magson's own error was "both objectionable and inferentially vindictive."

471. From this incident, those MHKs present were aware of the blame being placed (wrongly) on Dr Ranson and then again later the same month, in the House of Keys, they heard further criticism by The Speaker because of Miss Magson. It was the failure of Miss Magson to accept responsibility which caused the detriment to Dr Ranson and was causatively linked to the recent protected disclosures and challenges.

Testing Workshop

472. The detriment alleged was contained in (viii) of the Amended Particulars of Complaint at **G4216**. It read as follows:

"On or around 22nd October 2020 the Complainant became aware that a Testing Workshop was being held. As the Complainant was about to go on annual leave, Miss Magson asked the Complainant who she should liaise with regarding input on the testing. Dr Khan was suggested, however due to the amount of work the Complainant

had to undertake, she cancelled her leave. The Complainant told Miss Magson of this but Miss Magson ensured that the Complainant could not attend the Workshop."

473. Due to this, Dr Ranson alleged she was left feeling marginalised, bullied and treated with disrespect and complete disdain and that her reputation with politicians and clinicians on the Isle of Man was damaged.

474. Dr Ranson's evidence was in her statement at paragraphs 111/112 – **pages 4873-4**. Miss Magson's evidence was at paragraphs 251 and 258 (**pages 4549-4560**).

475. The facts are clear enough about how the situation developed. During an Executive Committee meeting on Monday 19th October 2020, plans for a Testing Workshop were discussed. The Tribunal considered it was clear that Dr Ranson's attendance, along with her peers, would have been required at this significant CoMin event. However, to cover her expected absence (but with no date yet fixed for the Workshop), Dr Ranson was asked to nominate a deputy and she indicated that *if this topic came up whilst she was away*, Dr Khan should be the lead. In an email to Dr Khan from Miss Magson **at pages 2419 – 2420b,** she confirmed his attendance **- pages 2469/2470**. There was no suggestion that she had to clear attendance of a deputy with any Minister or the Chief Secretary.

476. Dr Ranson's plans changed and she expected to resume her role at the Workshop. This she made clear by email to Miss Magson and Dr Khan on the morning of 22nd October. At **page 2433**, Dr Ranson commented that her availability "was fortuitous as I have led the "medical" advice throughout so there is no need for Rizwan to deputise for me."

477. In this email, Dr Ranson provided extensive guidance as to what needed to be decided by CoMin at the Testing Workshop. She advised that CoMin needed to confirm its preferred strategy *in advance* of the Workshop for consideration. She explained that once CoMin had decided which of three suggested possible strategies to pursue, "any number of testing Pathways can be designed."

478. On the following morning (**page 2450**), Dr Ranson then wrote to Mr Greenhow and copied in Miss Magson, asking for briefing on the questions and issues so that she could prepare.

Dr Ranson indicated that she would lead on various aspects but that the presentation would be led by Dr Ewart supported by officials - then leading to debate and questions.

479. Dr Ranson also wrote a collaborative message (**page 2431**) to Dr Ewart and also asked (**page 2445**) for the Public Health testing proposals. Dr Ewart responded the following day (**page 2445**) commenting that the Chief Officers Group would be drafting the Workshop plan/presentation on the following Tuesday. The request for her Department's testing proposals to be provided was ignored. She commented that Miss Magson would liaise with Dr Ranson:

> **"If there is felt to be any need for operational Medical Director input at this stage."**

480. However, the Tribunal had concluded that, by now, Miss Magson had already determined that Dr Ranson should not attend. She told Dr Ranson that she was unaware of the date, something that was false (**page 3639**) and there was some evidence that pointed to Dr Ewart being aware of this.

481. On the 23rd October, Dr Ranson wrote her robust email timed at 11:35 AM (**page 2454**) to Miss Magson, this being a proven protected disclosure. Dr Ranson made her concern very evident. That evening, she also provided her "running action log" (**pages 2471 -2474**).

482. It was clear that from on or soon after Friday 23rd October, Miss Magson and Mrs Malone both knew the date of the Testing Workshop. In her text exchanges with Miss Magson, Mrs Malone said that she knew it was on the following Wednesday. Accordingly, even if Miss Magson had not known before, she knew the date from that exchange, that information coming from her immediate Deputy.

483. That evidence apart, other evidence suggested that the Workshop would be on the Wednesday or Thursday but Miss Magson deliberately denied even that information to Dr Ranson, something that the Tribunal considered was an important pointer to Miss Magson intending to exclude her. That information was revealed by the "catty" text messages (as described by Mr Segal) exchanged that day between Miss Magson and Mrs Malone (**page 3639)**. Despite knowing the likely date, Miss Magson pretended otherwise to Dr Ranson.

484. Interestingly, it was also on 23rd October that Miss Magson wrote, in what the Tribunal considered to be deliberately negative terms to Minister Ashford (**page 2475**). She was seeking to secure a negative response about Dr Ranson's involvement in the Testing Workshop.

485. This email could have been written in positive terms. Instead, Miss Magson struck a very different tone. Read as a whole, the email gratuitously poured scorn on Dr Ranson. The exchange of emails is at **page D 37** and at page **2475**:

> **"Just had 2 hours and 45 minutes with RR again (!) this PM. She is still going on and on about HE which has its issues but she has cancelled her holiday next week because she wants to lead the workshop on testing next week and only she can do this. Rizwan is going to come in to answer any technical questions on the different types of testing as requested by Dr A. Are you okay if she comes too? She spent 2 hours telling me Council of Ministers don't understand the strategic ask so she is going to look very silly coming in saying that, and are worried she remains so behind still. I am writing the presentation with STE and HE this weekend with Rizwan and will involve RR but said I would talk to you and Will about her coming too. I might send you the presentation later this weekend to check in and ensure it's hitting the mark."**
>
> Minister Ashford replied shortly afterwards:
>
> **"I do worry with the state of mind she's in. We can't have a presentation where officers are contradicting each other the CM would finally be a cardiac case."**

486. By lunchtime on 27th October, Dr Ranson still did not know whether she would be involved because Miss Magson had told her she did not yet know – as confirmed by email of 22:19 PM (**page 2541**). Later that evening (**page 2540**) Miss Magson finally confirmed that Dr Ranson would not be needed to attend at CoMin. On 28th October, Dr Ranson was informed that Dr Khan would be attending.

487. Miss Magson's witness statement did not say that Minister Ashford had approved or disapproved the presence of Dr Ranson as such. She testified that the decision on

attendance was not hers to make and that she had just been managing "a difficult member of staff" who wanted to be involved in everything.

488. In support of the lack of good faith on Miss Magson's part, Mr Segal drew attention to her first attempt to deflect Dr Ranson from attending by pretending that she did not know when the Workshop would be held. The texts had now shown that not to be true. Mr Segal suggested that Miss Magson had been acting in a manner consistent with keeping Dr Ranson away from meetings with politicians – something she denied. The Tribunal considered this deliberate evasiveness and trying to shelter behind the Minister, to be a strong pointer to Miss Magson's determination to prevent Dr Ranson attending as of right as the Medical Director – as had been the position at the outset on 19th October.

489. Despite his comment, Minister Ashford had no direct dealings with Dr Ranson at this time so as to judge her state of mind. The Tribunal considered that his opinion can only have been coloured by the tone and wording of Miss Magson's email to him. The Tribunal considered that Dr Ranson's email (**page 2433**) to Mr Greenhow / Miss Magson referred to above, outlining what was needed to ensure a successful Testing Workshop, was clear and business-like. Additionally and in fact, Dr Ranson had accepted that Dr Ewart would run the presentation.

490. In cross-examination, Miss Magson explained that she had no power regarding the attendees at the Workshop. She indicated that it was Mr Greenhow, together with the Chief Minister who had decided that Dr Khan should attend. She did not assert that they had blocked Dr Ranson from attending. There was no evidence of that. There was no witness evidence or any email or other message from either of them to corroborate what Miss Magson was asserting. Mr Greenhow's statement was silent about this. Neither was he called to give evidence.

491. Contrary to what she said in the witness-box, Miss Magson's email of 22nd October to Dr Khan had made no mention of her having to get consent from Mr Greenhow and/or the Chief Minister for Dr Khan to attend. Indeed, by then, at the Executive Meeting on 19th October, she had already agreed that Dr Khan should deputise. There had been no

suggestion by Miss Magson at that meeting that she needed to seek approval - whether for Dr Ranson to attend (had she been able to) or for Dr Khan to attend as her deputy.

492. At **page 2435**, having recited that Dr Ranson had proposed that, in her absence, Dr Khan should be the lead, consistent with her power on attendance, Miss Magson wrote to him:

"I would like you to be involved in a few things in the next week."

493. There was no mention that Mr Greenhow or the Chief Minister had approved Dr Khan's attendance. Neither was there any email consistent with this referred to in evidence.

494. To the Tribunal, It came across that Miss Magson could determine who was to attend, although if a Minister or Mr Greenhow were to veto somebody, the Tribunal accepted that Miss Magson would be bound by that. However, there was no evidence, even including from Minister Ashford, that the Medical Director should not attend. Yet when Dr Ranson as the MD and previously much involved in leading this Testing programme became available, impediments were cast in her path. This was not as though the Medical Director had suddenly become unavailable and needed to be represented by a deputy. Quite the reverse. Dr Ranson had led before and on this occasion had set out in clear terms by email what she considered was needed to ensure a successful Workshop outcome.

495. Mr Segal drew attention to the timing. Dr Ranson not being permitted to attend the Workshop was a decision taken just after she had made her protected disclosure about *a **serious governance issue*** involving Pathways (**page 2454**). This issue had started with the protected disclosure of 7th September and was still an embarrassment for Miss Magson as bluntly set out in the protected disclosure on 23rd October. This follow-up (but connected) disclosure was Dr Ranson challenging whether accurate medical advice was being passed to Ministers as to the changing of the Pathway without proper process.

496. It will be recalled that the very important email exchange that only emerged after the Hearing contained evidence that the 7-Day Pathway ***had been changed by Miss Magson.***

497. The Tribunal considered that, with this backdrop of challenge about how the Pathways had been changed, Dr Ranson's attendance could well have been uncomfortable for Miss

Magson. Dr Ranson, having originally been unable to attend, had now given Miss Magson an opportunity to side-line her and to adopt an excuse of blaming others for the decision.

498. In conclusion, Mr Segal said that it was "inconceivable" that Miss Magson would have conducted herself in that way if the Director in question had been Dr Ewart, Ms Brayshaw or Mrs Quilliam.

499. The Tribunal considered that a Workshop was an opportunity to inform CoMin and debate / discuss issues and to achieve an informed decision based on, *inter alia*, medical input. As expressed by Miss Magson, and prior to the CoMin Workshop, Dr Ranson was to be involved in preparing the draft presentation to be submitted to the Minister for approval. On that basis, the Tribunal considered it made sense for Dr Ranson to attend the Testing Workshop to answer questions as needed.

500. Mr Boyd's submission only quoted the words "**Are you ok if she comes too**?" from Miss Magson's email to Minister Ashford. Taken out of context that is innocuous enough. He summarised that there was no evidence to contradict the assertion that it was not Miss Magson's decision as to who attended. However, given that the Tribunal preferred to have corroboration of Miss Magson's evidence on controversial areas, for reasons already discussed, there was none from any Minister or the Chief Secretary.

501. Mr Boyd further submitted that the Tribunal should accept the evidence of Miss Magson that it was not her decision who could attend – instead asserting that this rested with the Chief Secretary after agreement with the Chief Minister. There was no corroboration of that and indeed the very fact that Miss Magson asked for approval direct from Minister Ashford and not from the Chief Secretary is inconsistent with the truth of the position. Neither did Minister Ashford reply to Miss Magson that she had to check with Mr Greenhow as the Chief Secretary and not with him.

502. Mr Boyd's final submission was that there was no causative link. The Tribunal could not accept that. This was part of the ongoing fall-out from 7th September and 23rd October protected disclosures.

503. The Tribunal accept that Miss Magson did not want Dr Ranson to attend and then ensured that it did not happen. The available evidence was consistent with Miss Magson deciding in the first place who attended. As the Medical Director who had led the testing programme, the Tribunal reject the suggestion that Miss Magson would have needed consent from her superiors if Dr Ranson had been able to attend from the outset. There was no evidence of Miss Magson getting consent for any other attendees. Though only deputising for Dr Ranson, there was no evidence that Miss Magson had to obtain consent for Dr Khan to attend – and her email to him requiring him to attend is no corroboration of her evidence and indeed is inconsistent with it.

504. The Tribunal decided that the timing overall linked this detrimental situation to the protected disclosures of 7th September 2020 and 23rd October. These presented problems and challenges to Miss Magson and were part of a pattern of decisions by Miss Magson or influenced by her which were detrimental to Dr Ranson.

"Grantham Meetings" and (non) transfer to Manx Care

505. There was no issue between Mr Segal and Mr Boyd that this was the most significant of all the detriments. The consequences were the most damaging to Dr Ranson.

506. The detriment alleged is at (xxi) of the Amended Particulars of Complaint. This reads as follows:

> **"In about October/November 2020, Miss Magson advised Mrs Cope and Mr Foster that the Complainant was not fit to perform the role of Medical Director of Manx Care by reason of her under-performance and being subject to a performance management process, and also that the Complainant had agreed that she was not fit to perform that role – as a direct result of which Mrs Cope and Mr Foster determined that the Complainant should not be employed by Manx Care as MD but instead that position should be advertised externally ."**

507. In this Decision, what are referred to as the ***Grantham Meetings*** is a generic term covering both physical and virtual meetings in October and November 2020. Based on the evidence during the substantive Hearing, there was confused evidence about dates and details in

the absence of documents. The best evidence appeared to be from Mr Foster who was an attendee at the meetings and he gave his evidence in person on 17th January 2022, being the second day of the Disclosure Hearing. Though he was cross-examined, he had his diary available and his evidence was probably the most reliable on dates.

508. Mr Foster said there were two meetings in October 2020 held in Marston, a village close to Grantham, where the attendees met in a private room at a hotel. The dates as confirmed by him were 15th and 29th October 2020. On 7th January 2022, Miss Magson had previously described the meetings as being in Grantham and that tag stuck although Mr Foster's description of Marston was more precise. He went on to confirm that on 12th November, that meeting was virtual only rather than in person. A fourth meeting had been fixed for December 2020 but did not take place because of renewed Covid-19 restrictions in England.

509. He identified the regular attendees for the meetings as being himself, Mrs Cope, Miss Magson, Mr Robin O'Connor and Ms Clair Barks, the latter both from the Transformation Team. To the Tribunal, the position appeared to be that Ms Barks and Mr O'Connor were Co-Leads on Transformation. He did not mention Mrs Clare Conie from HR ever attending in person or on Teams.

510. Ms Barks was not a witness in these proceedings and neither was Mr O'Connor. If Ms Barks, assumed by the Tribunal to be the person with that name identified on the Cabinet Office website as Co-Lead, was an attendee, so far as the Tribunal was aware, she never produced any manuscript or other notes of any of these three meetings. Mr Foster indicated meetings lasted about two hours or so. Given the absence of agendas and minutes, let alone informal notes taken by the five attendees of these meetings, the Tribunal cannot be sure what happened at any particular meeting. However, according to Miss Magson she did take notes on at least one occasion in October 2020.

511. One pointer was Miss Magson's Day-Book entry, undated but almost certainly for 12th November. That identified those involved, in what now seems more likely to have been a Teams Meeting, as being "Teresa / Robin/ Clair / Andrew." Miss Magson's cryptic

manuscript note mentions Dr Ranson and Mrs Conie in its substance suggestive that she, Mrs Conie, was not an attendee.

512. Based on the unsatisfactory and unclear evidence, the Tribunal cannot be sure whether a decision was taken regarding Dr Ranson not transferring to Manx Care at an October or November meeting. The preponderance of evidence suggested October but the Day-Book note is evidence that Dr Ranson was still a live topic on 12th November. Of course, she was but one of some seven executives employed by the DHSC who would or might move to Manx Care from 1st April 2021 and so their futures and other key matters relating to transformation were also discussed at these meetings.

513. What replaced the cancelled Grantham Meeting fixed for December was unclear. It could have gone ahead using Teams like the 12th November meeting. Mr Foster confirmed that there were, inevitably, other discussions taking place outside these three meetings. His recollection was that Dr Ranson had been discussed at two of the three meetings. In Miss Magson's witness statement at paras 359, 360, 361, 362 and 363 (**page 4560**), she said this:

> **"Following the appointment of Manx Care designate CEO (Teresa Cope) Manx Care Chair (Andrew Foster), we started to think collectively about the process in establishing their new team, and firstly the process for Executive Appointments. This topic was one of a number of items discussed in "development sessions" that were held very regularly (perhaps weekly in some cases).**
>
> **All DHSC Executives were clear that the (sic) Teresa, Andrew and myself were meeting with the Transformation team co-leads on a regular basis (almost weekly generally other than holidays) to discuss the set-up of Manx Care, which included the structures Manx Care would finally agree they wanted and also how they would appoint.**
>
> **A face to face meeting was agreed in order to welcome Teresa … I recall that Manx Care wanted to spend time on the proposed structures and it was agreed**

that Clare Conie would join virtually to support the conversation. I recall that Teresa went through her preferences around Executive portfolios across the entire structure.

… Clare and I discussed the preferences expressed by each Executive…"

514. Bearing in mind the vital nature of these discussions, it was a puzzle to the panel members that there was a dearth of agendas, minutes or other manuscript notes. There was even uncertainty about the attendees because Mr Foster did not mention Mrs Conie being involved but Miss Magson mentions "Clare" above – which is different to "Clair" Barks.

515. Dr Ranson's fate as an employee of the DHSC, and her wish and intent to transfer to Manx Care on 1st April 2021, was decided at a meeting held in Grantham in October or November 2020. The outcome was that she was to remain with the DHSC. The meeting of 12th November was unknown to Dr Ranson until after close of evidence, as to which, see further below. Miss Magson's Day-Book note of it was only produced on 25th January 2022, on the second day of the Hearing but it was never included in the many additional belated disclosed documents.

516. Due to this decision, Dr Ranson alleged she was left feeling marginalised, bullied and treated with disrespect and complete disdain such that her reputation with politicians and clinicians on the Isle of Man was damaged. As a direct result of being subjected to this detriment, the Complainant has already suffered and will potentially suffer further significant loss of earnings from January 2022.

517. This detriment had been added on the first day of the Hearing. Mr Boyd did not criticise that amendment as such but pointed out that he considered it to be transparent that the amendment was merely an attempt to give an already weak *whistleblowing dismissal claim* a better chance of success as a *whistleblowing detriment claim*. He explained this as follows:

a) **In order to succeed in a whistleblowing dismissal claim, as set out above, the main or principal reason for dismissal must be the qualifying disclosure(s);**

b) **To succeed in a whistleblowing detriment claim, the bar of causation is set much lower: the qualifying disclosures must materially (in the sense of more than trivially) influence the employer's treatment of the whistleblower. As was pointed out in Fecitt, that means that it is theoretically easier to succeed in a whistleblowing detriment claim than in a whistleblowing dismissal claim;**

c) **One of the features of the case of Timis v Osipov is that a section 47B detriment claim (Westminster statute reference) could in principle include financial losses from the subsequent dismissal caused by the detriment. In other words, a party could manoeuvre around the more difficult bar of causation in whistleblowing dismissal claims by effectively re-casting the claim as a whistleblowing detriment claim, which subsequently caused the employer's dismissal. In Mr Boyd's submission, that was precisely what Dr Ranson had done with this new alleged detriment.**

518. Mr Segal was rather incensed by the allegation of such a tactical ploy which he described as "most unfortunate." He pointed out that the only reason the amendment had to be made was because the Respondent had not disclosed documents during the standard disclosure process. They had only been produced in late 2021 under the Document Subject Access Request. Far from being a tactical ploy, Mr Segal pointed out that, with no pleaded case plus late disclosure of documents, there was a legitimate basis to seek amendment. He concluded that it had been because of this that the Respondent had consented to it. Rightly, he also submitted that this was why the Tribunal had been content to permit such an amendment.

519. The DSAR disclosures had revealed to Dr Ranson something which Mr Segal submitted she had no reason to suspect previously. This was that the reason she had not been

transferred as MD into Manx Care was because Miss Magson had told Mrs Cope and Mr Foster of her being ***under performance management*** and that Dr Ranson had ***agreed*** that she was not suitable for the role – **pages 2854 and 2866**.

Fallacies in the Response

520. Mr Segal drew the Tribunal's attention to paras 19-22 and 57-60 of the Response dated 18th May 2021. These read as follows:

> **Paras 19-22 (G 4228)**
>
> **The process by which the decision was made to either transfer staff from the DHSC to Manx Care or to retain those staff within the DHSC was a result of the consideration and allocation of functions between each organisation (the DHSC and Manx Care).**
>
> **Where there was a necessity to retain a function within the DHSC, whether that be temporarily or to support transition, then existing staff with responsibility for that area were retained where possible. This included the Complainant's position.**
>
> **The Respondent will say that the Complainant's expertise, particularly in relation to legislation and regulatory matters, along with her medical knowledge, is still required by the Respondent. However, the DHSC will not have a Medical Director following the expiry of the Complainant's LTA.**
>
> **Instead it is proposed that medical advisory posts will be created with the DHSC and it is expected that the Complainant will be accountable, in her current role, for the hiring of these advisers.**
>
> **Paras 57-60** (**page 4232 - G 4232**)
>
> **The Complainant has not been given an alternative role. The Complainant remains in the role that she was employed to do. It is however admitted that**

the Complainant's role has adapted and changed, following the introduction of Manx Care and the Respondent repeats the contents of paragraph 21 above.

The Complainant has not been demoted as a result of alleged protected disclosures or at all. It was always the intention of the Respondent (an intention that had been well communicated to the Complainant) that the Complainant's role would be temporary and fixed for a two-year period.

521. Mr Segal submitted that neither pleaded case was true and Miss Magson had sought to cover up the true position when giving instructions on which the Response had been prepared. The Tribunal noted that the pleaded case gelled rather better with Miss Magson's Day-Book entry of 1st December 2020 (see further below) when she and Mrs Conie had planned what Miss Magson should tell Dr Ranson when explaining she was remaining with the DHSC. The Tribunal considered Miss Magson's explanation and reasoning given to Dr Ranson on 8th December was untrue. The Tribunal was satisfied that, in reality, the position was that the DHSC had not expected to have any MD from 1st April 2021, nor following the expiration of Dr Ranson's LTA on 26th January 2022.

522. Correctly, in the opinion of the Tribunal, Mr Boyd submitted that the determination by the Tribunal of Miss Magson's motivation in saying what she said to Mrs Cope/Mr Foster (which in turn led them not to run with Dr Ranson) would be critical to the outcome of this issue (and the whistleblowing dismissal issue). That in turn revolved around what the Tribunal made of Miss Magson's evidence about *performance managing* Dr Ranson.

523. Mr Segal pointed to the silence of Mr Boyd in his closing submissions to any reference of the written and oral evidence coming from Mrs Cope and Mr Foster of the alleged agreement of Dr Ranson to remain with DHSC because (allegedly) she was unsuitable to transfer.

Capability Procedures

524. Mr Boyd anticipated that Mr Segal would point to two Capability Procedures referred to in the proceedings and would highlight a disconnect between the strict letter of what

should have happened and what did in fact happen. He accepted that Mr Segal would undoubtedly be able to highlight a deviation, even at the "informal" stage of the capability process. He anticipated that Mr Segal would assert that such a deviation strongly suggested there must be some other motivating factor at play – or at least that any qualifying disclosures by Dr Ranson must have had more than *a trivial influence* in that deviation. Mr Boyd respectfully suggested that any such argument was "illusory."

525. Mr Boyd submitted that Miss Magson genuinely believed that she was following a performance management process and that Miss Magson's long-standing issue with Dr Ranson had not been the "**what**" but "**the how**." Mr Boyd submitted that if the Tribunal accepted that these points were genuinely in Miss Magson's mind, then the "reason why" question could only be answered in one way.

526. For the reasons expounded below, the Tribunal did not accept that either of the two Capability Performance procedures was being followed (even in spirit) nor that the words used and impression deliberately given by Miss Magson to Mrs Cope and Mr Foster in Grantham were a genuine or fair appraisal of the truth. This is expanded upon in depth below. Because of the protected disclosures and history of challenges (as perceived by Miss Magson), the Tribunal considered that she had unreasonably picked and nit-picked on Dr Ranson.

527. Miss Magson's purported opinion of Dr Ranson, as expressed during one or more of these meetings, was far removed from the overwhelmingly favourable opinions about Dr Ranson as expressed in the **360 Colleague Feedback Summary -** see further below (**paras 605 et seq**) in this part of the Decision. The Tribunal concluded that Miss Magson's adverse message on performance to Mrs Cope and Mr Foster went way beyond the gist and tenor of the emailed exchanges between Dr Ranson and Miss Magson leading up to 12th November 2020.

528. The DHSC's Capability Procedure (**Year 2006**) was provided to the Tribunal, after Mrs Conie's evidence, on 31st January 2022. It placed the burden on the employer to ensure that the volume of work was reasonable and that adequate advice, supervision and

support was available. The Tribunal makes no criticism of the inordinate levels of work that Dr Ranson and many others had to carry out due to the pandemic but does question the support and staffing that was available (and at times denied to her) during 2020 and until 31st March 2021.

529. Even in the earliest informal stage (pre-Stage 1), Miss Magson was obliged to maintain a complete written record of all discussions and actions throughout the process both informal and formal, giving a copy to Dr Ranson. This never happened. During this informal stage, issues of poor work performance should be resolved wherever possible and only if there is no sustained improvement should the formal stages then be invoked.

530. Summarising the next step (being the Stage I procedure) there must be an agreed action plan detailing the improvements required plus the targets and timescales. There had to be continuous monitoring and assessment over a determined period of time. It follows from what was said above, this must be in writing. This never happened and yet this is the Stage that experienced senior executives in Mrs Cope and Mr Foster both understood Dr Ranson to have reached. Worse than that, they were led to understand by Miss Magson that (by implication) performance management was not going well in that Dr Ranson was likely to move to Stage 2 (Formal).

531. Stage 2 (Formal) only follows if the work performance remains unsatisfactory after following the detailed requirements of Stage 1. To Mrs Cope and Mr Foster, they were entitled to assume that, despite the efforts of Miss Magson, Dr Ranson was not responding well enough in Stage I.

532. Under Stage 2, there would then have to be notice of the formal interview detailing the capability issues and the procedure. At this review meeting, the next course of action could include voluntary redeployment, seeking medical advice/treatment, more intensive counselling/advice or consideration of redeployment.

533. The Tribunal take from the published procedure that, from the outset, Dr Ranson **had to be made aware** that she was involved in an unsatisfactory work performance process.

She was not. Neither was the Office of Human Resources aware that Miss Magson was contemplating even entering into a pre-informal process with Dr Ranson.

534. Dr Ranson's evidence was that she had never been told that she was under performance management whether formal, informal or even pre-informal. The word *capability* was never used to Dr Ranson though it was mentioned in a note in Miss Magson's Day-Book (**page 3861**). Besides neither Stage I (Informal) nor Stage 2 (Formal) being instigated, Dr Ranson was also never told (consistent with paragraph 5.2 of the Capability Procedure) that there were "issues of poor work performance" which needed to be addressed and that unless there were a "sustained improvement in performance" the paragraph 6 procedure would need to be invoked.

535. Reference has previously been made to the inordinately long Teams Meeting of 17th November 2020 and this is fully covered below. In the course of that, Dr Ranson had provided her detailed annual workplan (**pages 582 – 584)** and her detailed monthly workplan (**pages 2472 – 2474**) for the first time. This was about a month after Miss Magson was now alleging she had commenced informal performance management. Dr Ranson testified that, after 17th November, Miss Magson made no further reference to these documents to monitor whether Dr Ranson had been keeping up with, or falling behind, the actions/tasks. Miss Magson's evidence in cross-examination disagreed with this. The Tribunal prefer the evidence of Dr Ranson.

536. The evidence was that neither Mrs Malone (Deputy CEO at the time) nor Mrs Conie were aware of performance-management even being considered, let alone commenced at any time. Both Mrs Conie and Mrs Malone confirmed in their oral evidence that Miss Magson had not suggested to them that she was putting Dr Ranson under performance management and that moreover they would have expected Miss Magson to have raised that with them. Mrs Conie testified that she would have *expected* to be asked for advice if that had been the case. Tellingly, Mrs Conie did not even accept any such concept as pre-informal performance management.

537. Contrary to the pleaded case, the Tribunal noted that in her witness statement dated 18th January 2022 (**page 4561**), Miss Magson stated at paragraph 372 that Dr Ranson had been

moved “to informal performance management.” Miss Magson testified that in her experience it was highly unusual to be having performance discussions with a senior executive for such a lengthy period.

538. Mr Boyd drew heavily on the evidence of Miss Magson as to performance management - highlighting references in her evidence and her witness statement. However, the Tribunal could not do other than conclude that unfettered reliance on Miss Magson’s evidence was not possible where there was a dispute and no sufficient corroboration.

539. Nothing in the documents preceding 12th November could fairly or reasonably underpin or justify what Miss Magson reported at the Grantham Meeting as explained below or at any of the Grantham Meetings. The Tribunal accept that there had been one-to-one (Teams) meetings between Miss Magson and Dr Ranson but the Tribunal was not persuaded that this was performance management and especially not even Stage One, let alone close to Stage Two.

540. In her evidence, Mrs Conie testified on 28th January (**page 72 of the Transcript**) that the performance of an employee is always being managed - that being part of the relationship between the line-manager and the person involved. The Tribunal considered that this was appropriate pointing to the distinction between performance management within the Capability Procedure and what was happening as between Miss Magson and Dr Ranson.

541. With so much day-job business going on in addition to continuing issues with the pandemic, it was inevitable that there would have to be regular discussions with full-on agendas between the CEO and Dr Ranson as the MD. The matters discussed were typical of what might be expected as between CEO and MD and agendas were not worded or structured consistent with the capability requirements, however informal.

542. Miss Magson held one-to-ones with other employees and they gave no appearance of being regarded as performance management. Mr Greenhow had one-to-ones with Miss Magson as did Sir Jonathan Michael and so the Tribunal cannot interpret references of one-to-ones as being indicative of performance-management.

Lead-Up to Grantham

543. On 19th September 2020 Sir Jonathan Michael wrote to Dr Ranson and, inter-alia, made the following pertinent observation:

> **"I am glad you have a session with Andrew Foster. I know him well. An experienced CEO with strong background in people issues. I also think that you will get on with the CEO designate once the appointment is finalised."**

544. It was unclear to the Tribunal whether this meeting with Mr Foster took place. That seemed unlikely. However, from this message, it was apparent that, like Dr Ranson, Sir Jonathan was expecting Dr Ranson to transfer to Manx Care. Additionally, confirmation was contained in Dr Ranson's email of 29th September to Miss Magson (**page 2341**). What she wrote was as follows:

> **"In the meantime we have talked about me relinquishing some of the work streams I have that sit more within DHSC. This will enable me to focus on the Manx Care work streams as my intention is to move to the Manx Care MD role. I am reluctant to give these up as I have particular expertise in these areas; I was involved in the development of the 2005 Mental Capacity Act, I have worked for three regulators so am well-versed with regulation and inspection and Duty of Candour is something I have a lot of practical experience with."**

The Grantham Meetings

545. According to Miss Magson's statement (Para 362 - **page 4560**) Mrs Clare Conie joined the meeting on a virtual basis although others were present in Grantham. Mrs Conie made no reference in her witness statement to attending any discussions in Grantham on a virtual basis or at all. Neither did she have any notes or records that were put in evidence. In her oral evidence, she made no reference to being involved in the Grantham meetings. To the extent that she was involved, this would inevitably have been on Teams, even if the others (or some of them) were meeting in person.

546. At para 373 (**page 4561**) of her statement, concerning the Grantham meeting dated 29th October, Miss Magson did not recall "a great deal of discussion around performance."

Miss Magson dated this meeting as 29th October, (see para 362) which she described as face-to-face to welcome Mrs Cope. Mrs Cope however had referred only to meetings on 15th October and 12th November with no mention of 29th October. Whether there were two or three Grantham meetings remained unclear to both Mrs Cope and Miss Magson. Indeed, on 7th January 2022 at the Disclosure Hearing, Miss Magson mentioned only two (or possibly even only one Grantham meeting) (**page 78** of the Transcript). The Tribunal comment on this uncertainty in the conclusions about missing disclosable evidence.

547. The Tribunal doubt much turns on the date of the first meeting but it was a concern that in evidence, there were no minutes of any Grantham meetings, irrespective of contemporaneous notes which the Tribunal had been told were made. With the seniority of the personnel present, to the Tribunal, lack of contemporaneous notes / minutes was unsatisfactory for such important meetings. It also appeared likely to the Tribunal that on at least one occasion when Mrs Conie attended, the event would have been recorded on Teams. Again, the Tribunal return to this unsatisfactory situation in the conclusions about missing disclosable evidence.

548. Lack of manuscript or typed-up notes of these meetings was particularly unfortunate when Mrs Conie, with her HR experience, had been in virtual attendance on at least one occasion. Miss Magson's evidence was that Mrs Cope would keep the notes.

549. Miss Magson explained that it had been agreed in October that Mrs Cope/Mr Foster would meet the DHSC executives who would be expected to transfer. Mr Segal pointed out in cross-examination that Dr Ranson did not meet them, a point that had not been challenged. Miss Magson said that she did not know what had happened but, in the agreed process, Dr Ranson was always going to be met.

550. The Tribunal, as explained below, considered that the past history including the proven protected disclosures undoubtedly coloured and drove Miss Magson's report in Grantham. On the evidence, the Tribunal's opinion was that even if Miss Magson had genuine reservations about "***the how,***" she could and should still have been able to encourage Mrs Cope and Mr Foster to make up their own minds as to Dr Ranson's suitability.

551. Because of what Miss Magson had said at the Grantham meetings, Mrs Cope and Mr Foster were led to believe that for some weeks Dr Ranson had been under Stage I of the Respondent's Capability Procedure - and was perhaps soon to be moved to Stage 2.

552. If that unfair appraisal were not bad enough, the Tribunal was satisfied that Miss Magson had made the further unfounded assertion that Dr Ranson had ***agreed*** that she was not suitable to transfer and be MD of Manx Care (**pages 2854 and 2866**). This was denied by Miss Magson but the Tribunal concluded that Mr Foster's subsequent emails (see below) were accurate and based on what Miss Magson had told them. Mrs Cope agreed. Indeed, as will be clear below, other surrounding evidence also supported Mrs Cope's important testimony. The Tribunal considered that Miss Magson's representations had been deliberately made and were calculated to prevent Dr Ranson being accepted into Manx Care.

553. The Tribunal accepted the evidence of Mrs Cope and of Mr Foster as to what they had been informed by Miss Magson. On this pivotal topic, as with all her evidence, Mrs Cope came across as straightforward and truthful. It was consistent with the documentary evidence (see further below) and she cast serious doubt on a number of aspects of the evidence given by Miss Magson on this Grantham Meeting and other issues.

554. Irrespective of the credibility of the Foster / Cope evidence on what Miss Magson had told them, Mr O'Connor and Ms Barks (at least) were at the Grantham Meetings either in person or using Teams. Neither of them gave any witness statement supporting Miss Magson's version – a telling silence as far as the Tribunal was concerned.

555. Mrs Cope was CEO-designate and already a senior figure working in the NHS in England. Mr Foster was an eminent businessman and Chairman-designate. At the Pre-Hearing on Disclosure, he had presented with calm assurance. Mrs Cope also gave her evidence with confident self-assurance and clarity. The Tribunal considered that neither of them was likely to have totally misunderstood or misheard what they were being told by Miss Magson on such an important topic.

556. The Tribunal was not surprised that, as Mr Foster was later to confirm, it was not possible for him and Mrs Cope even to contemplate taking on a Medical Director who was under performance management and close to Stage 2 (Formal). This is expanded upon below. It was in consequence of Miss Magson's adverse input that Mrs Cope and Mr Foster decided not even to meet and interview Dr Ranson – something Mrs Cope later regretted.

557. Miss Magson denied that she had prevented her listeners from meeting Dr Ranson to form their own opinion. However, the Tribunal was satisfied that Dr Ranson was never interviewed after 12th November because of what Miss Magson had told Mrs Cope and Mr Foster. At para 387 of her statement (**page 4563 / KM388)** Miss Magson denied that she had advised Manx Care at any time that Dr Ranson would "agree" to remain in DHSC. Her written evidence was that:

> **"It was clear throughout our discussions that Dr Ranson's preference would be to move to Manx Care."**

558. That evidence is at total odds with the message received by Mrs Cope and Mr Foster. The Tribunal reject Miss Magson's evidence given the clear recollection of Mr Foster and Mrs Cope and the further vital evidence below. There was no room for such a fundamental misunderstanding on both core points heard by the two listeners.

1st December 2020 Meeting – Magson / Conie

559. Mrs Conie's evidence that she believed she had not been asked by Miss Magson for HR advice until 11th February 2021 was mistaken. Following the Grantham Meetings, she had given important advice to Miss Magson on 1st December 2020 as confirmed in Miss Magson's undated Day-Book entry (**page 3850**). Mrs Conie produced no note of this significant meeting. Tellingly, there was no mention in Miss Magson's note of Dr Ranson already being subject to prior capability allegations or of ever being under performance management.

560. It was obvious from this manuscript note that Miss Magson was discussing with Mrs Conie what she should say to Dr Ranson at the imminent meeting to break the bad news from

Grantham. The note appeared to summarise how best to explain to Dr Ranson that she was not transferring to Manx Care. The note made clear that the message to be delivered to Dr Ranson should emphasise the positives of why she was to remain at DHSC.

561. The Tribunal was shocked that Miss Magson did not tell Dr Ranson the truth on 8th December about how she had come to remain with the DHSC, against her wishes. The positive message delivered was consistent with Miss Magson's discussion with Mrs Conie on 1st December. However, the Tribunal had no evidence as to whether Miss Magson had shared the full truth of the 12th November Grantham Meeting with Mrs Conie. In part that may depend on whether the attendee identified only as "Clair" in Miss Magson's Day-Book note of 12th November 2020 as an attendee was a mis-spelling for Clare Conie or whether (as the Tribunal believes) it was Ms Clair Barks. Confusingly, there was also the evidence from Miss Magson that Mrs Conie was involved in at least one Grantham Meeting in October 2020.

562. Mrs Conie's witness statement is silent both on whether she attended the Grantham meeting by Teams on 12th November and about any conversation of 1st December with Miss Magson. Neither were there any documents, timelines, notes or other evidence produced by Mrs Conie about any Grantham meeting or that of the 1st December.

563. Before Miss Magson had informed Dr Ranson that she was to remain with the DHSC (but after the advice from Mrs Conie on 1st December 2020) the decision to recruit for an Interim MD for Manx Care had been considered by 3rd December 2020 (**page 2797**). The post was advertised prior to Christmas 2020. Later, Dr Andole was appointed and commenced from 29th March 2021 although, before then, he had attended some key meetings.

8th December 2020 – Magson / Ranson

564. Consistent with the Day-Book notes of the 1st December discussion with Mrs Conie, Miss Magson sold only the positive case on 8th December that Dr Ranson was to remain with the DHSC because her skills were suited to the ongoing needs of the DHSC – something which the Tribunal could not accept. In this meeting, no mention was made:

- Of performance management or capability, whether past or going forward.
- That Miss Magson had represented to Manx Care that Dr Ranson had agreed that she was not suitable to transfer to Manx Care.
- That she was not transferring because Manx Care did not want her because she was under performance management.
- That Miss Magson had made the decision that Dr Ranson would not be transferring and that the shadow directors of Manx Care had simply accepted it.

565. Illuminating email exchanges consistent with the truth of the situation are referred to below.

18th Dec 2020 - Mr Foster's Emails to Mr Greenhow and Sir Jonathan Michael

566. On 18th December 2020, Mr Foster wrote to Mr Greenhow and made this observation in his opening paragraph (**page 2854):**

> **"I think you know that both Kathryn Magson and Rosalind Ranson have agreed that Ros is not suitable for the job of Medical Director for Manx Care and they are instead proposing to use her in an advisory capacity at DHSC. Perhaps surprisingly, I am also told that there is no one on the Island who could do the job, even on an interim basis."**

567. Mr Greenhow's witness statement is silent on this email so that the Tribunal do not know whether he had heard that from Miss Magson or not. There was no evidence he had heard it at all. His only comment at paragraph 21 of his statement (**page 4744**) was that he had no input into Dr Ranson not being transferred to Manx Care:

> **"I had no input into Dr Ranson not being transferred to Manx Care, the decision was not mine to take. I was however made aware that discussions were taking**

place in that respect. I am sure that Kathryn and I would have discussed it but I wouldn't have offered any advice one or the other."

568. At **page 2853** is another email of 18th December – this time from Mr Foster to Sir Jonathan Michael and his opening sentences are identical to his message to Mr Greenhow:

"I think you know that both Kathryn Magson and Rosalind Ranson have agreed that Ros is not suitable for the job of Medical Director for Manx Care and they are instead proposing to use her in an advisory capacity at DHSC."

569. Again, the Tribunal did not have the benefit of evidence of Sir Jonathan, even in the form of a written statement.

570. Pertinently, there was no testimony from Mr Foster or evidence in any emails or other correspondence, that either Mr Greenhow or Sir Jonathan had responded to him on this topic – whether to agree, disagree or to express shock or surprise. Nor was there any evidence from Miss Magson of either of these emails being discussed by either recipient with her.

571. Nor was there testimony from either Mrs Cope or Mr Foster saying that either of them had received emails or other messages from Mr Greenhow or Sir Jonathan stating that they were mistaken about any such agreement between Miss Magson and Dr Ranson.

572. The Tribunal found the silence from the two email recipients both deafening and compelling. Although the Tribunal was convinced Miss Magson had informed her listeners of Dr Ranson's alleged agreement, there was not a shred of *credible* evidence that Dr Ranson had ever agreed to remain with the DHSC.

573. At the 7th January 2022 Disclosure Hearing, Mr Falkowski had questioned Miss Magson as to how it could be that Mr Foster had written confirming that Dr Ranson had agreed that she was not suitable for the job with Manx Care. Miss Magson denied that she had told Mr Foster this. She continued (page 75 of the transcript):

"No I have not told Mr Foster and you will have to ask Mr Foster, that we have agreed in fact my disclosures show that that wouldn't be the case."

574. During the Pre-Hearing of the evidence, under questioning by Mr Falkowski, Mr Foster did not demur from what he had written to Mr Greenhow or Sir Jonathan. Mr Foster's evidence was bolstered also by confirmation from Mrs Cope. On **page 27** of the Transcript for 3rd February 2022, there were these telling exchanges with Mrs Cope when she confirmed the accuracy of Mr Foster's email:

Mr Segal: (referring to the assertion in Mr Foster's email to Mr Greenhow, that Dr Ranson had agreed to remain with the DHSC:

"**But for the moment it's the first sentence I want to ask you about. Presumably his recollection on the 18th of December was correct."**

MRS COPE: "Yes, yes we, yes."

MR SEGAL:

"Okay, and that caused obviously a potential issue didn't it for Manx Care unsurprisingly, the last thing that Manx Care would want would be to interrupt the continuity of the Medical Director function particularly if there was nobody else at the Respondent who was capable of acting up into that role. Would that be fair?"

MRS COPE: "Yes."

At page 28 of the Transcript were these further exchanges concerning input from Dr Ranson in a presentation of February 2021:

MR SEGAL:

"So if you then go to the page before, page Z230, this is an email prompted by what I've just shown you which is referred to by Mr Foster, copied to you amongst others as the message. "The message is crucially important and from

everything I've heard not exaggerated, at least in some parts of the organisation and fits in with our baseline audit. The messenger" that's Dr Ranson "is understandably very unhappy, she was brought in early last year expecting to become Medical Director of Manx Care but Kathryn decided she didn't have the skills and ability to take on the post, something that Ros strongly disagrees with. I think Teresa has a more balanced view of her too … was it your understanding that Dr Ranson had been brought in in 2020 expecting to become the Medical Director of Manx Care?"

MRS COPE: "Yes."
MR SEGAL: "Thirdly, that didn't happen because Miss Magson said she didn't have the necessary capabilities, is that correct?"

MRS COPE: "Yes."

MR SEGAL: "And fourthly, you now know of course that Dr Ranson disagrees, Mr Foster describes it as a strong disagreement with that view."

MRS COPE: "Yes."

MR SEGAL: "And finally, it says that you had formed a more balanced view of Dr Ranson, is that true?"

MRS COPE: "Yes."

Illuminating Email Exchanges – March 2021

575. As to the integrity of the evidence of Miss Magson, Mr Segal pointed out further cause for concern. After the letter before action dated 22nd March 2021 (**page Z153**) but before Dr Ranson's Complaint had been put into the Tribunal on 8th April 2021, Miss Magson had tried to distance herself from what she had told Mrs Cope and Mr Foster on 12th November 2020.

576. In March 2021, Miss Magson exchanged messages with Dr Crellin who had mentioned at **page Z518** that her colleagues at Nobles had expressed "their outrage and their concern about the transition process." She had also expressed concern about Dr Ranson being "side-lined."

577. At page **Z517**, Miss Magson wrote to Mrs Cope, copying in Mrs Conie and Mr Foster explaining that there was "a narrative about Rosalind being side-lined." She then went on to say:

> **"However, overall, I am still concerned that this is playing out as my decision, when it was a joint decision and that there needs to be support for the decision from Manx Care around Rosalind staying in DHSC."**

578. Following receipt of the 22nd March letter before action, at **page 3369**, Miss Magson, on 24th March 2021, had also written to Mrs Cope and Mr Foster. She wanted the position portrayed to the Clinical Directors that Dr Ranson not transferring had been a ***joint decision*** with focus on where Dr Ranson's skills lay in supporting the work within DHSC. As evidenced below, the Tribunal sensed concern (later bordering on panic) in Miss Magson's exchanges with Mr Foster / Mrs Cope in the immediacy of the letter before action.

579. At page **Z253**, was an email from Mrs Cope to Mr Foster dated 25th March 2021 in which she approved the terms in which Mr Foster was going to reply to Miss Magson's request. She made this important point:

> "**I feel we accepted Kathryn's decision and recommendation re: RR (as we did with all other Executives). At that point I recall Kathryn articulating that she was about to move RR onto formal performance management having been under informal performance management for a number of weeks and we discussed what a significant concern that was at Executive Director level**."

580. By way of reminder, that summation is consistent with Miss Magson representing to them that Dr Ranson was close to advancing from Stage 1 into Stage 2 (Formal) of the Capability Procedure.

581. Mr Foster's subsequent response to Miss Magson of 25th March 2021 (**page 3368**) did not deliver the message that Miss Magson was hoping for. He confirmed that Manx Care would make it plain to the Clinical Directors that:

> **"Whilst this could only be your decision as the DHSC Chief Executive, you had explained the rationale to us before you took the decision and we agreed with it."**
>
> He continued:
>
> **"I well remember the unwelcome prospect of inheriting a Medical Director who was already the subject of performance management. This is why we embarked on a recruitment exercise for an Interim Medical Director."**

582. As the Tribunal read the situation, in these exchanges (also on **page 3368)**, Miss Magson was attempting to rewrite history. She responded on 28th March 2021 as follows:

> **"I have to say that the comments below were not my recollection of events to be honest. It is my understanding that the numerous discussions debated not only current delivery issues but the role you were looking for – "jobbing operational MD," Rosalind's skills, the need to go out for a permanent MD, mixed feedback that you had had and the needs of DHSC in its workaround legislative areas that Rosalind was recruited to support e.g. capacity. It is my view that there was a discussion and joint agreement regarding all roles and joint decisions taken on the best way forward…"**

583. There was no evidence that Mr Foster and Mrs Cope were receptive to this cry for support. The Tribunal concluded that Miss Magson was trying to shift the weight of the decision to the shadow officers of Manx Care and they were not having it.

584. The Tribunal was mindful of the evidence of Miss Magson at the pre-Hearing on 7th January 2022. When cross-examined by Mr Falkowski, Miss Magson denied that the decision about Dr Ranson's future had been hers. Mr Falkowski pointed out that Mr Foster and Mrs Cope had denied that they were part of the decision-making process and that their evidence was that it had been Miss Magson's decision. To this Miss Magson said (**transcript 79 -80**):

> **"…the decision with Dr Ranson was a Manx Care decision (*recording unclear*).**
>
> **"… it was a joint decision."**

585. When she gave this evidence, Miss Magson must have known that her evidence was inconsistent with the recollections of Mr Foster and Mrs Cope, who had distanced themselves from making the decision.

586. It bears repetition that Mrs Cope's note dated 19th April 2021 (**page Z254**) made this point:

> **"On reflection, I wish I had been able to make an assessment on the Executive Team myself, particularly regarding Rosalind Ranson who I feel on reflection would have functioned much better in the new arrangements."**

28th March 2021 - Miss Magson's Strange Request

587. In Miss Magson's email of 28th March 2021 (**page 3368**) to Mrs Cope, Mr Foster and Mrs Conie, shortly after the letter before action, this further paragraph was of particular interest to the Tribunal:

> "**May we please discuss this again in the morning, as I believe there is probably a need to consider how Rosalind can "rehabilitate" back into the workforce after her sick leave, and that in light of her current allegations this should probably be best in Manx Care. This might then give Rosalind time to get back on her feet without the day-to-day pressures and apply for the permanent MD role as its advertised. If we could discuss again tomorrow that would be the best way forward I would think. Appreciate the offer of support in this respect**."

588. In this extraordinary request, the Tribunal sensed Miss Magson's panic at the potential of proceedings in this Tribunal. It was certainly risible that, with the knowledge of imminent legal proceedings, Miss Magson now wanted Dr Ranson to be able to "rehabilitate" within Manx Care and perhaps even to be suitable to apply to become the permanent MD at Manx Care.

589. On 29th March 2021, Dr Andole was due to take up his post as Interim MD of Manx Care (having already been active informally), a situation that made Miss Magson's suggestion very difficult or even unrealistic to implement in the immediate term – irrespective of why Miss Magson could have expected Mrs Cope and Mr Foster to rehabilitate Dr Ranson after the negativity expressed by Miss Magson on 12th November. It also contradicted the essential need as alleged by Miss Magson for Dr Ranson to fulfil her regulatory /legislative and other role within the DHSC as represented in December 2020.

590. Needless to say, nothing like this ever happened.

Organograms, Logic and Budget

591. The Tribunal also bore in mind that the September 2020 organogram (**page 571 and 4817**) showed no position of or role for a Medical Director in the DHSC once Manx Care was operational on 1st April 2021. The other organogram, entitled "*Manx Care Additional Staff*" (**page 4803)** showed an incumbent MD in Manx Care. As this pre-dated the appointment of Dr Andole, it could only refer to Dr Ranson being the incumbent.

592. These two organograms showed the truth compared to the pleaded Response - and contradicted Miss Magson's evidence regarding her 8th December meeting with Dr Ranson that, from 1st April, there was a planned meaningful ongoing role for Dr Ranson with the DHSC. Such a role had never been intended. The alleged future role, created on 1st December between Mrs Conie and Miss Magson, was a concoction.

593. If yet further proof were required (which it was not), neither was there a budget in the DHSC for Dr Ranson to continue as MD after 1st April 2021. The evidence showed that

efforts had to be made to find the money to pay her to continue in her almost meaningless shell of a role until 26th January 2022.

594. Mr Segal also pointed out that there was no other person within the DHSC who could perform the Medical Director role for Manx Care from 1st April 2021 even on an interim basis. Mr Segal considered it to be "inconceivable" that Mrs Cope and Mr Foster would have rejected the opportunity to employ Dr Ranson at least until the expiration of the Limited Term Agreement - unless they had been convinced that Dr Ranson was wholly unfit to perform that role. That was expressly confirmed by Mrs Cope in her oral evidence.

Minister Ashford's Evidence

595. At a political level, Mrs Clare Barber MHK emailed Minister Ashford on 8th February 2021 when the announcement was made that Dr Andole had been appointed as the Interim Medical Director of Manx Care (**page Z151**). She commented:

> **"Have I missed something – is Rosalind going. What has happened? I had heard a rumour… surely she would be a huge loss to us?"**

596. Minister Ashford responded the same day (**page Z150**) explaining that Dr Ranson was moving position into DHSC and would be taking on a more project and data orientated role following the split in April.

597. Minister Ashford had made clear in his witness statement (**pages 4629-4636**) that he delegated staff matters to Miss Magson and that his understanding was that:

> **"Dr Ranson was not transferred to Manx Care because her skill set was suited to the transformation work between DHSC and Manx Care, rather than that of a "normal" Medical Director and that was agreed jointly by DHSC and Manx Care."**

598. The Tribunal assumed that the Minister's understanding came from Miss Magson and noted no mention of Dr Ranson being unsuitable because she had been under

performance management. Nor had he mentioned that Dr Ranson had agreed that she was not suitable to transfer. The Tribunal was not surprised.

599. The Minister's statement (**para 14**) also made this observation:

> **"It has become apparent to me, throughout my workings with Dr Ranson, that she has a view that if someone does not agree with her it means that they must not understand her or have not been privy to the same information that she has. She simply cannot accept that someone might form a different view to her based on the same facts."**

600. Whilst Minister Ashford's witness statement made not a single favourable mention of Dr Ranson, this did not reflect the view when he had replied to Dr Patricia Crellin on 15th March 2021 (**page 3333**). Dr Crellin had written to the Minister on 14th March 2021 (**pages 3334 – 6)** very much in support of Dr Ranson and had done so not as doctor at Noble's but "as a concerned citizen." To her, the Minister wrote this:

> **"Rosalind is an exceptionally talented individual and having worked closely with her as part of the management team since she came to the Island I have always found her to be professional and the driver for change both operationally and culturally."**

601. When questioned in the Tribunal about this opinion, Minister Ashford confirmed this was "**still my view now**." Additionally, when questioned by the Chairman who quoted from the negative appraisal in his witness statement, the Minister considered that the two views were not inconsistent. He said:

> **"She was passionate about her medical view, my relationship with Dr Ranson was highly professional. I had a high regard for her."**

602. Mr Segal pointed out that, in effect, this evidence disowned para 14 of his written statement.

603. In his witness statement, the Minister had also commented that Dr Ranson had been free to contact him. That is rather like saying the Ritz Hotel is open to all. It was not the evidence of Miss Magson nor the evidence of Dr Allinson. The Tribunal considered that, during 2020 Miss Magson would have been irritated to the point of reprimand following any (further) approach by Dr Ranson to the Minister. Dr Ranson had already been warned not to contact him direct. It was clear from Dr Allinson's evidence that the Minister would not have welcomed direct contact either. Minister Ashford only wanted to be approached through the command structure.

604. The Tribunal question how closely the Minister had worked with Dr Ranson given that the balance of evidence was that she was not to communicate with him. The Tribunal considered that the vast majority of input to the Minister about Dr Ranson came from Miss Magson and to some unknown extent from Dr Ewart who also had direct access to him.

360 Colleague Feedback Summary and other Appraisals

605. Mr Segal emphasised that once Mrs Cope had the opportunity to assess Dr Ranson's capabilities for herself, she concluded that she had been misled. Having said that she empathised with Dr Ranson, her evidence in the Hearing was to this effect:

> **"My personal experience working with Dr Ranson was positive and there was mutual respect and understanding… she absolutely had the right skill set. There was no reason for Dr Ranson and I not to work constructively together… we could have worked constructively as Medical Director and CEO."**

606. Mr Segal highlighted the consistent opinions of witnesses who gave evidence to the Tribunal such as:

- **Ms Lisa Hall, (paras 3,8,11 and 17 – page 4997 et seq),**
- **Ms Debbie Brayshaw (paras 4-5 and 29 - page 4899 et seq),**
- **Mrs Malone (para 28 – page 4756),**

- **Dr Adrian Dashfield (paras 8-10, 18-22 – page 4929 et seq)**
- **Dr Sivakumar Balasubramanian (paras 21, 16-17 and generally 4956 et seq),**
- **Dr Simon Mardell (paras 10-12, 15-18) – page 4987 et seq) and**
- **Dr Helen Freer (paras 4-5, 21-26, 35 – page 5006 et seq).**

The Tribunal also noted the supportive evidence of:

- **Dr Giovanna Cruz** (**para 19 – page 4937 et seq**)
  - and the emails previously referred to from:
- **Dr Andre Risha, Dr Gareth Davies and Dr Crellin**.

607. Because of what Miss Magson said about Dr Ranson when misleading Mrs Cope and Mr Foster in October / November 2020, the Tribunal considered it appropriate to summarise how out of step was her viewpoint compared with those who had contributed to this **360 -Colleague Feedback Summary of March-June 2021**. The anonymous responses were from:

- **One GP.**
- **Six Hospital Doctors.**
- **Three nurses.**
- **One Manager.**
- **Two "other clinical" and**
- **Three non-clinical.**

608. Dr Ranson's highest score was 98%. The lowest was 72%. As to Peer Average involving ten categories of abilities for assessment, five results were over 80% with two over 90%. The few *de minimis* adverse comments were noted by the Tribunal but lost in the endless list of favourable observations. It would be disproportionate to recite the several pages of praise but here is a cross-section of comments summarising what Manx Care lost because of the message delivered by Miss Magson:

a) **The best Medical Director I have ever seen.**
b) **Excellent understanding of change management.**

c) **Dr Ranson has exercised great integrity in very difficult circumstances. A less resilient person may have crumbled but she has remained a very credible clinician and accountable Medical Director.**
d) **Has worked above and beyond during Covid-19.**
e) **Despite facing many intensely difficult, if not overtly hostile situations over the past year, she has been able to maintain a good work/life balance and to delegate tasks when appropriate.**
f) **Very professional hard worker, respectful, malleable and easy-going.**
g) **In addition to excellent clinical skills, Dr Ranson has excellent management skills.**
h) **I believe she is held in high regard with an exemplary work ethic.**
i) **Dr Ranson continuously reflects upon her performance and strives to improve.**
j) **She not only accepts feedback but actively encourages constructive feedback.**
k) **She uses her strengths of good negotiating skills, fairness, high ethical standards and persistence.**
l) **Dr Ranson delegates when appropriate.**
m) **The lack of a team of suitably qualified and experienced people to delegate impacted on delegation.**
n) **Her passion for excellence is infectious.**
o) **She is uniformly polite, respectful and unbiased in discussions with others.**
p) **She ably chairs meetings, which can be really challenging.**
q) **More than excellent, wonderful.**
r) **I have witnessed her having constructive and courageous conversations with peers and seniors.**
s) **A great leader and not a boss.**
t) **Dr Ranson had a significant workload with limited support and whilst not always meeting deadlines, it has been because of competing priorities, not poor time management**
u) **Dr Ranson uses her time efficiently.**
v) **Dr Ranson is able to moderate meetings in a timely manner.**
w) **Amazing how she could manage all the job she has.**
x) **Dr Ranson is extremely organised and thorough and able to prioritise actions and define an overriding strategy for a variety of meetings.**

y) She responds to my emails in a timely manner.

z) Meets challenges head-on. This doesn't sit well with some senior managers and politicians.

aa) Cannot find enough words to praise her.

609. Based on these answers, the Tribunal considered that Miss Magson's allegation of the need for performance management seemed (and was) ludicrous and unjustifiable. Based on these impartial assessments, the injustice of what Miss Magson did to Dr Ranson in the Grantham Meetings can be seen in stark relief.

610. The Tribunal did not have deaf ears to criticisms of Dr Ranson. No doubt, some were justified but never to the extent that Miss Magson would have had the Tribunal (or Mrs Cope and Mr Foster) believe. In his submissions, Mr Boyd pointed to the apparently poor relationship between Dr Ranson and the following:

- **Ms Cath Quilliam (Director of Nursing). In that respect, Mr Boyd referred to hearsay evidence of Miss Magson at paragraph 54 – 56 of her witness statement. That was, to a very limited extent counterbalanced by a message from Ms Quilliam that, but for health issues, she would have testified on behalf of Dr Ranson.**

- **Ms Angela Murray. The Tribunal accepted that the relationship between Dr Ranson and Ms Murray was troubled. However, given the apparent summary dismissal of Ms Murray by Mrs Cope with the approval of Miss Magson, the Tribunal places little value on her viewpoint, not least (and unsurprisingly) because she provided no evidence.**

- **Dr Henrietta Ewart. The Tribunal accept that her witness statement was hostile almost to a fault regarding Dr Ranson - probably for good and bad reasons. Her display in the witness box in parts displayed unreasonable malice. As mentioned much earlier, seven paragraphs of her witness statement of hearsay evidence were so prejudicial (and irrelevant to the issues) that they had to be struck out by consent of both Counsel.**

- **Dr Adrian Dashfield. Mr Boyd submitted that whilst he had given a statement highly in favour of Dr Ranson, he had noted that Dr Ranson's management style was "*very direct*" and that he could "*see how that might ruffle feathers*." To the Tribunal, this seemed a somewhat desperate attempt to make something out of nothing.**

611. Though not a finding of fact, the Tribunal certainly considered it was plausible that Miss Magson sometimes, but not always justifiably, had drip-fed an unfair image of Dr Ranson to Minister Ashford, Mr Greenhow, Ms Murray, CoMin and others. However, the more compelling evidence was from witnesses who had no vested interest in doing anything other than either supporting a colleague who had been badly treated or who had a neutral stance in this stand-off between Dr Ranson and Miss Magson.

Submissions on the Grantham Meetings

612. As outlined rather earlier in this Decision, Mr Boyd submitted that Miss Magson was a credible witness. For the reasons appearing throughout this Decision, the Tribunal regrettably could not agree. He summarised Manx Care's reasons for not accepting Dr Ranson were as follows (broadly consistent with an emailed summary made to Manx Care by Miss Magson):

a. **Current delivery issues.**
b. **The role Manx Care was looking for – a "jobbing operational MD."**
c. **Dr Ranson's skills.**
d. **Manx Care's need to go out for a permanent MD.**
e. **Feedback Manx Care had received regarding Dr Ranson and**
f. **The needs of DHSC in terms of work around legislative areas.**

613. The Tribunal noted that the evidence from Mrs Cope and Mr Foster did not endorse or support what Miss Magson had regarded as the reasons for Dr Ranson not transferring.

614. Fleshing out his performance management submission, Mr Boyd indicated that Miss Magson's view in regard to work performance was not of Dr Ranson's overall ability but how she went about her job. This was his point:

"Even if Miss Magson is found to have taken an unfair view of the "how" in the sense that others in her position would have found Dr Ranson's "how" perfectly acceptable, so long as Miss Magson's view is not causally tainted by any qualifying disclosures, that is the end of the matter as far as this part of the claim is concerned."

615. The Tribunal did consider that the exaggerated views on performance given by Miss Magson to Mrs Cope and Mr Foster were unjustified and could only reasonably be explained by being tainted by the proven qualifying disclosures.

616. From Mr Boyd's perspective, he rightly homed-in on one-to-one meetings that undoubtedly took place but which he has submitted were performance management. The overall circumstances, as outlined above, belie that. But, even if the Tribunal was wrong on this, these meetings (one of which was referred to as a *catch-up*) did not get close to Miss Magson's version of performance management as described to Mrs Cope and Mr Foster. As observed previously, and cited by Mrs Conie as the Executive Director of HR, line-managers monitor and manage performance as part of their role without it involving or becoming pre-informal performance management.

617. Additionally, Mr Boyd was notably silent on the resilient evidence of Mrs Cope and Mr Foster that Dr Ranson had agreed not to transfer because she was not suitable. This fictional assertion was explicable only because Miss Magson had no intention of giving a fair appraisal and was consistent with being tainted by proven qualifying disclosures.

618. Mr Segal invited the Tribunal to address the fundamental question as to why Miss Magson had misled Mrs Cope and Mr Foster about Dr Ranson being under performance management that cost her the job as MD of Manx Care. He asked that the Tribunal also consider why an innocent whistleblower was subjected to the detriments complained of without proper explanation.

619. His submission was that the Tribunal had to determine the reason for such treatment and as guidance, he drew attention to the **Osipov** and **Fecitt** decisions as to the correct approach to be taken:

> **"Where an innocent Complainant is treated less favourably than other employees in similar circumstances, the Tribunal should be astute to draw inferences adverse to the employer as to the explanation for that treatment where generally (as here) the employer does not admit to a lawful reason. Dr Ranson was singled out not to make the transfer."**

620. "Vindictive" is a word that Mr Segal used on various occasions to describe Miss Magson's approach. On too many occasions on key issues, Mr Segal was able to throw into serious doubt whether the Tribunal could or should rely on the evidence of Miss Magson. As is evident from the totality of this Decision, the Tribunal has had to conclude that Miss Magson's evidence was unreliable.

621. In summary, it was hard not to agree with Mr Segal and conclude that, in effect, Miss Magson's evidence as to the Grantham Meetings, had been self-serving to conceal or deflect from the vindictiveness of her approach to Dr Ranson.

622. On the most significant aspect of this litigation concerning why Dr Ranson was not transferred to Manx Care, Mr Segal urged that:

- **This was only because Mrs Cope and Mr Foster had been actively misled "with the only possible objective of unfairly depriving Dr Ranson of the job of Medical Director" and**

- **That Miss Magson had given misleading evidence to the Tribunal and**

- **He invited the Tribunal to draw inferences that Miss Magson had behaved in that way at least in some part because of the protected disclosures that the Tribunal are satisfied were made.**

623. The Tribunal accepted all three of these submissions.

624. Mr Segal submitted that it was "almost inconceivable" that Miss Magson's conduct was not *at least to some non-trivial extent* influenced by the disclosures even if the Tribunal were to decide that the earlier disclosures could not be inferred to have contributed to influencing that conduct. This, he submitted, was fortified by the absence of any other (credible) explanation for Miss Magson's conduct and given the proximity in time between certain protected disclosures and the commencement of the discussions over employees and their future with Manx Care.

625. In this respect, the Tribunal concluded that even without the issues and challenges starting from March 2020, the proven protected disclosures of September and October 2020 could stand-alone to support the accelerating pace of detriments. However, the Tribunal considered that those early challenges would have added weight to Miss Magson's ultimate negative attitude and approach but such challenges were not essential to the validity of the Tribunal's ultimate conclusion.

626. By the date when this Hearing concluded, Dr Ranson was out of a job and suffering ongoing loss of earnings. This Mr Segal considered to be attributable to the unlawful conduct and he relied on the decision in **Wilsons Solicitors LLP v Roberts**.

627. Mr Segal considered it to be obvious (if not common ground) that had Dr Ranson been employed as MD of Manx Care from 1st April 2021, there was no evidential basis to assume that such employment would have been terminated in January 2022. Such a conclusion was consistent with the evidence of Mrs Cope. When being cross-examined, Mrs Conie also accepted that the only basis for terminating Dr Ranson's employment as MD of Manx Care once she had begun on 1st April 2021 would have been under the normal lawful reasons involving dismissal / termination of redundancy, capability or *Some Other Substantial Reason*.

628. The Tribunal accepted that what Miss Magson had said, during what are generically called the Grantham Meetings, was so damning that it had improperly caused Mrs Cope and Mr

Foster not even to interview Dr Ranson. It was poignant that Mrs Cope admitted in her oral evidence that she regretted that Dr Ranson had not transferred to Manx Care.

629. The Tribunal accepted the thrust of Mr Segal's submission that the developing and accelerating history of detriments stemmed from the proven qualifying disclosures rather than performance management. Given the lack of credibility of aspects of Miss Magson's evidence, the Tribunal feel entitled to draw the inference as against the Respondent that the causative link on Dr Ranson's present plight resulted from those protected disclosures which were proven.

630. Additionally, there strongly appeared to have been selective disclosure of documents by Miss Magson. That caused the Tribunal concern about the overall integrity of her approach to this litigation. The 12th November 2020 note of the Grantham Meeting was so obviously relevant on its face that failure to disclose this in October 2021 or otherwise by 7th January 2022 after her sworn affidavit, spoke of deliberate selectivity. In her evidence on 7th January, Miss Magson had testified that she had gone through her Day-Books, page by page. That cannot have been true.

631. In career-damage terms for Dr Ranson, matters peaked during the reports made by Miss Magson to Mr Foster and Mrs Cope which misled them into not even considering appointing Dr Ranson for the role for which the Tribunal concluded she had been destined from the outset. In image terms, further damage was caused from December 2020 through until March 2021 by the further detriments found to be proven. These had affected Dr Ranson more particularly in her image with her peers whilst ultimately also impacting on her future career. From October 2020 at least until 31st March 2021, she endured a period of torrid humiliation with stoic dignity until her health suffered as a result of what she had been forced to endure.

632. This misleading spin on the situation stemmed from the damage-limitation discussion between Miss Magson and Mrs Conie on 1st December 2020. That conversation set the pattern deliberately to portray to third parties (and to Dr Ranson) the positive reasons why she was remaining with the DHSC. The organograms (**pages 571 and 4803**) revealed the truth.

633. In the end, the Tribunal could not support Mr Boyd's valiant but forlorn submission that none of the qualifying disclosures had any impact on the adverse transfer decision. The impact was more than trivial. As to Mr Boyd's other submission that the Tribunal had to consider whether Miss Magson's view was causally tainted by any qualifying disclosures, the Tribunal was satisfied on the evidence that it had been.

634. To the Tribunal, what was agreed on 1st December 2020 between Miss Magson and Mrs Conie, to sell to Dr Ranson why she would stay with the DHSC, was exposed as a lame attempt to justify the unjustifiable. It was untrue.

17th November 2020 - Teams Call

635. The detriment alleged was contained in (ix) of the Amended Particulars of Complaint. Set out at **page G4216**, it read as follows:

"On 17th November 2020, the Complainant informed Miss Magson at the start of a meeting scheduled for 4 PM that she had not eaten since the previous evening and that she had a headache. Miss Magson nevertheless proceeded with the 1:1 meeting (without giving the Complainant a break) and the meeting lasted for 4 hours and 39 minutes."

636. Due to this, Dr Ranson alleged she was left feeling marginalised, bullied and treated with disrespect and complete disdain.

637. The circumstances are dealt with by Dr Ranson in paragraph 142 of her statement **page K4881**. Miss Magson dealt with the matter between paragraphs 259 – 265 of her statement (**page I-4550**).

638. Mr Boyd pointed out that it was uncontested that when Dr Ranson had mentioned that she had not eaten, Miss Magson asked if she wanted a break to get something to eat but that Dr Ranson had refused the offer. Of course, at that time, Dr Ranson had no idea that the conversation would last anything like as long as it undoubtedly did and the offer did not take account of the fact that Dr Ranson had a headache. Miss Magson had not offered to postpone from the outset nor to adjourn during the meeting nor to take a break, long before over four hours had elapsed.

639. Miss Magson recognised from Dr Ranson's body language that she did not want to start the meeting (paras 260- 261 **– page 4550**):

> **"Dr Ranson made it clear at the beginning, and I noted in my day book that she was clearly not interested in having the discussion … Dr Ranson did not say she didn't want the 121 directly, but it was clear in her body language."**

640. Miss Magson might reasonably have offered to postpone the conversation because of Dr Ranson's headache and her appearing unwell, let alone because of lack of sustenance. Miss Magson did suggest that Dr Ranson had a break to grab some food and then to call back. However, having no idea how long the meeting might be, Dr Ranson decided it was better to get on with it rather than head off to the canteen at the hospital. Neither was she comfortable eating during a Teams Meeting and she knew that Miss Magson insisted that videos had to be on. It was already 4 p.m. and she also knew that after the call with Miss Magson, she still had further work to do before she could go home to Port Erin, some fifteen miles from the hospital.

641. The irony was not lost on the Tribunal that when Dr Ranson was ***not*** unwell, Miss Magson had tried to prevent her from appearing at a press briefing in March 2020 based on an unsubstantiated notion of burn-out but when she actually ***was*** unwell with a headache, Miss Magson was not sympathetic.

642. There was no significant evidence that anything to be discussed was time-critical except from Miss Magson who would not concede on this. Her statement does not suggest there was anything urgent – just important. The items discussed and identified did not appear to be time-critical, certainly nothing that could not wait. According to Dr Ranson, Miss Magson went over and over in minute detail where she was with regard to each task. This was despite Miss Magson already having had a very detailed and complete action log. Miss Magson then required Dr Ranson to complete a new template which she transmitted. This then prompted a robust discussion about the unreasonableness of what Miss Magson now wanted to be provided in a different format.

643. Dr Ranson's workplan document was in evidence. Progress was identified using a Red-Amber-Green coding. There was no need for Miss Magson to seek to change a process

that Dr Ranson considered to be fit for purpose, least of all when it dragged out the unwanted meeting. The blank template from Miss Magson was in evidence at **page Z453**.

644. Dr Ranson testified that she considered that this had been "a way of breaking me." When giving evidence, during the Hearing, reliving this particular meeting caused Dr Ranson such distress, that an adjournment was essential. On resumption, Mr Boyd apologised but the Tribunal considered that he had nothing to apologise for. There was nothing untoward about the questioning.

645. Miss Magson's statement contained criticisms about Dr Ranson's work-style and approach. However, Mr Segal pointed to **pages 2711** and **2855.** These showed a highly organised and successful approach to all Dr Ranson's workstreams. In any event, the Tribunal concluded that drilling down into workplans was not urgent and could and should have waited.

646. Mr Boyd considered that, because Dr Ranson had rejected the offer of a break at the outset, her allegation that this meeting going ahead was linked to qualifying disclosures, was "hopeless." That argument apart, Mr Boyd considered it to be a remarkable proposition that Miss Magson had deliberately strung out the meeting as a punishment. He pointed out that the email preceding the meeting had suggested a busy agenda (**page 2708**). Mr Boyd considered that advancing this detriment had impacted negatively on Dr Ranson's credibility,

647. However, the Tribunal did not consider that a busy agenda meant that it was an urgent one. As to Mr Boyd's submission that Dr Ranson had failed to provide any cogent explanation for how the conversation was twice as long as it need have been, the Tribunal accepted Dr Ranson's evidence that it had been Miss Magson who had been pushing the agenda and drilling down. The Tribunal considered this to be insensitive.

648. Miss Magson could have stopped at any time - especially knowing that Dr Ranson was feeling unwell and had not even wanted to start the meeting. The Tribunal rejected Miss Magson's evidence that she was being supportive. The Tribunal was also mindful that just five days previously, on 12th November (and perhaps in October), Miss Magson had been discussing Dr Ranson far from supportively and had quashed her expectation to transfer

to Manx Care on 1st April 2021 – information known then to Miss Magson but not by Dr Ranson.

649. During this call on 17th November, Miss Magson no longer had any motive or reason to be supportive of Dr Ranson. She was fresh from destroying Dr Ranson's career with the DHSC and Manx Care. As will be seen from 12th November onwards, there was scant, if any, sign of Miss Magson ever being supportive at all – quite the reverse. Mr Segal characterised Miss Magson's behaviour as slice-by-slice side-lining and humiliation of Dr Ranson and this exceptionally long call in the particular circumstances could not be regarded as either compassionate or supportive.

650. Mr Segal could not accept that Miss Magson would have strung out a meeting in the manner she had done with any other director, given that she knew from the outset that Dr Ranson was both in need of food and had a headache.

651. The Tribunal concluded that it was Miss Magson's meeting as CEO and line-manager. She had control. She held the power to adjourn either from the outset or adjourn at any time once it seemed to be going on rather a long time. Instead, as the Tribunal accepts, she went over and over matters that were not urgent. Alternatively, Miss Magson could have suggested taking a break at any point– such an initiative coming from her. There was no evidence that she had even enquired of Dr Ranson during the meeting as to whether she was well enough to continue.

652. The Tribunal determined that there nothing of immediate urgency to be discussed even if some matters discussed may have been important, as would be most likely as between a CEO and her MD. It is true that Dr Ranson could have asked to stop at some point during the meeting but the Tribunal consider that the impetus should really have come from the CEO knowing what she had seen and been told at the outset.

653. The Tribunal concluded that this long Teams call was another example of behaviour by Miss Magson that she would not have imposed on Dr Ranson's peers and stemmed from the protected disclosures. It came at a time when Miss Magson knew that she must soon tell Dr Ranson that she would not be transferring to Manx Care. Demoralising her like this

was consistent with what Miss Magson wanted to achieve – or, as Dr Ranson testified, of Miss Magson wanting to "*break*" her.

29th Nov 2020 - Medical Workforce Strategy

654. The detriment alleged was contained in (xi) of the Amended Particulars of Complaint. It read as follows:

> **"On 29th November 2020, Miss Magson instructed the Complainant to stop working on the successful medical workforce strategy "until Manx Care is established." Miss Magson restricted the communications the Complainant was allowed to send to doctors about this."**

655. Due to this, Dr Ranson alleged she was left feeling marginalised, bullied and treated with disrespect and complete disdain. Dr Ranson's reputation with politicians and clinicians on the Isle of Man was damaged. Miss Magson would have been aware that stopping this work would be highly damaging to Dr Ranson, as it would appear to the doctors that she was failing to follow through on what she had promised to deliver.

656. This allegation is set out at **page G4216** and in paragraph 147 of Dr Ranson's statement (**page K4882**). Miss Magson's observations are between paragraphs 291 – 297 of her statement (**page I-4553)**. Miss Magson's evidence at paragraph 294 -295 was as follows:

> **"… although it was me who asked to stop the work, that was on the back of a request from Teresa Cope and Andrew Foster at a development session – who did not wish this to be a current priority and undertaken by Manx Care when established. Manx Care would determine when they wanted to undertake their own workforce strategy and as I was Dr Ranson's direct line manager I was asked to relay their decision to her."**

657. In their approach to this allegation, the Tribunal cannot ignore that on 12th November, Miss Magson had, by her false, unfair and damaging assessment to Mrs Cope and Mr Foster, prevented Dr Ranson from moving to Manx Care. On 29th November, Miss Magson was shortly to meet Mrs Conie, of the HR Department, to discuss how best to sell to Dr Ranson that she would be remaining with the DHSC and why this was so – although what

Dr Ranson was later told on 8th December was subsequentlyrevealed as being far from the full truth.

658. The Tribunal was satisfied that stopping the Medical Workforce Strategy was a further step directed by Miss Magson on the road to dismantling Dr Ranson's role as MD. She had already prevented her from appearing at the CoMin Testing Workshop. Other steps followed before Manx Care was in operation on 1st April 2021.

659. On 29th November, Mrs Cope was still an appointee to Manx Care but her role did not commence till 1st December. Her evidence was that stopping the Medial Workforce Strategy had **not** been her decision and nor did she believe that she had been a party to it. Dr Ranson believed that this had been Miss Magson's decision.

660. There were no email chains, nor indeed any other evidence, before the Tribunal suggesting that this happened because of any alleged input by Manx Care as Miss Magson wanted the Tribunal to believe. As will be seen later, Miss Magson took shelter behind, and falsely blamed, Manx Care for another decision that she had made**.**

661. The Tribunal rejected Miss Magson's evidence that this was Manx Care's wish. Mrs Cope's witness statement makes no mention of her or Mr Foster having any involvement in determining the fate of the Workforce Strategy programme.

662. Despite being detrimental to the doctors involved, stopping this programme was handled in an insensitive manner. In the opinion of the Tribunal, Dr Ranson suffered both reputational damage and personal hurt from her successful programme being stopped in mid-stream.

663. The Tribunal accepted Dr Ranson's evidence that Miss Magson had ordered Dr Ranson not even to write to explain why, or to inform, those doctors who had been attendees. The Tribunal concluded that the way Miss Magson's decision was implemented was needlessly damaging to Dr Ranson and to her reputation.

664. Miss Magson's Day-Book note of the Grantham meeting on 12th November with "Robin, Andrew and Teresa" made no mention of this topic being discussed at all despite noting other matters regarding Dr Ranson. This note was only belatedly disclosed during the

Hearing but somehow, despite its significance, it never made the trial bundle. The Tribunal felt sure that one or other Counsel would have referred to it, had it hit their radar before the Hearing had commenced. It was never referred to until after being found and raised by the Chairman. That was after the close of evidence and shortly before oral closing submissions. It would have helped the Tribunal if this note could have been put to Mrs Cope and Miss Magson and perhaps Mr Foster.

665. In her letter of 29th November 2020 (**page 2777)** to Dr Ranson, Miss Magson wrote:

> **"Medical Workforce Strategy – an important task and to progress will need project management resource. Agreed I would discuss with Robin. Since our meeting, met with Robin Andrew and Teresa and we have agreed that although important the medical workforce strategy as a project in itself will wait until Manx Care is established. The work you have set off with, with the consultants will not be lost but this needs to be fed into the wider workforce strategy that Clare and Ruth have drafted as part of Manx Care workstream as part of any next stage of delivery."**

666. The combination of the silence of the Grantham note on this topic and Mrs Cope's denial of any involvement means that the Tribunal must reject Miss Magson's evidence as being another example of her taking shelter behind others to deflect from her own role and behaviour. The Tribunal asked itself why Miss Magson would again do this. It answered this by concluding that Miss Magson wanted to distance herself from her own readiness to damage Dr Ranson but also to blame others for detriments, whenever there was a chance to do so.

667. Miss Magson's written evidence did not comfortably gel with the wording in her letter that was suggestive that the programme would resume. The Tribunal considered this was because on 29th November, the letter was written in the context that Miss Magson knew that Dr Ranson would not be transferring to Manx Care. However, Miss Magson was not yet ready to inform her of this and so her letter softened the impact by making out that the programme would resume.

668. In cross-examination, Miss Magson accepted that ending (or pausing) the programme had to be handled sensitively and carefully. In cross-examination, she also accepted that it was important how communication should be given. She asserted that "Manx Care would do that," which seemed highly improbable in the circumstances. There was not a shred of evidence for that assertion.

669. Miss Magson's letter of 29th November did not instruct, nor suggest, that Dr Ranson should resolve / discuss or facilitate the ending of the programme with Manx Care. Nor was it suggested that she should check with Mrs Cope to find out if they were notifying the doctors. Neither was it clear how Mrs Cope / Manx Care could notify the attendees on this programme unless provided with the names and details by Dr Ranson or otherwise with her knowledge. There was no evidence that suggested why Miss Magson believed that Manx Care would inform the doctors. There was no evidence that she had asked Mrs Cope / Mr Foster whether they were going to explain the position.

670. Accepting, as the Tribunal does, that Mrs Cope knew nothing of what Miss Magson alleges was agreed, Mrs Cope could not have raised the topic of the Workshop Programme directly with Dr Ranson and had no chance to input to make sure that the situation was handled sensitively.

671. Finally, the Tribunal was unimpressed with Miss Magson's excuse in cross-examination that Dr Ranson was speaking and working with (doctors) – and by implication, that is how all those involved in her successful programme could learn of the programme ending or even pausing. Considering that Miss Magson was so critical of Dr Ranson's style of working ("***the how***"), informing so many doctors by word-of-mouth compared to one single email made no sense whatsoever.

672. As to why Dr Ranson had been told that she could not write to the doctors, Miss Magson's unsatisfactory evidence to the Tribunal was that she believed that Manx Care were going to do that. Perhaps the true rationale for no email to be sent was because Dr Ranson would have innocently but falsely explained that the decision had been that of Mrs Cope and Manx Care.

673. The Tribunal was satisfied that this was another occasion where the blame rested with Miss Magson for a deliberate action on her part where she took shelter by trying to blame someone else who had no part in it.

674. The Tribunal were reminded of the situation involving The Speaker when Dr Ranson had been prevented from responding to him so that she was blamed. Now, this was a similar approach whereby unreasonably preventing Dr Ranson from writing to explain the situation, caused her professional and personal harm for no valid reason. It also has to be noted that there were still four months before Manx Care would become operational, plenty of time for continuation of this successful programme.

675. On her evidence, Miss Magson seemed to have no real concern to ensure that the situation would be handled sensitively and carefully – quite the reverse. On her own evidence, there was nothing to suggest that she had ensured no damage to Dr Ranson or that she even had any interest in protecting Dr Ranson's reputation.

676. This attitude was also consistent with when Miss Magson failed to protect Dr Ranson in front of Minister Ashford and others - and similarly before and after the Speaker had blamed her in public.

677. The Tribunal considered that Miss Magson demonstrated disregard for the image and hurt that this situation would cause to her Medical Director to whom she had a responsibility as line-manager. The Tribunal reject as unacceptable Miss Magson's answer to Mr Segal that the way the decision was to be implemented was how "they (Cope/Foster) wanted to handle it."

678. The exchanges between Miss Magson and Mr Segal where Miss Magson tried to justify the unjustifiable came across as lame and unconvincing. However, Mr Boyd considered that any intent on the part of Miss Magson to punish Dr Ranson or otherwise to undermine her as part of some Machiavellian plot, made "absolutely no sense whatsoever."

679. Miss Magson herself accepted the benefits of Dr Ranson's programme and yet it was her decision alone to terminate it. The Tribunal had to ask why had Miss Magson done this

and yet had blamed Mrs Cope? This had to be a deliberate decision to continue dismantling Dr Ranson's achievements and her enjoyment of the role of MD, stemming from protected disclosures and being part of an ongoing pattern.

680. Dr Ranson had been nominated for a Covid-19 Care Award, as confirmed by email from Ms Nicola Grose of 17th November 2020 (**page 2686**). Because of the importance of what it said, it is now set out in full. The irony of this arriving five days after Dr Ranson's fate with Manx Care had been sealed by Miss Magson and shortly before the needless ending of the Medical Workforce Strategy, was not lost on the Tribunal:

> **"Rosalind took charge of the hospital's, and to an extent the whole Island's response, to the pandemic from the outset. She called an extraordinary meeting of the senior clinical leaders on a Sunday afternoon – 15th March. This was before we had had a single case on Island and when people were still debating whether or not TT was likely to go-ahead. Through this action she gained the consensus among senior clinicians that the Island needed to be bold in shutting down activities and travel and was able to influence CoMin to act as they did. This single act resulted in us having an early lockdown, without which we would not be in the favourable position of having eliminated Covid-19 from the Island. Rosalind had been in post here for about 6 weeks when she was landed in a situation she could not have envisaged on taking up the job. From then until now she has worked round-the-clock (I know this from email responses received at weekends, at midnight etc) to ensure the Island's Covid-19 response has been as it has. If anyone deserves a medal for accountability, and going the extra mile, it is surely Dr Ranson."**

681. Mr Segal considered that Miss Magson's conduct was objectionable and seemingly disingenuous. He said that an explanation from her was essential but none had been provided. The Tribunal agreed that nothing credible had been provided. This was a detriment following from protected disclosures.

December 2020 - Vaccine Roll-Out - Patient Group Direction (PGD)

682. The detriments alleged are at (xiv), (xv) and (xvi) of the Amended Particulars of Complaint. They read as follows:

> **"Dr Ranson had considerable expertise in this field, having been a Commissioner on the Commission on Human Medicines, as Miss Magson well knew. The exclusion of Dr Ranson from the vaccine roll-out at the start, was intended to side-line and marginalise Dr Ranson, who was in fact an essential part of the process as a matter of statutory procedure.**
>
> **"From about 17th December 2020, Miss Magson later demanded that Dr Ranson take on the medical leadership of the vaccine roll-out and in doing so, cancelled Dr Ranson's study leave and annual leave and on the 18th December 2020, Dr Ranson was asked by Miss Magson to sign the Patient Group Direction (PGD) for the new Covid-19 vaccine. Between that date and about 21st December, Miss Magson unreasonably continued to demand that Dr Ranson sign the PGD despite knowing that she had good reason for refusing to sign because the indemnity position needed resolving. Further, during a meeting on 18th December 2020 Miss Magson conveyed the impression to the Vaccine Group that Dr Ranson had failed to attend previous meetings and failed to sign the Direction and other documents. In fact, Dr Ranson had been told by Miss Magson that she was not to have any input into the Vaccine Group."**

683. Due to this, Dr Ranson alleged she was left feeling marginalised, bullied and treated with disrespect and complete disdain and her reputation with politicians and clinicians on the Isle of Man was damaged.

684. The allegation is set out at **page G4217** and Dr Ranson's evidence is in paragraphs 125 to 136 of her statement **– (page K4877 – K4879).** Miss Magson dealt with the matter between paragraphs 321 and 342 of her statement **(page I-4556 – 4558).**

685. The PGD was a document from NHS England providing a legal framework that allows some registered health professionals to supply and/or administer specified medicines to a pre-defined group of patients, without them having to see a prescriber.

686. This was no *two-page tick box and sign* type of document. Miss Magson accepted that this was "a huge piece of work." Neither was it even as simple as the PGD being the only issue. Many other aspects had to be resolved prior to vaccine roll-out. These included the standard operating procedures, consent forms and the transportation and storage of the vaccine at a very low temperature. All these requirements were yet to be scrutinised and satisfactorily resolved when Dr Ranson was suddenly expected to sign off on 18th December and so trigger vaccine roll-out.

687. When Dr Ranson was brought in belatedly on 17th December, she appreciated that a significant amount of work was required. To achieve this, she promptly convened an extraordinary Senior Clinical Advisory Group meeting (**pages Z450-452**). This Group identified what work needed to be done on the documentation before the roll-out could begin.

688. Miss Magson, at paragraph 321 (**page 4556**) denied that she had instructed Dr Ranson that she would have no input into the Vaccine Group or roll-out. However, Mr Segal indicated that the correct factual situation was that Miss Magson had asked all the other Executives to join the Vaccine Group or to appoint a deputy. She had given no such choice to Dr Ranson despite her being the "most obviously relevant person" because of her experience on the Commission on Human Medicines and because of her statutory accountability as Medical Director.

689. From his cross-examination of Dr Ranson, Mr Boyd submitted that the detriments being advanced seemed to be the following:

    a. Exclusion of Dr Ranson from the Vaccine Group in the first instance;

    b. Dr Ranson being humiliated and blamed on 18th December 2020 for the failure to ensure the vaccine was rolled out on the 21st December 2020 and

    c. Miss Magson insisting that Dr Ranson come to a meeting of the Vaccine Group on 18th December 2020 and sign the PGD.

690. As to the allegation at (a) above, Mr Boyd relied on the evidence of Miss Magson that Dr Ranson had not been told that she would need to nominate a deputy. In her evidence, the issue (as she alleged) was about Dr Ranson's workload. In cross-examination, Miss Magson pushed the blame back to Dr Ranson. She asserted that if Dr Ranson had said that she *must* attend the Vaccine Group or that it was *very important* that she did so, then Miss Magson would have given that consideration and we "would have worked around that."

691. Coming from Miss Magson, in a disputed area of evidence, the Tribunal did not consider that to be credible, plausible or likely. In consequence, despite being the MD, Dr Ranson was not invited to meetings of the Vaccine Group and nor was she copied into minutes of the meetings. Her first involvement was at a meeting on 18th December

692. When Mr Segal pointed out that Dr Ranson had uniquely relevant experience, Miss Magson gave the impression to the Tribunal that she had not been aware of that. Her answer was: ***"I've learned that***." The inference was that she had learned this subsequently rather than being aware of it prior to the matters complained of in December 2020. Besides the apparent or possible unawareness of Dr Ranson's experience with the Commission on Human Medicines, Miss Magson must, or should have known of the statutory accountability of the Medical Director in this situation.

693. The Director of Nursing, Ms Cath Quilliam, had been happy to sign the PGD but Ms Bell, the Chief Pharmacist, had been unable to get the GPs to sign – to the knowledge of Miss Magson (email 18th December 2020 to Ms Quilliam copied to Miss Magson and Dr Ranson - **page 2851**).

694. On 18th December, at the meeting, Miss Magson instructed Dr Ranson to sign the PGD for the Covid-19 vaccine to enable roll-out on 21st December. Ms Bell had previously been instructed by Miss Magson to make changes to the PGD. With her experience, Dr Ranson realised that the amendments broke the chain of indemnity from NHSE to the Isle of Man – a situation that was impossible to accept.

695. There is no dispute that at this meeting, Miss Magson got "cross" with Dr Ranson. According to Miss Magson's version, she was only "cross" because Dr Ranson had said

that she would have to leave the meeting after 30 minutes because she was due on annual leave.

696. Contrastingly, Dr Ranson's evidence was that Miss Magson had raised her voice when she demanded that Dr Ranson sign the PGD. However, as Dr Ranson explained, Miss Magson could not instruct her to do something that in her professional opinion was unsafe. The Tribunal accepts as much more plausible that Miss Magson raised her voice when cross because refusing to sign was a public challenge to her authority and was going to be unwelcome news for Minister Ashford.

697. Dr Ranson was within her rights to refuse. Additionally, as Mr Segal pointed out, Miss Magson knew during this meeting that the GPs had also refused to sign and that the other paperwork issues were unresolved anyway. Miss Magson's appropriate and reasonable reaction to Dr Ranson should have been gratitude for preventing the Island from losing the NHSE's indemnity.

698. In cross-examination, Miss Magson denied pressurising Dr Ranson to sign the PGD. Her evidence was that she took the responsibility at a time of political pressure. The Tribunal do not accept this. The Tribunal accept that Mis Magson would have been under political pressure to achieve the roll-out but the blame for this was her decision to side-line Dr Ranson from the Vaccine Group. That had led to the formalities being far from ready.

699. The consequence of Dr Ranson's refusal to sign was that the vaccine could not be given to the public on 21st December as Miss Magson had led the Minister to anticipate was doable. That had caused a problem for Miss Magson who had (again as with section 76 Report) over-promised Minister Ashford that 21st December was achievable. The Tribunal prefer Dr Ranson's evidence of the reason why Miss Magson was "cross."

700. Mr Segal pointed out that Dr Ranson had volunteered during the meeting to explain this problem with the PGD personally to the Minister. This had then prompted Miss Magson to tell her "in a raised voice" that she was not to speak to the Minister because only she spoke to him. The Tribunal could envisage that Dr Ranson's explanation to the Minister may well have exposed Miss Magson's mistakes when trying to ensure a swift roll-out by

not involving Dr Ranson in the Vaccine Group from the outset and for instructing Ms Bell to amend the paperwork.

701. Mr Segal pointed out that during the 18th December meeting, Miss Magson conveyed the impression that (a) Dr Ranson had failed to attend previous meetings and (b) had failed to do the work expected of her to enable the PGD to be signed off. Both these impressions were unfounded and should never have been given. This was another example of Miss Magson passing the blame for her own errors to someone else – this time to Dr Ranson. The Tribunal accepted that knowingly making out that Dr Ranson had failed to attend or do what was expected of her, was both needless and vindictive and yet a further detriment.

702. The Tribunal reject Miss Magson's denial that Dr Ranson had been pressured to sign. The Tribunal prefer the evidence of Dr Ranson.

703. Mr Boyd submitted that, even if there were any pressure placed on Dr Ranson to sign the PGD, that stemmed from the desperate desire to enable the vaccine roll-out and had nothing to do with any qualifying disclosures, such an allegation being "nonsensical".

704. Mr Boyd urged that it was because of Dr Ranson's workload that Miss Magson had not involved her in the Vaccine Group. By now, Dr Ranson's workload had already been reduced through her Medical Workforce Strategy programme being stopped.

705. To the extent that there were material differences as to fact, the Tribunal preferred the reliability of the evidence of Dr Ranson. The Tribunal agreed with Mr Segal who characterised Miss Magson's behaviour on and after 18th December as another example of her unreasonably blaming and bullying Dr Ranson following her own over-promising to the Minister.

706. The Tribunal considered that the entire episode from start to finish was consistent with Dr Ranson being side-lined and victimised by non-involvement, compared to the other executives. Then, from 17th December, when it became apparent to Miss Magson that Dr Ranson's involvement was essential, she was blamed unfairly for non-attendance and for

not doing what she allegedly should have been doing. The side-lining was yet another destruction of Dr Ranson's role of MD.

707. Consistent with Mr Segal's submission that Miss Magson would not have behaved like this with the other Directors, there was no evidence to suggest otherwise. The Tribunal accepted that this was most probably so. The Tribunal consider there was a causative link between the proven protected disclosures and the way in which Dr Ranson was unfairly treated. This behaviour was consistent with a pattern of quite deliberate decisions and detrimental actions.

1st January 2021- Clinical Advisory Group Meeting

708. The detriment alleged is at (xvii) of the Amended Particulars of Complaint. This read as follows:

> **"On or around 1st January 2021 and in relation to the Covid-19 outbreak, the Complainant recommended an urgent Clinical Advisory Group meeting be convened. Miss Magson prevented the Complainant from doing this."**

709. Dr Ranson alleged that she was left feeling marginalised, bullied and treated with disrespect and complete disdain such that her reputation with politicians and clinicians on the Isle of Man was damaged.

710. The allegation is at **page G4218**. Dr Ranson's evidence in her witness statement is at paragraphs 164 and 170 – (**pages K4887 – K 4888**). Miss Magson's statement as to this is at paragraphs 343 and 347 (**page 4558 – 4559**).

711. Dr Ranson's evidence was that she was concerned about the risk of a rapid spread of Covid-19 as a result of a carrier in a nightclub. Her text message (**page 3634)** to Miss Magson was clearly expressed as follows:

> **"Happy New Year, having seen the press announcement this morning and given the location and the number of hours the person was in the nightclub, the risk to the public is high not low. I would suggest we ask PH to strengthen the press release and ask all those there limit contact with others … maybe one of our**

meetings could be called urgently by you to discuss options as this will turn out to be a super spreading event. I am happy to be available at any time but I think <u>today</u> we should meet."

712. There is no document or text message showing that Miss Magson replied. Neither had Dr Ranson any recollection of a call with Miss Magson on 1st January but she did not dispute that Miss Magson may have spoken to her. However, there was no reference in Miss Magson's Day-Book to confirm any such conversation.

713. On 2nd January 2021, Dr Ranson emailed Miss Magson and other executives (**page 2947**) explaining that there were a number of matters which the CAG needed to consider in relation to the new cases so that proper advice could be given to the DHSC. Dr Ranson indicated she was convening this Group urgently. She was fearful of a new variant of Covid-19 following what may have been a super-spreader event. This, as it transpired, leading to a Circuit Break being introduced on 7th January.

714. On 3rd January, Miss Magson replied (**page 2946**) making clear that any questions to be discussed at the CAG would need to be agreed in advance. They never were. In consequence Dr Ranson was prevented from effectively fulfilling her role and advising regarding the new outbreak. In practical terms, the position now was that she was prevented from giving advice or leading her medical – clinical team to advise.

715. When told that Mr Greenhow would decide if a joint group of senior leaders was needed, Dr Ranson told Miss Magson that it was necessary for her to convene an urgent meeting to discuss the advice to be given. Miss Magson prevented this by indicating that the Silver / Public Health grouping would give that advice. Subsequently, neither Miss Magson nor Mr Greenhow ever convened a meeting of that group.

716. Mr Boyd's interpretation was that there was no push-back from Miss Magson about Dr Ranson holding a CAG meeting – only the proviso that there be clear questions on what advice would be asked of it. Mr Boyd pointed out that Miss Magson needed more input from Mr Greenhow. However, Mr Boyd had not highlighted the two emails of 3rd January 2021. These, Mr Segal submitted, were consistent with Dr Ranson being prevented from fulfilling her MD role or from advising on the new outbreak – **pages 2979 and 2977.** The

Tribunal considered it extraordinary that at a critical moment for the health of Islanders, the Island's MD was being delayed and inhibited from working with CAG to fulfil its (and her) role.

717. Mr Segal pointed out that, yet again, Miss Magson had taken shelter behind Mrs Cope – contending that it had been her decision that the Clinical Advisory Group should no longer perform their previous function. Just as before, Mrs Cope's evidence did not support that. Her evidence was that the decision had been Miss Magson's. The Tribunal reject Miss Magson's evidence as unreliable. If the side-lining was *bona fide* in the way Miss Magson wanted the Tribunal to accept, once again, the Tribunal had to question why she needed to pretend that Mrs Cope was to blame?

718. Mrs Cope's evidence was that she was unclear how or even that the functions of the CAG had changed before and after 1st January 2021.

719. Dr Ranson pointed out that for CAG to provide advice and know how to respond, first-hand information was needed. They had been driven to try to get such information from the Government's website and broadcasts. Unsurprisingly, Dr Ranson pointed out that this was an inappropriate way to have to gather facts. In robust distinction to the evidence of Miss Magson, Mrs Cope testified that she had not understood that CAG was no longer being given data or asked for advice.

720. The Tribunal considered that not being providing Dr Ranson's CAG with data was consistent with Miss Magson intentionally side-lining Dr Ranson and her Group – in keeeping with the now lengthening line of detriments flowing from the protected disclosures.

721. Miss Magson's new group - mandated to facilitate direct communication and a governance link between Public Health and CAG did not meet. In consequence CAG was kept out of the loop with what was happening.

722. On 3rd January (**page 2977**), Miss Magson identified that CAG had to consider the mid-test Pathway as an option instead of wider household exit testing and that Dr Khan should be able to bring this to CAG. Additionally, as a priority, CAG had to consider evidence

including the UK Chief Medical Officer's letter and make recommendations about timings of the second dose vaccines by close of play on Tuesday. This evidence was suggestive that CAG would have a role.

723. Mr Segal urged that if the Tribunal concluded that it had been Miss Magson's decision to prevent Dr Ranson, through CAG, from performing her role and blaming Mrs Cope (and thus, in his submission misleading the Tribunal), it seemed to be a reasonable inference that this decision was personally directed at Dr Ranson. The Tribunal did accept that Mrs Cope was not to be blamed.

724. In Mr Segal's words, he considered this was the first step on the road of her being progressively stripped of most of her operational functions and responsibilities over the coming weeks and months. The Tribunal did not accept that this was the *first step* (see above for earlier steps) but otherwise agreed with the submission.

725. Mr Boyd summarised by indicating that his interpretation of the evidence was that Miss Magson had not refused to allow a meeting when placed in context and secondly that events between 1st and 3rd January 2021 had "absolutely zero to do with any qualifying disclosures." The Tribunal did not accept that. The Tribunal considered that since the final proven protected disclosure and Miss Magson's October / November Grantham false report to Mrs Cope and Mr Foster, Miss Magson had been and continued to be content to chip away at Dr Ranson's erstwhile role as MD and with CAG (which should have been ongoing).

726. The Tribunal accept the legal approach (per **Osipov** and per **Fecitt)** of the inference to draw. The Tribunal reject Miss Magson's explanation that it was not her decision. This undermines not just her credibility but the good faith of what she was doing. That points to this being a deliberate attempt to demean Dr Ranson while she was still the MD and is part of the ongoing fall-out from the protected disclosures.

727. This detriment was established.

January 2021 - Loss of Office at Noble's and Removal of PA

728. The detriments alleged are at (xviii) and (xix) of the Amended Particulars of Complaint. These read as follows:

> **"Following the Complainant's return to work at Noble's Hospital in January 2021, she found her PA had been moved from her adjoining office. Following this the Complainant's belongings were removed from her office and put into a store, the Complainant was given a smaller office with a broken chair, no telephone and no "Medical Director" sign on the door.**
>
> **On or around 5th February 2021, the Complainant's PA was removed or redeployed without any discussion with the Complainant."**

729. The alleged consequence from both these incidents was that Dr Ranson was left feeling marginalised, bullied and treated with disrespect and complete disdain such that her reputation with politicians and clinicians on the Isle of Man was damaged.

730. A prior indication of lack of concern for Dr Ranson was when Ms Lisa Hall had been removed from her office during December without notice. Dr Ranson had gone into the hospital and found that she was no longer there and that her room had been reorganised.

731. Dr Ranson's evidence in her written statement (**para 158 – page 4885**) was that from 1st January 2021, she had been excluded from Manx Care discussion, meetings and policy decisions. The other executive directors with whom she worked closely were included. Dr Ranson found this distressing. It had also made it difficult for her to do her job as the MD who had a responsible role to fill until 1st April 2021. It was a humiliating time for her at that level.

732. Following annual leave on 29th and 30th December 2020, Dr Ranson returned to work on 4th January 2021. At **paragraph 161 – page 4886**) she described what happened as follows:

> **"I do not recall the exact dates these events occurred but during this period of time my Personal Assistant was moved from the adjoining room outside my office to another office along the corridor in the management suite. Shortly thereafter, my belongings were removed from my office and put into a store.**

The sign saying Medical Director from my old office had been removed from the door and was nowhere to be seen. I had to ask where I should work and I was pointed to an empty office which had previously been occupied by junior manager. There was no sign on the door and the nameplate was empty. There was no phone in the room and the only chair was broken. There was no computer screen. I had previously had a large room and my secretary had sat immediately outside in a small room that was the entrance into my room. I had the facilities to hold small meetings."

733. This happened without any warning or consultation. As Dr Ranson put it, this followed on from Miss Magson's false explanation and decision given to her on 8th December. As Dr Ranson testified, the manner in which she was stripped of her room ought never to have happened. As she put it, since 8th December, she had felt "broken and beaten" by the treatment she had been receiving. Never in her career had she experienced such "hostility, marginalisation and humiliation." The Tribunal accept that this was no exaggeration.

734. By chance, when Dr Ranson started in January 2020, there had been available for her use, the office normally used by the CEO with an outer office for the PA. The Tribunal could understand that with Mrs Cope having now started as the incoming CEO of Manx Care, it was perfectly reasonable that she should be given that office suite and that Dr Ranson be moved elsewhere.

735. However, this was a situation that had to be handled with all due sensitivity. In answer to questions in the Tribunal, Miss Magson left the impression that she had given no directions to her COO, Ms Angela Murray, to handle the situation with sensitivity. At page 69 of the Transcript for 4th February 2022, there was this exchange:

Chairman:

"What did you brief Miss Murray to make sure it was sensitively handled? Because obviously it was not with regard to her room being taken away, her assistant being taken away and her being moved unexpectedly to another room."

Miss Magson:

"Most of the conversations were with Teresa Cope because she was, as we talked about earlier, taking the lead operationally and ultimately my involvement with Angela would step back as a result, but I did advise Angela of the decision so that she was aware on the shop floor and that was it, no other position to my knowledge."

Chairman:

"So you gave her no directions about what should happen regarding the room?"

Miss Magson: "Absolutely not …"

736. On 31st December 2021, almost 12 months later, Dr Ranson wrote to Mrs Cope hoping to get her to testify on her behalf in the Tribunal. At **page Z426**, Dr Ranson reminded Mrs Cope by email of a prior conversation early in 2021 and it made a number of pertinent points including this one regarding Ms Murray:

"You told me that you had never encountered behaviour as you witnessed for yourself from Angela Murray and you told me that you had 11 members of staff come and tell you about their treatment at the hands of Angela Murray and that was why you summarily dismissed her. There is a culture at Noble's – which Kathryn was fully aware of – of bullying and threatening."

737. The Tribunal considered it material to make mention of this because although Miss Magson denied being aware of bullying by Ms Murray, it seemed to be unlikely and the Tribunal prefer the evidence of Dr Ranson. The point was that if a situation had to be handled sensitively, Ms Murray did not appear to be temperamentally suited to doing so without very specific instructions. As CEO, the Tribunal would have expected Miss Magson to be aware of the part-decided but still pending proceedings in this Tribunal **Dr Tinwell v DHSC (case number 17/81)** in which there were allegations against Ms Murray because of her behaviour. That action was listed for Hearing in 2021 and commenced later that year.

738. The Tribunal concluded that, because of the soured relationship between herself and Dr Ranson, Miss Magson, having unfairly ensured that Dr Ranson did not transfer to Manx Care had no real interest (beyond lip-service) in her welfare. Thereafter, Dr Ranson was increasingly being side-lined and humiliated whether directly by Miss Magson or (***perhaps*** on Miss Magson's evidence) by decisions of Ms Murray as the COO. If it was the latter, that resulted from lack of interest or concern from Miss Magson to protect Dr Ranson's feelings and well-being from 8th December onwards.

739. The Tribunal was surprised at Miss Magson's expressed attitude in the witness-box that stripping Dr Ranson from her room without warning was not her concern and had been for Ms Murray alone to handle (or less persuasively, an operational matter for Mrs Cope). If, as Miss Magson indicated, but with no corroborating evidence, it was something left to Ms Murray, then the Tribunal considered that perhaps Ms Murray felt it reasonable to humiliate Dr Ranson in this way, confident that she would not be reprimanded by Miss Magson for doing so.

740. There was no evidence of reprimand or action by Miss Magson involving Ms Murray, once she knew what had happened. There was no apology to Dr Ranson from anybody. Miss Magson's *apparent* lack of knowledge of how this situation had come about, showed how little interest she had in Dr Ranson because she never (*apparently*) made any enquiry to find out so that an apology could be made.

741. In her evidence, Miss Magson had previously talked and written about the need for "sensitivity" when dealing with Dr Ranson after 8th December. There was precious little sign of it in reality. Sensitive this was not.

742. From 8th December onwards, the dismantling of Dr Ranson's role was handled invariably without sensitivity. Consistent with her disregard for Dr Ranson's feelings, it appeared to the Tribunal that Miss Magson neither personally nor through issuing advance instructions to Ms Murray ensured that there was sensitivity. Quite the reverse.

743. To the Tribunal, if any further support were needed, about an ongoing pattern of behaviour, demonstrating Miss Magson's lack of care and interest for the welfare of Dr

Ranson and for her dignity, it came in the emailed comment on 12th January (**page 3063**) when she was informed by Mrs Cope that Dr Ranson was at work:

"Goodness! Does she have a desk?????"

744. This demonstrated not simply a callous lack of care and interest in Dr Ranson. It also pointed to Miss Magson's awareness that Dr Ranson had been removed from her office.

745. The Tribunal accepted the evidence of Mrs Cope that she had no part to play in this shabby treatment. Miss Magson, in what was by now a familiar fashion, distanced herself from any part of this mistreatment but her comment ***Goodness! Does she have a desk*** smacked of glee, gloating and lack of concern at a time when Dr Ranson had found herself in a room with a broken chair, no phone, no computer-screen and no name on the door.

746. To Dr Ranson, the shock of what had happened, must have been painful, not least because her humiliation must have been obvious to the wider DHSC community. As line-manager to the Medical Director at a sensitive time, Miss Magson had a duty of care and to be involved.

747. At issue was whether the Tribunal could believe Miss Magson on this occasion when she had taken shelter behind Ms Murray who provided no evidence in corroboration. There was not a single document produced of how the loss of room and its replacement was implemented. If her evidence is believed, Miss Magson had no interest in this at all and did not even enquire how it was to be handled.

748. There was no evidence from Human Resources of their involvement. With or without an instruction from Miss Magson, had this plan been implemented by Ms Murray instructing someone else to handle it? Who had decided to remove Dr Ranson's personal belongings and dump them in store? The Tribunal did not envisage that, as the COO, Ms Murray herself would have had any physical involvement in the removal process. Not a single document was produced regarding these events.

749. To the Tribunal, Miss Magson gave the impression of (*in her view* perfectly reasonably) having shown no role or interest in what was happening at Noble's about this. However,

her mocking comment to Mrs Cope on 12th January implied she knew a great deal more than the Tribunal ever heard.

750. The Tribunal accept the general principle that if there are changes in rooms or staffing needed at a junior level in a large enterprise such as the DHSC, it would be reasonable to expect Ms Murray to implement changes. It would not be a task for the CEO. This situation was different. The Tribunal doubted that Miss Magson would have treated other directors like this.

751. Dr Ranson considered that such changes could not have happened without consultation, warning and then be implemented without Miss Magson's authorisation. Miss Magson's witness statement said that she ***assumed*** the changes were made at the instigation of Manx Care - which they were not. Mrs Cope who took over Dr Ranson's former office had no knowledge of this background at all until after the event. In the Tribunal's opinion, had the decision been that of Mrs Cope, it is highly likely that it would have been handled with fairness and sensitivity. She distanced herself from the way this was handled.

752. Mr Segal identified evidence which he considered to be a strong pointer supporting Dr Ranson's belief about Miss Magson's involvement. When questioned by Mr Segal, as to who had made the decision to move Dr Ranson, Mrs Cope said it was Miss Magson's decision. As to who had decided whether Dr Ranson should be consulted, Mrs Cope said that this could only again be Miss Magson.

753. Once actively involved in January 2021, Mrs Cope was swift to act and, after endorsement by Miss Magson as the CEO, Ms Murray agreed to leave on 8th February 2021 following apparent allegations of bullying – as to which the Tribunal had no evidence in these proceedings. Mrs Cope had explained to the Tribunal that she had been very concerned about the bullying culture. She was not able to say whether Miss Magson had known of this. She said that it was:

> **"Difficult to know. I had been physically present. I was aware of the behaviour and had concern about a number of people besides Ms Murray."**

754. Miss Magson said that she had not been aware of bullying involving Ms Murray, something disputed by Dr Ranson. It did seem curious to the Tribunal that an incoming Chief Executive in Mrs Cope could so quickly act because of past allegations of bullying and yet the existing Chief Executive claimed to have been unaware of any problem involving her COO.

755. In cross-examination, it was put to Miss Magson that it was "wildly unlikely" that without Dr Ranson's knowledge or any warning, the office move and her PA later being removed had happened without her sanction. The evasive reply was:

"I have said before responsibility was clear between Angela Murray and myself."

756. A further evasive answer from Miss Magson was to Mr Segal's point-blank assertion that she had played a role in this. Miss Magson explained that who was working for whom was not determined by her. She testified that Ms Murray had day-to-day operational responsibility, while Miss Magson was "facing upward and out". That unsatisfactory answer did not go to the nub of the issue. To a point-blank question, there was no point-blank answer of ***no*** – merely a deflection.

757. As to the separate issue of who had deprived Dr Ranson of her PA on 5th February 2021, Mrs Cope indicated that she could not be sure but she thought that this was a high-level instruction from Miss Magson. She thought that it had involved Ms Murray who was responsible for movement and how it was managed. Mrs Cope made the somewhat telling comment to the effect that she had a *personal view* on how this was handled.

758. Mr Boyd considered that besides Dr Ranson's supposition, there was no evidence that Miss Magson had made that decision to remove Dr Ranson's PA. He pointed out that Mrs Cope couldn't be sure. However, the Tribunal recalled that, despite Miss Magson's denial of involvement and her explanation of the demarcation in roles between herself and Ms Murray, Miss Magson had been very active in her dealings with Ms Brayshaw in 2020 when seeking to deprive Dr Ranson of Ms Hall's support. That belied Miss Magson's attempt before the Tribunal to suggest that she was not involved in a staffing matter regarding 5th February 2021.

759. Mr Segal invited the Tribunal to conclude that, if Miss Magson had authorised the decisions "dumping Dr Ranson out of her office into a small non-functional office and taking away her PA without consultation or warning," that would demonstrate a personally hostile attitude towards Dr Ranson that could only be explained as vindictive. Reaching that conclusion would mean that the Tribunal was finding that Miss Magson had sought misleadingly to blame others for the decisions.

760. The Tribunal accepted that Miss Magson had tried to persuade the Tribunal that she had ***assumed*** Mrs Cope had determined this mistreatment regarding the loss of room or, as her Plan B, that Ms Murray was to blame.

761. The Tribunal, mindful of Mrs Cope's conversation with Miss Magson on 12th January, consider that she was well-placed to have known who had authorised that Dr Ranson be stripped of her room and the manner it was handled. Weight to that finding was added by Mrs Cope's evidence when, in contrast, very fairly, she testified that she was not quite sure about Miss Magson's role in the removal of the PA.

762. As to the decision to strip Dr Ranson of her PA on 5th February 2021, the evasive answers provided by Miss Magson, as noted above, coupled with her very active role in a staffing matter to remove Ms Hall in 2020, showed that contrary to her evidence about February 2021, Miss Magson did take an active hand in staffing matters.

763. Bearing in mind that on too many occasions, the Tribunal could not rely on the evidence of Miss Magson, the conclusion reached was that it was probable that she had an active role in both these incidents and caused detriment, as more fall-out from the history of protected disclosures. These two unfair and badly handled events were in sync with Miss Magson's prior detrimental and malevolent behaviour to Dr Ranson.

"Interim Appointment."

764. The detriment alleged is at (xix) of the Amended Particulars of Complaint. This reads as follows:

"4th February 2021, in a Meeting of the Mental Health Commission, Miss Magson announced to the Group that the Complainant was "Interim" and would only be working until January 2022."

765. In consequence, Dr Ranson alleged she was left feeling marginalised, bullied and treated with disrespect and complete disdain such that her reputation with politicians and clinicians on the Isle of Man was damaged.

766. The Tribunal noted (**page 1170**) that nearly twelve months earlier on 4th February 2020, Miss Magson had apologised back then to Dr Ranson and had acknowledged that Dr Ranson's title was not *Interim*.

767. This allegation is set out in (**G 4218)** and is dealt with by Dr Ranson in her witness statement at paragraphs 180 – 183 **(K 4819 – K 4891).** Miss Magson dealt with the matter between paragraphs 352 and 357 of her statement (**I-4553**). In her letter of 15th February 2021 (**pages 3191 – 2**) Dr Ranson pointed out in numbered paragraph 11 that Miss Magson had said to others on a number of recent occasions at meetings, that Dr Ranson was "Interim." She complained that this was wrong and undermined her in front of colleagues. Based on this, the comment made on 10th February at the Mental Health Commission meeting was but one example.

768. Mr Boyd's limited submission on this was that he relied on the statement made by Miss Magson. She accepted that she had used the word "interim" but that she had not done so with any malice. She pointed out that Dr Ranson had a limited term contract ending in January 2022. She had apologised afterwards for using the word "interim." She had been concerned as to whether Dr Ranson accepted that her contractual position was interim.

769. Mr Segal questioned why Miss Magson would have commented at all that Dr Ranson was interim and only working until January 2022. He submitted that on the balance of probability, there was malice involved because there had been no reason to describe Dr Ranson in that way at this meeting at all (other than to demean her). According to Dr Ranson, her contractual position had also been discussed between Dr Ranson and Miss Magson in September 2020.

770. Given the history of the relationship, the Tribunal concluded that this comment had been said both needlessly and in bad faith. It stemmed from the previous protected disclosures and was part of a chain of detriments that flowed from the protected disclosures.

February – March 2021 – Exclusion and Marginalisation

771. The detriment alleged is at (xx) of the Amended Particulars of Complaint. This read as follows:

> **"Manx Care appointed a new Interim Medical Director and the Respondent made it clear that there would be no operational Medical Director within the DHSC. Further and/or as a result, Dr Ranson was increasingly excluded and marginalised during February and March 2021, including by the Clinical Directors being told to report to the COO instead of to Dr Ranson and by Dr Ranson being told that further Clinical Advisory Group meetings would not be chaired by her."**

772. Due to this, Dr Ranson alleged she was left feeling marginalised, bullied and treated with disrespect and complete disdain such that her reputation with politicians and clinicians on the Isle of Man was damaged.

773. Dr Ranson accepted that, other than the decision that she would no longer chair the CAG meetings, the other matters raised followed inevitably from her not being permitted to continue as Medical Director within Manx Care. However, even in that context, Mr Segal submitted that there seemed to have been no reason why Dr Ranson could not have continued to chair the Clinical Advisory Group from a date in February 2021 given that she had successfully set it up and run it for almost one year.

774. Mr Segal submitted that Miss Magson had no worthwhile explanation as to why she had told Dr Ranson not to continue chairing the CAG. That decision had not been taken by Mrs Cope who confirmed that the decision has been Miss Magson's. Mrs Cope had wondered whether it was because Dr Ranson had been off sick but in fact she had remained at work until signed-off sick on 11th March 2021.

775. The Tribunal was satisfied that this was part of a continuing pattern which Mr Segal described as the "slice by slice" demeaning of Dr Ranson continuing throughout February and the beginning of March. Dr Ranson considered that the treatment at this time was exacerbated because of Dr Ranson's letter of 8th February sent to Miss Magson, Mrs Cope and Mr Foster, this being the final protected disclosure relied upon.

776. The Tribunal accepted that this detriment flowed from the protected disclosures that had been made thus far. There had been no worthwhile explanation advanced by Miss Magson for treating Dr Ranson like this.

PART SEVEN

CONCLUSIONS

The Legal Approach

777. Throughout the Decision, on key issues of protected disclosures and then of consequential detriments, the Tribunal has followed a well-trodden path as laid down in leading authorities from England and Wales. In terms of the Tribunal being assisted by both Counsel, each came up with similar benchmark decisions to provide guidance.

778. In regard to each decision on whether or not Dr Ranson had made a protected disclosure, the Tribunal followed the guidance in **Kilraine v London Borough of Wandsworth**. In each proven case, the Tribunal was satisfied that there had been the required disclosure of information and this had been in relation to the requirement of (in the instant case) health and safety.

779. As to what did not amount to *information*, the distinction between a whistleblower making an *allegation* or disclosing *information* no longer carries the significance that once it had. Following the decision in **Kilraine** this distinction which had emerged in the **Cavendish Munro** decision of the Employment Appeal Tribunal was clarified in the Court of Appeal so that the correct approach is that *information* and an *allegation* are not mutually exclusive concepts.

780. So far as was necessary, the Tribunal also looked at the *information* to ensure that it contained *sufficient factual context and specificity*, also as laid down in **Kilraine**. Additionally, as required, the Tribunal therefore considered the context in which the alleged protected disclosure had been made when determining whether or not it qualified within the statute.

781. The Tribunal also approached each alleged protected disclosure on the basis that the burden on Dr Ranson was to demonstrate a reasonable belief that the disclosure "tended to show" a matter of health and safety. Consistent with **Kilraine**, in those alleged protected disclosures on which Dr Ranson has succeeded, the Tribunal was satisfied that she had subjectively believed the information disclosed tended to show a concern for health and safety and that it did indeed contain sufficient factual content.

782. Accepting Dr Ranson had a reasonable belief in what she was providing by way of *information* was not troublesome, - even in those alleged disclosures which were not proved. The Tribunal was readily satisfied in her reasonable belief and steadfast good faith of what she was disclosing.

783. Mr Boyd, very properly, made great play of the question of causation – in other words the linkage between any particular proven protected disclosure and the consequential detriment. Mr Boyd encouraged the Tribunal always to look for "the reason why." In other words:

> **After a protected disclosure, was the alleged detriment that followed caused by the disclosure or not?**

784. That is a less than straightforward issue. However, in the most significant element of this decision, which was determining linkage between protected disclosures and what Miss Magson said at the Grantham meetings, such were the unfounded assertions then made, that they could only been motivated by the recent protected disclosures which had caused problems, irritation / anger and potential embarrassment for Miss Magson.

785. The important decision from the Court of Appeal in **Fecitt v NHS Manchester** provided the guideline that the Tribunal should be satisfied that the disclosure materially influenced, in the sense of being *a more than a trivial influence*, the employer's treatment of the Complainant. This approach was of particular significance involving Dr Ranson's dismissal as a detriment.

786. The Tribunal regarded the initial burden of proof for causation as being on Dr Ranson consistent with the **Osipov** decision. However, in considering linkage on the ground or reason for detrimental treatment, the employer must be prepared to show *why* there had been detrimental treatment. In particular, for the detriment of dismissal prompted by the Grantham Meeting, the Tribunal could not accept that there had been a genuine belief in performance management to the extent represented to Mrs Cope and Mr Foster. Miss Magson's message and description of performance management was grossly exaggerated.

787. Additionally, inventing without any basis for it, that Dr Ranson had ***agreed*** that she was unsuitable to transfer to Manx Care and informing Mr Foster and Mrs Cope of this, endorsed why Mr Segal's urged approach was appropriate. Miss Magson had no explanation for how her listeners had been mistaken. Neither Mr O'Connor or Ms Barks (both answerable to the Chief Secretary at that time) provided a statement or other evidence to corroborate Miss Magson. The Tribunal felt entitled to draw an adverse inference against Miss Magson and therefore the Respondent.

788. The inference drawn was that the history of 2020 but especially the most recent disclosures had caused Miss Magson to exaggerate performance issues in the manner she had done. Additionally, other than denying that she had ever informed Mrs Cope and Mr Foster that Dr Ranson had agreed that she was not suitable to make the transfer to Manx Care, Miss Magson had no other prop on which to rely. The Tribunal was satisfied that, despite her denials, she had made this false assertion and it could only have been made because of the linkage between her feelings against Dr Ranson because of the protected disclosures and the problems they had caused for her.

789. Further guidance, as submitted by Mr Segal, also assisted the Tribunal in establishing the linkage from disclosure to detriment. The Tribunal was mindful of the guidance of Elias LJ in the **Fecitt** decision as follows:

> **"I entirely accept that where the whistleblower is subject to a detriment without being at fault in any way, Tribunals will need to look with a critical – indeed sceptical – eye to see whether the innocent explanation given by the employer for the adverse treatment is indeed the genuine explanation. The detrimental treatment of an innocent whistleblower necessarily provides a strong *prima facie* case that the action has been taken because of the protected disclosure and it cries out for an explanation from the employer."**

790. Such guidance was helpful in considering and applying the sceptical eye which this Tribunal placed on Miss Magson's explanations and evidence in general but specifically involving the Grantham Meetings.

DISCLOSURE CONCERNS

791. The Tribunal ordered that after the Decision, there would need to be a special Hearing limited to investigating disclosure issues (hereafter the Disclosure Hearing).

792. As headlined and flagged from the outset of this Decision, disclosure issues cast a long shadow over the entire Hearing involving the Respondent's documents that should have been in evidence from October 2021. Mr Segal's written submissions summarised the chequered history of disclosure. Disclosure had caused the Tribunal considerable concern throughout and different aspects were raised during oral submissions on the final day of the Hearing.

793. As Mr Segal put it, "some of the Respondent's failures might be explicable as the result of carelessness but it is difficult to excuse them all on that basis." The Tribunal members were left with knowledge that some documents had been destroyed (but not deliberately) and an uncomfortable feeling that others could still exist but remained undisclosed. Serious litigation of this stature should not have to be conducted on that basis.

794. Perhaps the most telling point, as highlighted by Mr Segal, was that most of the documents which undermined the Response had not been volunteered to Dr Ranson as they should have been in October 2021. They had only emerged following her use of the DSAR process. Even that had not been wholly effective. Mr Segal said that he could not be confident of whether the fault lay with the Chambers of the Attorney General or with Miss Magson.

795. It was because Dr Ranson had not been satisfied about disclosure that, inter alia, Miss Magson had been ordered to swear an affidavit and then be cross-examined at a bespoke hearing on 7th January 2022.

796. Mr Segal submitted that the only plausible explanation for the flaws in initial disclosure was that this had been handled selectively and in the main disclosing only those documents which the Respondent felt supported its case. Mr Segal accepted that it was not uncommon for a Court, Tribunal or party to identify potentially relevant documents during a trial which had previously been overlooked. However he considered it to be "extraordinary for significant parts of a party's case to be supported by the ongoing disclosure of documents during the evidence of their main witness." The Tribunal agreed with that proposition without reservation.

797. Mr Segal submitted that these yet further additional documents disclosed during the Hearing (and even disclosed afterwards) were not the result of a further neutral exercise in which additional email folders or handwritten notes were examined by the lawyers on behalf of the DHSC with a view to disclosing all relevant documents. Rather, he submitted, specific documents such as Miss Magson's handwritten notes and evidence from email folders had been *selected* in order to support evidence that Miss Magson was giving or had given to the Tribunal.

798. Mr Segal accepted that the Tribunal had mitigated one aspect of the implications of woeful disclosure by permitting Dr Ranson to amend her case because of belated disclosure of documents concerning a significant element of the Respondent's case. This disclosure related to Dr Ranson's alleged performance management and capability.

799. Mr Segal submitted that, at its lowest, the Tribunal had to adopt a sceptical attitude to any evidence given by the Respondent on a disputed point unless the contemporaneous objective record was clearly supportive of that evidence. He pointed to Dr Ranson's second witness statement demonstrating that on the issue of supposed capability, even those documents actually still available to Dr Ranson presented a very different picture from the evidence given by Miss Magson on those issues. He concluded:

> **"It is a relatively safe assumption that Dr Ranson would have been able further to undermine the Respondent's case on that and other disputed areas had she obtained disclosure of all relevant documents within the Respondent's possession or control."**

800. Mr Segal considered it to be "highly unlikely that within the material documentary sources, the relevant documents are only documents supportive of the Respondent's case (being those disclosed during the hearing)."

801. Even allowing for the demanding challenges for the AG's Chambers in handling over 6,000 pages of documents, unfortunately, Dr Ranson is justified in feeling less confident that, she or the Tribunal, had all properly disclosable significant documentation. Fortunately, Dr Ranson was able to succeed in her claims despite her justified concerns about non-disclosure. However, her success might have come easier if, as Mr Segal submitted, there had been no selectivity. Both parties are entitled to feel confident that, when a Court of Tribunal has to come to a decision, all relevant and reliable documents are in evidence.

Dr Ewart

802. Only when in the witness-box did Dr Ewart produce an exchange of text messages held on her phone. She volunteered to produce it in support of her evidence of Dr Ranson allegedly ringing her late at night. Besides this lapse in her disclosure of a very material exchange, it points to a concern felt by the Tribunal that, beyond Dr Ewart, there were likely to be perhaps many other text messages that remained undisclosed or which may have been wiped.

Grantham Meeting Note – 12th November 2020

803. During standard disclosure in October 2021, Miss Magson was obligated to identify and produce material pages from her Day-Books. Significantly important, inter alia, were any notes that she had taken during the Grantham Meetings. In January 2022, the originals of the Day-Books in which she kept meeting notes were still in the possession of Miss Magson in Hertfordshire. Only extracts had been produced, the Tribunal and Dr Ranson being reliant upon Miss Magson to have sifted her ten Day-Books and taken copies of everything disclosable.

804. Following the Tribunal's Order made at the Complainant's request, Miss Magson had sworn an affidavit on 9th December 2021 as to her disclosure. It subsequently became increasingly evident that proper disclosures from the Day-Books had not occurred.

805. What follows is extracted from pages 78-80 of the transcript of Miss Magson's evidence when cross-examined by Mr Falkowski on 7th January 2022. Miss Magson denied that she took notes all the time at meetings but accepted she took notes when she could. She testified it had been agreed in the / a meeting that Mrs Cope would take the notes so that she did not believe that she took any notes herself at any of the Grantham meetings. Miss Magson then explained that the only notes held by her were those taken by Mrs Cope and that the only notes she had in her possession were those.

806. Having been equivocal about the number of meetings held at Grantham and being unable to recall whether there had been one or possibly two meetings, cross-examination turned to the question of notes of these meetings. Miss Magson confirmed that:

> **"I have disclosed all of my handwritten notes, Day-Books, yes I have, I've been through every single one as part of the disclosure process (unclear)."**

807. During the 7th January 2022 Hearing, Miss Magson referred also to a diary and the impression given was that this was perhaps electronic and so disclosable. On page 78 of the 7th January Transcript, Miss Magson even testified that there may only have been one Grantham Meeting. So far as the Tribunal is aware, that diary (in the sense of relevant extracts from it) has never been produced and this would have resolved the issue as to the number and dates of the Grantham Meetings plus perhaps other important dates and information. By the time when Miss Magson ultimately gave evidence in the substantive

hearing, there could and should have been no doubt about the number and dates of meetings. It appeared that Miss Magson was content to keep this fundamentally important sequence of meetings vague.

808. However, Mr Falkowski pointed out that there were no notes dealing with Dr Ranson's situation and that none had been disclosed. Asked if there were notes about Dr Ranson when her fate was decided, Miss Magson said that:

"The decision with Dr Ranson was a Manx Care decision (unclear)."

She then added:

"I have disclosed all the notes that I have…"

809. At page 81, Mr Falkowski asked whether Miss Magson had deliberately filtered out documents. This Miss Magson denied. The Chairman ordered that Miss Magson swear a further affidavit which she did on 14th January 2022 and that her Day-Book originals be delivered up to the Clerk before the Hearing.

810. By 14th January 2022, Miss Magson had by now sworn her two affidavits, consequent upon which, further Day-Book entries were produced belatedly up to and including on 25th January - this being the second day of the Hearing. Her two affidavits and oral evidence on 7th January can be summarised to indicate that she had read and re-read the Day-Books to meet her disclosure obligation. Somehow, despite three more substantial previously undisclosed bundles of documents being subsequently put in evidence by the Respondent during the main trial, the undated but identifiable page noting the Grantham (seemingly Teams) Meeting on 12th November never reached any bundle and was never in evidence. How this came about needs explanation.

811. ***This was an obviously disclosable page and should have been in the papers used in the Tribunal. It never was.***

812. In different circumstances, it might have been excusable for Miss Magson to fail to spot one page out of hundreds but the undisclosed page was among the most obviously relevant – even to a third-party, let alone to Miss Magson.

813. Besides the later additional bundles produced, the lack of chronology and sheer size of the trial bundle, made it difficult for the Tribunal to know whether both Counsel had been able to digest every single page of, sometimes difficult to read, manuscript Day-Book entries. Following the belated disclosures on 25th January, over one-hundred pages from the ten Day-Books had been produced and were scattered amongst the documents before the Tribunal.

814. By Thursday 10th February 2022, ***after*** the close of the evidence but ***before*** written submissions due on 11th February, the Chairman had studied some of the original Day-Books. In Day-Book Six were the undated notes of the Grantham Meeting of 12th November 2020. This document, having never been added to the belated bundles, had never been referred to in the proceedings. That same day, the Clerk sent the Chairman's direction to the parties enquiring whether this November page (and one other from about early December 2020) had been within the trial bundle.

815. Ms Heeley confirmed that the November page had been disclosed to Dr Ranson's solicitors only on 25th January but had never reached the trial bundle. The other significant note of 1st December had reached the bundle but had not been referred to - although considered very relevant to what was said by Miss Magson to Dr Ranson on 8th December 2020. It involved a discussion between Mrs Conie and Miss Magson and was pivotal to Dr Ranson's future status to be explained on 8th December 2020. Mrs Conie never produced any note of this meeting herself and (incorrectly) her evidence was that she had not discussed Dr Ranson's future with Miss Magson until February 2021.

816. Non-disclosure of the Grantham notes from October until after the Chairman had ordered the original Day-Books to be produced smacked of selectivity, especially given the hesitancy of Miss Magson about her note-taking and as to how many Grantham meetings there had been. Add to this that it took two sworn affidavits to obtain disclosure. Yet even then the document, for reasons unexplained, never made the trial bundles.

817. But for the persistence of Dr Ranson, the 12th November document plus too many others would never have been disclosed. Prior to the Hearing, Mr Segal had no opportunity to inspect the original Day-Books. He was able to have a brief look during a short

adjournment. To read all ten Day-Books would have required a lengthy adjournment. This is why litigants must be able to rely on the integrity of what is timeously volunteered and (in this case) sworn by affidavit to be conclusive that all material documents have been produced.

818. During the closing submissions on Friday 11th February 2022, the Chairman pointed out that this non-disclosure appeared to be "selective" - something that, as pointed out by Mr Segal, tainted the credibility of Miss Magson. The second affidavit of 14th January confirmed that there had been:

- A search of the Day-Books back in October,
- A further search as explained in her affidavit sworn on 9th December about which she gave evidence on 7th January 2022 and
- According to her affidavit of 14th January, a further trawl of the Day-Books was ongoing and was part-completed as at 14th January.

819. In respect of lack of frank and fair disclosure by 7th January, Mr Falkowski, Counsel then appearing for Dr Ranson, had already required that the Chairman certify that Miss Magson's less than frank disclosure thus far warranted her conduct being referred to the High Court for contempt of court under Rule 20 of the Employment and Equality Tribunal Rules 2018. On 8th January, following the Hearing, the Chairman made no Order on this, pending submissions.

820. The Chairman deferred any such ruling. The Tribunal will be holding a Disclosure Hearing when Mr Segal or Mr Falkowski may renew that Application.

821. As to the Day-Book situation, in fairness to Miss Heeley who had the burden of putting together the voluminous documentation from a variety of sources, the originals were in Hertfordshire and held by Miss Magson until just before this Hearing. To an extent, Ms Heeley was entitled to rely on Miss Magson to fulfil her duty of disclosure, especially after being required to swear affidavits. However, the burden remains with the advocate to probe and question where there may be incomplete disclosure – such as when gaps in email correspondence point to further material documents existing. That Miss Magson

had understood her duty of disclosure, was evident from her two affidavits and her evidence at the 7th January Hearing.

August 2020 emails – Post Hearing Disclosure on 18th February 2022

822. On 18th February 2022, after the proceedings had concluded the Respondent disclosed an exchange of emails dating back to August 2020 involving the Testing Pathways. This followed a question from the Chairman during Closing Submissions. These were of considerable significance because they cast doubt on the evidence of Miss Magson. At face value, one email named Miss Magson as the person who had changed the Testing Pathway, something which she had denied. It was most unsatisfactory that non-disclosure had prevented these emails leading to oral evidence and cross-examination with perhaps additional witness evidence being needed.

823. Ms Heeley's covering note to the Clerk of 18th February 2022 explained the non-disclosure in this way:

> **"The Chairman had asked for a copy of an email which was referred to in Mr Boyd's closing submissions – specifically an email from Vicki Knox to Steve Doyle which is referenced in the handwritten notes of the Claimant at page 3728 of the bundle. The Respondent could not initially trace that email and believed that the email might actually be held under the Manx Care organisational unit. With suitable permissions obtained from Manx Care a search was undertaken and the email has been traced, indeed it was held within Manx Care. It is attached."**

824. As at August 2020, Manx Care was not in existence and neither Mrs Cope nor Mr Foster had even been appointed. The explanation for non-disclosure and why the documents were found belatedly was because they were "**under the Manx Care organisational unit**" **or held by Manx Care**. This requires an explanation at the Disclosure Hearing.

825. The Tribunal can understand that without any intention to defeat the disclosure process, the creation of Manx Care inevitably involved millions of routine documents held on servers and the like becoming part of the knowledge of Manx Care. Without that it could not function.

826. However, the explanation from Ms Heeley that these material documents were not disclosed because they were in the possession of Manx Care throws into question what else that was transferred still remains undisclosed. The Tribunal is mindful that certain relevant and significant documents were produced by Mrs Cope and Mr Foster concerning March 2021 but the August 2020 documents, produced only post-Hearing leave the Tribunal uneasy as to what else has not emerged The answer could be *de minimis* through to countless documents for all that Dr Ranson or the Tribunal can know.

827. Somehow, despite:

- **The standard disclosure procedure,**
- **The affidavit process and**
- **DSAR.**

- these important documents never surfaced. The Tribunal needs to understand what was meant by the "organisational unit" and why during the above processes these two emails slipped the net. The deeply unsatisfactory position is that there could be other documents now retained within Manx Care that were or may have been properly disclosable.

828. The panel members are concerned at the inferences arising from this because this may arise in further proceedings in this Tribunal (or the High Court) involving disclosure. The Tribunal is aware that different Departments of Government are not part of the automatic disclosure process so that Complainants need to get orders for disclosure from them if it is believed that there are material documents held otherwise than from the named Respondent. Manx Care is distinct from the DHSC, as is the Cabinet Office within which there could have been material documents held by Public Health (Dr Ewart), the Chief Secretary, the Office of Human Resources (Mrs Conie) and perhaps more.

829. Of relevance are the following issues:

a. The August 2020 documents could only have been put into Manx Care after it was created on 1st April 2021 and thus after the DHSC were aware

of Dr Ranson's letter before action of March 2021 - and perhaps even after presentation of the Complaint dated 8th April 2021.

b. Did the Respondent retain copies of everything on its own server?

c. What is meant by the "organisational unit?"

d. When the disclosure processes outlined above were carried out, can the Tribunal be confident that all due searches were carried out whether the documents remained with DHSC or had been transferred?

e. On what date were instructions given (and by whom) for documents belonging to the DHSC and relevant for this disclosure to be transferred?

f. On what date were they transferred?

g. When the disclosure process was required for October 2021, (a) what enquiries had by then been made of Manx Care as to whether material DHSC documents were now held by them and (b) how or who by, would they be produced? In the instant situation, Dr Ranson is entitled still to be concerned that because she had not asked for an Order for specific disclosure against Manx Care, further documentation that should have been disclosed remains undisclosed. (This might also be so as against the Public Health Directorate and the Office of Human Resources being part of the Cabinet Office. This latter is not to be taken as wilful nondisclosure but rather because of the limited legal ambit of the requirement for standard disclosure).

h. If the Respondent, through Miss Magson or otherwise, was aware that documents such as this email exchange had for some, as yet unexplained reason, not continued to be regarded as disclosable DHSC documents, why was Dr Ranson not informed so that the Tribunal could have been

invited under Rule 15 for a specific Order to be made for disclosure against Manx Care?

i. **Was the first time a search for documents held by Manx Care material to the disclosure process (in addition to those now found) made only after Closing Submissions?**

j. **Did Dr Ranson's DSAR request include documents now held by Manx Care?**

k. **Finally, who should swear an affidavit explaining the full facts and circumstances of what has happened during the disclosure process on this issue and generally? It may need to be more than one person and such deponents will need to attend to be questioned.**

Mrs Cope's Missing Documents

830. The Tribunal formed a favourable impression of Mrs Cope when she testified. Her evidence was given with confidence, fairness and without fear or favour. The Tribunal had no hesitation in accepting the thrust of her testimony during the pre-Hearing process of sworn evidence as to missing documents. However, an example of what undoubtedly was missing were records maintained by her when she was shadowing until at least 1st December 2020 or perhaps 1st January 2021.

831. It remains unfortunate that an unknown quantity of material documents relating to Mrs Cope's role when shadowing in 2020 had been stored on a server of her previous employer in the UK. In evidence, was Mrs Cope's request in 2022 for such documents to be produced by her previous employer but that employer confirmed that the evidence was no longer available. What is unfortunate is that long before 2022, nobody had cautioned Mrs Cope to safeguard the 2020 documents after the letter before action in March 2021 or shortly after proceedings were launched in April 2021.

832. This was singularly unfortunate as the missing documents concerned, *inter alia*, Dr Ranson and business affairs of both DHSC and of Manx Care at a critical time relevant to this litigation.

"Concocted Documents"

833. At the Disclosure Hearing, submissions will be required and sworn testimony is likely to be needed, regarding the allegations of "concocted" documents. In his closing submissions, Mr Segal was forthright in his criticisms of the disclosure situation and the consequential prejudice to Dr Ranson - including advancing reasoned arguments as to why it appeared that certain documents had been "concocted."

834. During the two days earlier in January allowed for cross-examination of deponents, Counsel for Dr Ranson (then being Mr Falkowski) had pointed out that certain documents contained obvious material inaccuracies. Accordingly, the Chairman made an Order on 18th January 2022 for metadata and further explanations to be produced as to provenance.

835. Mr Segal's closing submissions referred to grounds for concern regarding authenticity of documents at pages **Z309**, **Z471 and Z745**.

- **Z309:** A typed note of a meeting identified Dr Ranson as an attendee. Not only had she not attended but at the date of the meeting, Dr Ranson had not even been employed by the DHSC.

- **Z471** was a note of a meeting of the Senior Medical Leadership Team (SMLT). That committee had not existed at the date of the note. The committee had been created only some days later than the date on the note. Additionally, the template for that note had never been used until towards the end of March 2020. The metadata produced as **Z474** showed that this document had only been created on 20th January 2022 – just four days before this Hearing.

- **Z475** purported to be minutes of a meeting taken by Ms Nicola Grose, Executive Assistant to Miss Magson. It purported to be a record of a Microsoft Teams

Meeting held on 16th March 2020. Firstly, at the date of that meeting, Teams was not even being used by the DHSC and secondly Ms Grose had not taken the minutes as recorded. Thirdly, there were material differences between the apparent minutes at **Z475** compared to draft minutes of the meeting appearing at page **1465**.

836. It is unusual in this Tribunal for any party to have to go to the lengths of seeking affidavits as to the veracity, scope and extent of the disclosure but in this case, it was thoroughly justifiable. Even that pre-Hearing process did not achieve timeous or satisfactory disclosure.

837. But for a Document Subject Access Request (DSAR) made by Dr Ranson, many material documents that should have been disclosed as part of standard disclosure would never have been in evidence – leading to a risk of a serious miscarriage of justice. That risk continued because of material late or non-disclosure.

Government Policy on (potential) Evidence Destruction – Teams and More

838. Based on the evidence of Miss Magson on 7th January 2022, it was evident there was confusion about a policy (beyond Miss Magson's control) regarding retention or destruction on an automatic basis of what may have included emails, chats held on Teams (and perhaps extending to text exchanges).

839. As an impression formed during the subsequent substantive Hearing, it seemed clear to the panel members there must have been many more communications relevant to Dr Ranson's case than ever surfaced. These may have been text messages but many were likely to have been video-calls or chats on Teams. Any Teams meeting or call can be recorded for future viewing. The recording captures audio, video, and screen sharing activity, and can be securely shared.

840. For example, during the 7th January 2022 Hearing, held on Teams with Miss Magson in Hertfordshire, whilst she was on screen giving evidence, she was able to use Teams to chat with third parties. At some point, about which Miss Magson could not be specific but which she thought was 7 – 14 days, across the Government such evidence was

automatically deleted – save that she thought there was some special policy that nothing was to be destroyed during Covid-19. Plainly, given the volume of emails that were in fact in evidence, far from everything, if anything at all, was destroyed under an automatic policy.

841. To take the first of two important examples, Miss Magson's evidence on 7th January regarding some communications on 25th March 2020 had (probably) involved Teams chats. These involved a decision (for which nobody claimed ownership) leading to Dr Ranson being stopped from appearing at the Press Conference four minutes before it was due to start.

842. The impression left with the Tribunal was that, from Hertfordshire, Miss Magson had been in virtual attendance at the CoMin meeting that afternoon (and thus on Teams and able to chat to third parties as well). Using Teams, she was able to communicate with Ms Murray about news of Dr Ranson arriving to appear at the event. However, the evidence never clarified what Teams exchanges they had shared or if messages were in fact by text exchanges. Whatever was used, no disclosure was made.

843. Miss Magson thought that, if the exchanges with Ms Murray had been on Teams, then they would have been deleted automatically on a 7 or 14-day basis (**page 88 of the Transcript**). Contradictorily, this was a time of Covid-19 and so if the non-destruct policy had started, this important evidence should have still existed but it was never produced.

844. Besides the unsatisfactory position of Miss Magson not seeming to know how or who stopped Dr Ranson's appearance at the last moment on 25th March 2020, that decision either still existed on Teams or had been deleted. The position regarding any texting was left unclear.

845. To take a second example of even more significance, the Grantham Meetings involved Mrs Clare Conie on at least one occasion attending through Teams. At some point, there would or could have been a complete record of that meeting which never surfaced. On 12th November 2020, that meeting was attended by someone identified only as "Clair." If this was Ms Barks (as seemed likely) and someone different from Mrs Conie, but working as Co-Lead on the Transformation Team, then she too would have been attending on Teams,

unlike the others who were all in England. Yet again there would have been a full recording that would have been of prime importance in this Tribunal.

846. Accordingly, an explanation is needed from an appropriate officer of the operation of the automatic destruction system in 2020/21 and how it operated for electronic communications. This is needed to understand whether there has been material non-disclosure or destruction in this case but importantly to prevent a miscarriage of justice in any future case involving any Government Department.

847. **The parties are now required:**

- **to liaise each with the other to seek to agree the format for the Disclosure Hearing and**
- **Having (hopefully) agreed this, they should confirm details to the Clerk including a time-estimate so that a date can be fixed.**

848. Mr Segal has flagged already that he would perhaps be seeking a costs sanction, something on which the Tribunal makes no observation at this stage.

SUMMARY

"Ordinary" Unfair Dismissal

849. The Tribunal had been invited to approach this as follows:

> Q. "**Was the Complainant dismissed from her role as operational Medical Director?"**
>
> A. **Yes. The Tribunal was satisfied that the nature of Dr Ranson's role was diminishing from December 2020 and was then so changed from 1st April 2021 as to amount to a fundamental breach and repudiation of her contract of employment, a conclusion consistent with the approach in Hogg v Dover College.**

850. Following that as a conclusion, the Respondent did not then advance any fair reason to justify the dismissal under section 113(2) of the Act.

851. **Dr Ranson was unfairly dismissed from her role of Medical Director on 31st March 2021 having been employed for more than a 12-month period.**

Protected Disclosures and Detriment

852. Dr Ranson's dismissal, as above, was the consequence of having made certain protected disclosures as explained and decided above. Because of these proven disclosures, she had suffered a significant number of identified detriments and especially, as such a detriment, had been prevented from transferring to Manx Care on 1st April 2021.

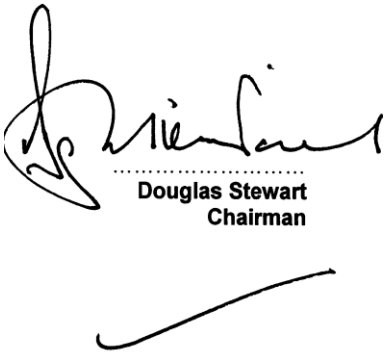
853. Having been satisfied that Dr Ranson had suffered detriment after making protected disclosures relating to health and safety consistent with section 71 of the Act, the Tribunal so declares under section 72 and the proceedings must now advance to remedy.

Remedies

854. In the event that Dr Ranson succeeded in moving to that aspect of her Complaint, as she has now done, by agreement between the parties, all questions of appropriate remedies were left over to a further Hearing.

855. In closing, the panel members would like to thank both Mr Boyd and Mr Segal for their unfailing courtesy during some quite difficult moments in the lengthy Hearing. The Tribunal was greatly assisted by their legal representation of their clients and in particular by the closing submissions.

Dated this 9th day of May 2022



Douglas Stewart
Chairman