

# VERITA

## IMPROVEMENT THROUGH INVESTIGATION

**Independent investigation into the management of the Trust's disciplinary process resulting in the dismissal of Mr Amin Abdullah**

A report for  
Imperial College Healthcare NHS Trust  
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This report was commissioned by Imperial College Healthcare NHS Trust with support from a stakeholder group including representatives of Nurse Abdullah and NHS Improvement. Anyone wishing to quote or reproduce any of the content should include a link to the full report on the trust website.

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## 1. Introduction

**1.1** This report provides an independent account into the disciplinary process regarding Nurse Amin Abdullah in late 2015. It was commissioned by Imperial College Healthcare NHS Trust ('the trust') in 2017 to review the process that it followed in dealing with Nurse Abdullah's case and whether fair and appropriate action was taken.

**1.2** The investigation was overseen by a stakeholder panel including representatives of the trust and NHS Improvement, Nurse Abdullah's partner and his partner's representative.

**1.3** Verita is a consultancy specialising in the management and conduct of investigations, reviews and inquiries. Kieran Seale and Lucy Scott-Moncrieff carried out the investigation with specialist HR advice from David Scott. The investigation was supported by Bethany Simpson. Peter Killwick has acted as peer reviewer. Biographies of the team are included as Appendix B.

## 2. Terms of reference

2.1 The following is a summary of the terms of reference for the investigation. The full terms of reference are shown in appendix A.

*An investigation is being commissioned into the disciplinary process and procedure that led to the dismissal of a Trust employee Mr Amin Abdullah on 16th December 2015. Tragically Mr Abdullah took his own life in February 2016.*

*The aim of the independent investigation is to establish firstly, whether there was any failure or weakness in the process and governance regarding the disciplinary procedure and what action was taken as a result and secondly if there is any learning for the Trust and the wider NHS and what that learning might be. Any learning captured will be made available to the NHS as a whole via NHS Improvement and other national bodies as appropriate.*

*Determine whether the process followed in dealing with Mr Abdullah's case was fair and whether it was conducted in line with the Trust disciplinary policy.*

*Consider whether the letter that Amin Abdullah confirmed at an investigation meeting on 15th September 2015 that he had written should have been treated as a case of whistleblowing in line with the Trust procedure for raising concerns. Review whether Amin Abdullah raised patient care concerns. If so, review whether they should have been considered in line with the Trust whistleblowing policy.*

*Review the handling of the grievance raised by Mr Abdullah on 1st December 2015. Report on whether it was addressed in line with the relevant Trust procedure.*

*Assess the extent to which the Trust's disciplinary policies and procedures align with the following ACAS guidance documents. Report on any deficiencies, and any recommendations for improvement. Review whether the Trust adhered to these guidelines in the case of Amin Abdullah.*

*Identify whether there are any further learning opportunities for the Trust.*

### 3. Executive summary and recommendations

#### Nurse Amin Abdullah

**3.1** Amin Abdullah was born on 27 September 1974 in Malaysia. He moved to London in 2003 and was awarded Bachelor of Science (with honours) in nursing from Buckingham New University in February 2014. After graduation, Nurse Abdullah started his first nursing post on a private ward in Charing Cross Hospital (part of Imperial College Healthcare NHS Trust) at Band 5 level. In the summer of 2015 Nurse Abdullah moved to the Ward at Charing Cross hospital where the events discussed in this report took place (referred to in the report as 'the Ward'). He was promoted there to Band 6 and deputy ward manager.

**3.2** Nurse Abdullah had worked on the Ward for nine weeks up to September 2015 when the events discussed here occurred. Following the events discussed in this report, he was dismissed on 21 December 2015. Although he had no history of depression or mental illness before this time, Nurse Abdullah took his own life on 9 February 2016.

#### Introduction

**3.3** This report provides an independent account into the disciplinary process against Nurse Abdullah in late 2015. It was commissioned by Imperial College Healthcare NHS Trust ('the trust') in 2017 to review the process that it followed in dealing with Nurse Abdullah's case and whether fair and appropriate action was taken. A stakeholder panel including representatives of the trust and NHS Improvement, Nurse Abdullah's partner and his partner's representative oversaw the investigation.

**3.4** The investigation was undertaken in private. It comprised 23 formal interviews and an examination of all available documentation including disciplinary case files, personnel files and trust internal investigations. Interviewees have been anonymised as instructed by the stakeholder panel.

## Disputed documents

**3.5** A number of documents in this case have been interpreted differently. These interpretations shaped the disciplinary process.

### *The email*

**3.6** On 6 September 2015, during Nurse Abdullah's employment on the Ward, a patient sent an email to the Ward Manager, copying in the chief executive. The email contains praise and thanks for members of staff on the Ward. It also raises two matters relating to Nurse Abdullah and three matters relating to another nurse, Nurse X. One of the issues relating to Nurse X was more serious as it raised a question about clinical care (unlike the issues relating to Nurse Abdullah).

**3.7** People we spoke to had differing views on how far this email and other interactions constituted 'complaints' as opposed to 'comments'. There was also uncertainty around whether correspondence was handled informally or went into the trust's formal complaints process.

**3.8** Nurse X was asked to respond to the email. Her response contained two documents and a covering email. These two documents became known as 'the Petition' and 'the Letter' (we use these names in the report as that is how people generally refer to them).

### *The petition*

**3.9** The Petition consists of a short piece of typewritten text followed by the signatures of 18 nurses including Nurse Abdullah. It reads:

*"The former patient has accused me of being lazy, arrogant and downright unfriendly and incapable of discharging patients and banned from the uniform I wear.*

*"If you disagree please put your names below:"*

**3.10** It is generally accepted that the Petition was written and circulated by Nurse X in response to allegations against her. It is not technically a petition because it does not ask for anything to be done. Nurse X described it as "*signatures of support*".

#### *The letter*

**3.11** The Letter contains criticisms of the patient who made the original complaint, including that the patient is a "*professional complainer against NHS staff*".

**3.12** We found no evidence that the Letter was circulated or widely seen. There is good evidence, however, that it was seen only by Nurse Abdullah, Nurse X, and the Ward Manager. Nurse Abdullah acknowledged that he drafted the Letter. He said that he gave it to Nurse X as a basis to create her own version.

#### The disciplinary process

##### *The Investigation*

**3.13** The Investigating Officer began her investigation on 15 September by interviewing the Ward Manager, Nurse X and Nurse Abdullah. She carried out a further seven interviews.

**3.14** Nurse X confirmed that she had sent the documents to the Ward Manager. She said she had found a copy of the Letter in the staff room. She said that she received it anonymously.

**3.15** The Investigating Officer interviewed Nurse Abdullah on the same day. Nurse Abdullah was interviewed as part of the case involving Nurse X, as he had signed the Petition. During the interview, however, he admitted to writing the Letter. It would have been better if this interview had been terminated then, and a separate interview had been held to discuss the details of what had happened in this new context. In particular, that would have given the Investigating Officer the opportunity to ask Nurse Abdullah about what he meant by the words in the Letter. The fact that he was asked nothing else about the Letter

and the circumstances around it allowed assumptions to be made later for which there was no evidence.

**3.16** Nurse Abdullah was asked about a “document”. He initially said that he did not know about it, but when the Letter was shown to him he said that he had written it. The investigating Officer’s report cited Nurse Abdullah’s brief denial to raise concerns about his honesty, but it is possible that he was simply confused about which document she was referring to.

**3.17** Seven interviews were carried out on 18 September, 22 September, 29 September and 1 October (the other signatories were not interviewed). The last interview took place on 2 December. The 2 December interview related to Nurse X but not to Nurse Abdullah.

**3.18** The interviews began with questions about the Petition. All the interviewees are consistent in the assertion that it was Nurse X who wrote the Petition and Nurse X who asked staff to sign it.

**3.19** The interviews were also consistent in finding that only Nurse X knew about the Letter.

**3.20** Many of the interview questions were closed and leading. At times they come across as berating.

#### *Nurse Abdullah’s reflections*

**3.21** We have seen several documents where Nurse Abdullah sets out his perspective on events. He says his use of the term ‘*professional complainer*’ meant that the patient was well known for constantly making negative comments. He said that he wrote the letter to help a colleague. Nurse Abdullah’s statements were consistent in this explanation of what he meant by the letter and what the letter was for.

### *The investigation report*

**3.22** The Investigating Officer started work on her report after the first interviews. The report is dated 22 October 2015. She sent the report to the Hearing Chair on 2 December "for decision" on whether to hold a disciplinary hearing. The report into Nurse X was dated 3 December. The hearing for both cases was held on 16 December.

**3.23** The charge made against Nurse Abdullah was set out in the investigation report. It says:

*"It is alleged that on 15/09/2015 Amin Abdullah wrote an untrue letter about a patient and did not follow the complaints procedure".*

**3.24** The investigation report is short. It begins:

*"Amin Abdullah admitted during an investigation meeting to writing a letter about [a] patient which contained adverse and untrue statements."*

**3.25** Nurse Abdullah admitted writing the Letter but he did not agree that the statements in it were untrue. This use of words is misleading in suggesting that Nurse Abdullah admitted that the letter contained false statements.

**3.26** With regard to the Petition, the report says that Nurse Abdullah:

*"signed a petition document ... circulated by his colleague".*

### *Untruthfulness of the letter*

**3.27** The Investigating Officer told us that she tested the accuracy of the term "professional complainer" by contacting the complaints department. They told her that there were no formal complaints on record relating to this patient. The investigation report reached the conclusion that the letter was "untrue" solely on this basis, notwithstanding the fact that the term was not defined. The investigation report does not include a proper discussion of this issue. This is a major flaw.

**3.28** The Investigating Officer goes on to say that including “*untrue*” statements in the Letter called Nurse Abdullah’s honesty into question. This was an enormous and inappropriate leap. The Investigating Officer had no other evidence that Nurse Abdullah was dishonest and her conclusion was completely unjustified.

#### *Failure to follow the complaints procedure*

**3.29** The investigation report says that Nurse Abdullah should have realised that the Petition was an inappropriate way to respond to a complaint and not in accordance with the complaints policy. This charge is puzzling. Nurse Abdullah had no involvement in responding to the patient, which was ultimately done by the director of nursing. The trust’s complaints procedure relates to responses to a complainant. Nurse Abdullah made no such response and did not interfere with the complaints process. References to the complaints policy are therefore misplaced.

#### *Overall comment on charge put to Nurse Abdullah*

**3.30** Neither element of the charge against Nurse Abdullah has much validity: the grounds for calling the Letter “*untrue*” are weak and the complaints policy has little relevance.

**3.31** Any charge as poorly worded as the one put to Nurse Abdullah has inherent problems. The vagueness of the charge leaves the accused person unclear about the required response. It is then difficult to evaluate whether any decision by the person conducting the hearing to uphold the charge is reasonable. These problems are manifest in this case.

#### **Delays leading up to the hearing**

**3.32** The interviews with Nurse Abdullah and Nurse X took place on 15 September. The hearing was held on 16 December. We were given a number of reasons for the delay. They included the linking of Nurse Abdullah’s case to that of Nurse X and the workload of the Investigating Officer.

**3.33** The delay was excessive and the justification for it is weak. The trust's HR team should have done more to minimise the delay.

#### **24 September complaint**

**3.34** The patient who sent the email on 6 September sent another on 24 September. It included a complaint about the Investigating Officer among a total of seven or eight concerns. This email is not mentioned in the investigation report or in any of the accounts of the hearing.

**3.35** The Investigating Officer told us she thought the complaint was irrelevant because it occurred after the events earlier in September and that it was just the patient "*raising her concerns*". She said she had not intended to hide evidence. She said she asked a member of the HR team if the email was relevant and they told her it was not. The person she said she asked had no recollection of this and said she would have expected the email to be raised because she believed it was relevant.

**3.36** We believe the complaint was relevant and represented a clear conflict of interest for the Investigating Officer. She should have declared it at the hearing and in the investigation report. Her failure to do so raises serious issues about her professional judgement.

**3.37** The central issue in the investigation was Nurse Abdullah's honesty, which was judged on the question of the frequency with which the patient complained. In context, the Investigating Officer's failure to disclose relevant evidence in the investigation report casts doubt on the reliability of her entire investigation.

#### **The hearing**

**3.38** The Hearing Chair upheld the charge that the Letter contained untrue allegations against the patient. He said that he did this because he heard no evidence to suggest otherwise. No attention appears to have been given to Nurse Abdullah's explanation of what he meant by the Letter (that the patient was someone who raised a lot of concerns).

**3.39** The hearing outcome letter refers to breaches of the NMC (Nursing & Midwifery Council) code but the sections quoted were not relevant to Nurse Abdullah's case.

**3.40** The outcome letter upholds the allegation of failure to follow the complaints procedure, although this issue does not appear to us to be relevant.

**3.41** The outcome letter reaches the following conclusion:

*"It was established during the hearing that you passed your letter over to your colleague, and that you then signed a petition circulated by your colleague."*

**3.42** The outcome letter criticises Nurse Abdullah for signing the petition. This criticism has some validity, although he was only one of eighteen to sign it and none of the others were formally disciplined.

**3.43** An issue arose during the hearing which was not included in the investigation report. Nurse Abdullah had applied for another job in the trust. The Hearing Chair found that Nurse Abdullah should have been "*open and honest*" with the recruiting manager by telling them the disciplinary process was underway. The HR manager who was present at the hearing considered this to be further evidence of Nurse Abdullah's dishonesty. However, trust forms do not require an applicant to declare active disciplinary proceedings. It was therefore wrong to question Nurse Abdullah's honesty on this point. It was also unfair to consider this issue at a hearing when Nurse Abdullah had no opportunity to prepare his response.

**3.44** The Hearing Chair, HR manager and Investigating Officer all felt that Nurse Abdullah didn't make a good impression at his hearing, saying either that he did not put his case clearly, or that he appeared to be dishonest. It appears that they gave undue weight to these perceptions. We are concerned that the false allegations of dishonesty against Nurse Abdullah made it harder for those present to be objective in evaluating his performance at the hearing.

**3.45** Nurse X's hearing was held immediately after Nurse Abdullah's hearing. Nurse Abdullah gave evidence at it. The Investigating Officer told us that Nurse Abdullah "*admitted to lying*" in Nurse X's hearing about whether he had discussed the Letter with Nurse X. The others present at the hearing (the Hearing Chair and HR Manager) do not recall

Nurse Abdullah lying at Nurse X's hearing. The outcome letter from Nurse X's hearing describes Nurse Abdullah as "*a credible witness*".

### **Analysis - the Letter and the Petition**

**3.46** Up to the hearing on 16 December all the accounts share a common view on what had happened to the Petition and the Letter. Nurse X prepared and circulated the petition; Nurse Abdullah wrote the letter for Nurse X intending her to use it as the basis for her own letter. All the evidence supports this view.

**3.47** After this date, however, the consensus broke down. The Hearing Chair told us he understood that the Letter had been "*displayed on the ward*". The HR manager who was at the hearing told us she had heard that the Letter and the Petition had been stapled to each-other. Another manager also thought the two documents had been circulated together. We found no evidence to support these versions of events and we note that interviewees made no reference to them when the outcome of the hearing was documented.

### **Whistleblowing**

**3.48** The evidence is clear that Nurse Abdullah thought that the purpose of the Letter was to support his colleague rather than to raise issues about patient care or safety. We do not therefore consider it to be whistleblowing.

### **Other actions taken by the trust**

#### *Support before the hearing*

**3.49** There was a long delay between Nurse Abdullah's initial interview and the disciplinary hearing. Nurse Abdullah's partner told us Nurse Abdullah found the delay stressful.

**3.50** On 30 November Nurse Abdullah's RCN representative emailed the Investigating Officer to complain about the delay, saying the process was harming Nurse Abdullah's health, *"so much so that I believe an urgent referral to Occupational Health may be required."*

**3.51** The Investigating Officer replied to the RCN representative on 15 December. The response focuses on the reasons for delays and says little about the request for an urgent referral to occupational health. However the Investigating Officer told us she raised this issue with Nurse Abdullah directly.

**3.52** Nurse Abdullah raised a grievance on 1 December. It highlighted the strain he was under and referred to the stress caused by the delay and the lack of updates. The Investigating Officer told the hearing that the investigation was a lengthy one because of the link to Nurse X's case, which was more complicated. The Investigating Officer said she had explained the purpose of the investigation to Nurse Abdullah at the initial meeting, had met with him during the process and had emailed him on 2 December with an update.

**3.53** Nurse Abdullah's appeal letter again referred to stress and said he was receiving counselling and taking diazepam. The Ward Manager noted that Nurse Abdullah did not take time off sick during the disciplinary process and worked as normal. She described this as *"exemplary"*.

**3.54** The management response to the appeal correctly pointed out that many of the issues that Nurse Abdullah raised in his appeal letter were not raised at the hearing and so could not be taken account of then. However, the response gave us no sense that the trust was open to taking account of these issues at the appeal. It also appeared to imply a conflict between Nurse Abdullah's having carried on working while also raising issues about the impact of the disciplinary process on his health. This was unfair.

#### *The dismissal*

**3.55** Nurse Abdullah was dismissed by being sent an email that the Ward Manager was asked by the Hearing Chair to tell him to open. The Ward Manager told us she felt this was *"deeply insensitive"*.

**3.56** The Hearing Chair who made the dismissal told us the normal process would be to write a letter or an email to the individual and to ensure their line manager offered support. He said he rang the Ward Manager, told her of his decision to dismiss and asked her to support Nurse Abdullah.

**3.57** Neither the trust's disciplinary procedure nor ACAS documents contain specific guidance on dismissal, but it is generally regarded as poor practice to dismiss someone by email or letter unless their absence from work gives no alternative. Nurse Abdullah was at work and on site. The dismissal should have been handled better.

### The summary report

**3.58** After Nurse Abdullah's death, a Senior HR Manager at the trust was asked to review the case and the actions of the trust up to that time. She had had no previous involvement in the case.

**3.59** The Senior HR Manager produced a report entitled 'summary report'. This includes a summary of the case that led to Nurse Abdullah's dismissal. Despite its brevity, the summary contains important inaccuracies. These include conclusions about why the Letter and Petition were produced that differ from those in the hearing outcome letter. She could give us no satisfactory explanation for the discrepancy.

**3.60** The summary report purported to give the work previously carried out by the trust a clean bill of health, although it was not in a position to do so. This gave the trust false assurance that it had done nothing wrong. Its responses to questions after Nurse Abdullah's death were based on a false premise. People close to Nurse Abdullah unsurprisingly saw them as a cover-up. The summary report was unacceptable.

## Quality of Imperial's policies

**3.61** We have no particular concerns with the trust's policies, as opposed to their application. The problems in this case are largely about decision-making rather than about the trust's policies and procedures.

## Conclusions and learning

**3.62** It is clear from the evidence that Nurse Abdullah was treated unfairly.

**3.63** Collecting signatures was not the right response from staff to the issues that arose here. Nurse Abdullah was a relatively senior nurse (by grade, if not by length of service at this level) and should have known that signing the Petition was not appropriate. However, he was by no means alone in signing it and was in fact the thirteenth person to do so. None of the other signatories was disciplined.

**3.64** Writing the Letter was a mistake. The language used was inappropriate and disrespectful and it was wrong to use the patient's name. However, the evidence indicates that Nurse Abdullah wrote it for a specific purpose and intending only Nurse X to see it. This may have been naïve, but we found no evidence that it was malicious.

**3.65** Nurse Abdullah had a strong commitment to nursing and his concerns about what had happened are evident as early as his initial interview with the Investigating Officer on 15 September. The impression Nurse Abdullah made at his hearing was interpreted negatively and was used as evidence against him. This is a difficult area to comment on both because it is impossible for people who were not there to judge what impression was made, and because it is hard for people who were there to objectively measure the state of mind of others.

**3.66** The evidence shows that the Investigating Officer repeatedly raised questions about Nurse Abdullah's honesty on the basis of little or no evidence. She also failed to disclose evidence which was critical of her but which tended to exculpate Nurse Abdullah. The trust should consider the implications for the Investigating Officer's integrity and, ultimately, her suitability for her role as a senior member of staff in the trust.

**3.67** The Hearing Chair and HR manager present at the hearing did not have all the information they needed available to them. However, they should have been more rigorous in their examination of the evidence they did have and more rigorous in testing it against the charges which had been put. The Hearing Chair in particular fell short in a number of ways:

- Failing to question the relevance of the complaints policy and making spurious references to the NMC code
- Poor handling of the fact of Nurse Abdullah's application for another job
- Writing a management response to Nurse Abdullah's appeal that was unduly harsh.

It is difficult to be overly critical of the Hearing Chair or the HR manager, however, because the evidence that they were given was so poor.

**3.68** Whether the trust gave adequate support to Nurse Abdullah is difficult to comment on objectively with the hindsight that we all have of the tragic events that followed. A delay of three months between the events and the hearing is troubling. We would have expected the trust's HR department to be more proactive in managing the case. The trust should work to minimise such delays in future.

**3.69** We heard evidence that Nurse Abdullah was a private man, and it was not necessarily evident to others that he was going through such a difficult time. However, his RCN representative's plea to the trust to provide support did not produce an appropriate response. The trust's HR team should in future take the initiative in ensuring that it fulfils its duty of care by ensuring the wellbeing of staff involved in processes like these.

**3.70** Staff involved in appeals note that the appeals are a normal part of the disciplinary process which may well lead to a decision to dismiss being reversed. Such an appeal may have succeeded in this case. It is not clear, however, that this is the impression given to staff who are going through the process and might get the idea that they have little hope. The trust should ensure that their communications with staff in the run up to appeal hearings give a balanced assessment of the possible outcomes.

**3.71** The summary report the trust produced after the events was poor. In judging the work of most trust staff in this investigation we are aware that we are looking back with the knowledge of a tragic event which they could not foresee. The same is not true of the Senior HR Manager who wrote the summary report after Nurse Abdullah's death. The lack of a clear mandate made her task harder but the mistakes in her report are all to the benefit of the trust's case. The summary report is a whitewash. It served to reassure the trust that it had handled the case with due care and attention. It failed to tell the trust what it needed to know. This is regrettable and did a disservice to the trust. The trust's response to this case subjected those connected to Nurse Abdullah to unnecessary pain. The trust must be assured that any future review like the summary report presents an honest and complete picture.

## **Recommendations**

**3.72** In the light of these conclusions, we make the following recommendations:

**R1** The trust should ensure that investigations are given sufficient resources, that reports are of good quality and that allegations are properly defined.

**R2** Managers conducting disciplinary hearings should show greater rigour in evaluating evidence, particularly when allegations are poorly defined.

**R3** Better training should be provided to those who conduct investigations and hearings about how to ask questions, gather evidence, record, classify and evaluate it. Such training should ensure that staff are aware of the danger of relying too heavily on impressions of how people come across at interview.

**R4** Management responses to appeal letters should not be overly defensive and should allow for the fact that evidence is open to different interpretations.

**R5** Communications after a hearing where a punishment has been imposed should make clear that this is not the end of the process and that the appeal process is a genuine one, which will look at all representations fairly.

**R6** The trust should take active steps to support staff going through a disciplinary process.

**R7** The trust should provide regular written updates to staff under investigation if their case is not dealt with within the agreed time.

**R8** The trust should provide clear guidance on the purpose of internal reviews which should be carried out professionally and with objectivity. It needs to be made clear to authors that their primary objective is to determine the truth rather than tell the organisation what they think it wants to hear.

**R9** The trust should give higher priority to ensuring that records of disciplinary cases are properly stored for future reference.

## 4. Approach and structure

### Approach

**4.1** The investigation was undertaken in private. It comprised 23 formal interviews and an examination of all available documentation including formal documents such as disciplinary case files, personnel files and trust internal investigations.

**4.2** We sent each interviewee a letter of invitation, a guide for interviewees and the terms of reference for the review. Interviews were recorded and transcribed. We followed established good practice in conducting the investigation by offering interviewees the opportunity to be accompanied to interviews. They were also sent their transcripts so that they could comment on them, make any amendments and approve them. In three cases we spoke to interviewees more than once as we had further evidence to discuss with them. A list of those interviewed is at Appendix C.

**4.3** We spoke to everyone that we felt was necessary to complete the investigation with the exception of one nurse, who we refer to in the report as Nurse X, who no longer works for the trust. Despite a number of attempts, it has not been possible to contact her. Interviewees have been anonymised as agreed by the stakeholder panel.

**4.4** We undertook a review of the disciplinary process that led to Nurse Abdullah's dismissal. We examined whether there was any failure or weakness in the process and governance of this procedure.

**4.5** We have made comments and recommendations based on our interviews and the information available to us to the best of our knowledge and belief.

### Structure

**4.6** This report is divided into ten sections. Section 1 is the introduction and section 2 provides an overview of the terms of reference. Section 3 contains the executive summary. The approach and structure for this report is set out in this section (4). Section 5 contains information about Nurse Abdullah and section 6 provides background information useful to the understanding of our investigation. We lay out a chronology of events in section 7. The

disciplinary process is described in section 8. This section also comments on the process and the governance issues relating to it.

**4.7** Section 9 of the report discusses the treatment and support of Nurse Abdullah during the process and other actions taken by the trust. Our conclusions and recommendations are described in section 10 together with our thoughts on moving forward.

**4.8** Our findings from interviews and documents are set out in ordinary text. Our comments and opinions are in ***bold italics***.

## 5. Nurse Amin Abdullah



**5.1** Amin was born on 27 September 1974 in Malaysia. He was raised in Rumah Bakti orphanage after his mother passed away when he was young.

**5.2** Amin moved to London in 2003 and became a British citizen in 2009. He started university in September 2011 with a dream of becoming an oncology nurse.

**5.3** He was awarded Bachelor of Science (with honours) in nursing from Buckingham New University in February 2014 and was given the Hannah Evans Prize for Clinical Excellence for excellence in clinical practice by Imperial.

**5.4** After graduation, Amin started his first nursing post on a private ward in Charing Cross Hospital at Band 5 level. In the summer of 2015 Amin moved to the ward at Charing Cross hospital where these events take place (referred to in the report as 'the Ward'). He was promoted there to Band 6 and deputy ward manager.

**5.5** Amin had worked for nine weeks on the Ward up to September 2015, when the events described in this report began. Although he had no history of depression or mental illness before this time, Amin took his own life on 9 February 2016.

## 6. Background

**6.1** In this section we set out background information to help the reader follow our analysis in later sections.

### NHS organisations

#### *Imperial College Healthcare Trust*

**6.2** Imperial College Healthcare NHS Trust (the trust) was formed in 2007 and is situated in central and west London. It is one of the largest NHS trusts in the country, caring for nearly two million people every year and employing nearly 11,000 staff. The trust has one of the largest portfolios of services in the country offering more than fifty clinical specialities from conception to end of life acute and specialist care. It provides for local communities as well as for patients nationally and internationally.

**6.3** The trust is partnered with Imperial College London to make one of the UK's eleven academic health science centres. Imperial is ranked fourth in the world for biomedical research in the Times Higher Education Supplement World University Rankings.

**6.4** Within the trust there are five hospitals as well as community services. The hospitals are:

- Charing Cross
- Hammersmith
- Queen Charlotte's & Chelsea
- St Mary's
- The Western Eye.

#### *Charing Cross Hospital*

**6.5** Charing Cross Hospital is an acute general teaching hospital located in Hammersmith, London. The present hospital was opened in 1973, although it was originally established in

1818 in central London. Charing Cross Hospital provides a range of acute and specialist services and a 24/7 accident and emergency department. It hosts the hyper-acute stroke unit for the region. It is also a growing hub for integrated care in partnership with local GPs and community providers.

### *The Ward*

**6.6** The Ward referred to in this report is a surgical ward located in Charing Cross Hospital. Nurse Abdullah worked on the Ward when the incidents discussed in this report occurred. He worked on the Ward as a newly promoted Band 6 (Bands across the NHS range from Band 1 to Band 9, 1 being the most junior. Senior staff nurses or charge nurses are more experienced and are normally Band 6.)

### **Disputed documents**

**6.7** There are a number of documents in this case which are in dispute. Their differing interpretations shaped the disciplinary process. These are briefly explained here to aid comprehension of what follows.

### *Initial email*

**6.8** On 6 September 2015, during Nurse Abdullah's employment on the Ward, a patient sent an email to the Ward Manager, copying in the chief executive. The email contains praise and thanks for members of staff on the ward. It also raises three issues relating to Nurse X and two relating to Nurse Abdullah. One of the issues relating to Nurse X was more serious as it raised a question about clinical care, including a specific issue relating to professional competence. Nurse X was informed of the email and was asked to provide a response. The comments about Nurse Abdullah were uncomplimentary, but do not raise clinical issues.

## Comment

*People we spoke to had differing views on the extent to which this, and other interactions, constituted “complaints” as opposed to “comments”. There was also uncertainty around whether complaints were handled informally, or went into the trust’s formal complaints process.*

*There is no simple distinction between what constitutes a comment from a patient, a complaint or a formal complaint on the basis of their content alone. In practice the distinction comes down to how the comment is dealt with. Formal complaints are handled through the trust’s central complaints department. They are logged and responded to in writing. This email was ultimately dealt with informally, although the complaint about clinical care against Nurse X was repeated in a later email that was dealt with through the formal process.*

There is some uncertainty about when Nurse Abdullah actually saw the email or what he was told about it. Nurse Abdullah’s own account is that he was told that he was mentioned in the complaint - *“I was approached by a colleague who was in distress, she told me that a particular ex-patient had put in a written complaint against her, she said that I was also mentioned in that complaint.”* (source: reflective statement). An examination of the staff rotas supports this order of events. The management case against Nurse X states that Nurse Abdullah was “given” a copy of the complaint by Nurse X.

## The key documents

**6.9** Nurse X’s response to the complaint contained two documents as well as a covering email. Those documents play an important role in the events discussed in this report.

**6.10** Although the documents are generally referred to as a petition and a letter, these are not particularly accurate descriptions of them, as we discuss below. However, we refer to those documents as the ‘Petition’ and the ‘Letter’ in our report because this is how the people involved generally refer to them.

**6.11** It is important to be clear about these documents as confusion about them lies at the heart of this investigation. We discuss the evidence relating to the documents in detail later in the report, but the following summarises the main issues.

#### *The 'Petition'*

**6.12** This document consists of a short piece of typewritten text, followed by the signatures of 18 nurses. The text reads:

*"The former patient has accused me of being lazy, arrogant and downright unfriendly and incapable of discharging patients and banned from the uniform I wear.*

*"If you disagree please put your names below:"*

**6.13** The Oxford English Dictionary defines a petition as:

*"A formal written request, typically one signed by many people, appealing to authority in respect of a particular cause"*

**6.14** This document is not a petition using this definition. It does not ask for anything to be done. Rather it is in the form of a reference. It was described by Nurse X when she submitted it as *"signatures of support"*.

**6.15** It is generally accepted that the Petition was written and circulated by Nurse X following the allegations made against her. Nurse Abdullah signed this document together with 17 other staff.

#### *The 'Letter'*

**6.16** The document that is referred to as the Letter begins with a form of words often associated with a petition, *"we the undersigned would like it on record that..."*. It contains criticisms of the complainant (who we refer to in this report as 'the patient'). The criticisms include that the patient is a *"professional complainer against NHS staff"*.

**6.17** We found no evidence that the Letter was circulated or widely seen and good evidence that, before the internal investigation, it was only seen by Nurse Abdullah, Nurse X, and the Ward Manager. Nurse Abdullah acknowledged that he drafted the Letter. He said that he gave it to Nurse X as a basis to create her own version.

## 7. Chronology of events

7.1 The following are the main events in this case.

2015

29 June	Nurse Abdullah starts working on the Ward.
6 September	A patient sends an email to the manager of the Ward (the 'Ward Manager'), copying the chief executive of the trust. The Ward Manager asks Nurse X for a response.
14 September	Nurse X emails the Ward Manager a statement, the Petition and the Letter. The Ward Manager passes these documents to the senior nurse for surgery and the HR partner for surgery & cancer expressing concerns about the response. A senior nurse manager in the Division ('the Senior Nurse Manager') asks the senior nurse for surgery to carry out an investigation (she is therefore referred to in this report as the 'Investigating Officer').
15 September	The Investigating Officer starts interviewing nurses on the Ward to investigate what had happened. She speaks to the Ward Manager, Nurse X and Nurse Abdullah. Nurse X and Nurse Abdullah are put on reduced hours. A further seven nurses who signed the Petition were spoken to in subsequent weeks.
24 September	The same patient emails the trust Complaints Team. The email again raises the earlier issue about Nurse X, as well as issues about the Investigating Officer. It does not mention Nurse Abdullah.
12 October	The Investigating Officer emails HR to say that she will be requesting disciplinary hearings for both Nurse X and Nurse Abdullah.
22 October	The Investigating Officer's 'investigation report' into Nurse Abdullah's case is dated 22 October. She sends it to HR on 28 October.
29 October	Nurse Abdullah's Royal College of Nursing representative asks the trust to make an urgent referral to Occupational Health for Nurse Abdullah.

7 December	Nurse Abdullah is notified of the date of the disciplinary hearing.
16 December	The disciplinary hearings for Nurse Abdullah and Nurse X are held.
21 December	Nurse Abdullah is sent a letter of dismissal.
23 December	Nurse Abdullah serves notice of appeal.

## 2016

8 January	Nurse Abdullah submits a letter of appeal.
14 January	Nurse Abdullah is notified that appeal hearing is set for 4 February.
21 January	A request is made to postpone the hearing as Nurse Abdullah's representative was unavailable. Nurse Abdullah is notified of a revised hearing date of 11th February.
27 January	Nurse Abdullah admitted to St Charles Hospital.
8 February	Nurse Abdullah leaves St Charles Hospital.
9 February	Nurse Abdullah takes his own life.

## 8. The disciplinary process

### Introduction

**8.1** This section focusses on the disciplinary process. Issues relating to the treatment of Nurse Abdullah during the process are discussed in section 9 (below).

**8.2** Following his qualification, Nurse Abdullah initially worked as a Band 5 nurse on a private wing located on the 15<sup>th</sup> floor of Charing Cross hospital. His matron on the private ward subsequently moved to the Ward to be the Ward Manager. Vacancies became available on the Ward and Nurse Abdullah discussed them with the Ward Manager. He applied for a Band 6 role on the Ward and was successful. He started work there on 29 June 2015.

### The email and the response

**8.3** The Ward received an email on 6 September 2015 from a patient who had been treated on the ward.

**8.4** The Ward Manager told us that she received the email, which had also been copied to “*someone fairly high up*” (it was, in fact, copied to the trust chief executive). The Ward Manager told us that she treated it as a complaint with regards to Nurse X and so spoke to her and asked her for a response to the email. She told us that she had to chase for a response. On Sunday 13 September she gave Nurse X a deadline to provide something for the next day.

**8.5** We spoke to the patient who had sent the email. She told us that she copied in more senior staff as she wanted to ensure that her positive comments weren’t overlooked.

**8.6** On Monday 14 September the Ward Manager received three documents from Nurse X:

- the Letter
- the Petition
- a covering email with a short statement from Nurse X.

**8.7** The Ward Manager escalated the issue to the Senior Nurse for Surgery ('the Investigating Officer') and the HR partner for surgery & cancer. The Investigating Officer was the Ward Manager's direct manager. The Ward Manager told us that she escalated the issue because she was concerned about the contents of the documents:

*"If a patient complains, they have a right to complain and we have a duty to investigate and to support the patient and, of course, support the staff member. Obviously, [Nurse X] is referring to how she was branded in the letter, so it felt very uncomfortable that she should then gather a group of ... some senior and some very junior [staff] ...*

*"That is not, in my opinion, in my professional opinion, how things should work. This also was not an acceptable way, I think, to manage or to react to a complaint, because it is basically saying 'The patient doesn't have a right [to complain]'*

*"That is not what we asked for, it was about 'your recollection of the situation', not this ... and, for me, I believe it is unprofessional."*

**8.8** The Investigating Officer oversaw the Ward, together with four other wards. She described her role as *"looking after the operational side of nursing in those ward areas and making sure that the patient care was to a high standard and that staff were well trained and looked after"*.

**8.9** We asked the Investigating Officer when she first became aware of the email from the patient. The Investigating Officer told us that because there were vacancies on the Ward she was *"very visible"* there. The Investigating Officer told us:

*"For that reason [the Ward Manager] would tell me, and she said a complaint came in from a patient. When I took over the ward it was one of the challenging things about the ward, that there were complaints, so it was something that I was very focused to deal with and get the complaints down. I can't recall off the top of my head but she would have told me soon after finding it."*

**8.10** The Investigating Officer told us that the next she heard about it was on 14 September:

*“The next thing I heard in relation to this complaint was an email that I was cc’d into where [the Ward Manager] had emailed to our HR partner for the Division, to say that she was concerned about the way [Nurse X] had responded to a complaint, and she had copied me into the email with the petition form and an anonymous letter that [Nurse X] was saying when [the Ward Manager] spoke to her, that had come in to her anonymously. I was cc-d into that, so that’s what I was aware of then.”*

**8.11** The Investigating Officer told us that she then contacted the Senior Nurse Manager who was, in effect, her line manager with relation to professional nursing issues<sup>1</sup>. She told us that she contacted the Senior Nurse Manager because:

*“... this was very unusual for a member of staff to respond to a complaint in that way and for... staff on the ward to sign a petition that almost was refuting what the patient had said about the one member of staff she mentioned in her complaint. Normally you would follow the procedure to interview the staff involved, get statements from them and ask the patient more questions and investigate it through the complaints policy. For that reason, it was very unusual and did not sit with prioritising people and listening to their concerns. I felt I needed to escalate it to my senior.”*

**8.12** The trust’s disciplinary policy refers to a “manager” carrying out the investigation. In one place it refers to this person as the “line manager” (although it is not specific about whether that is the line manager of the person being investigated). The Senior Nurse Manager asked the Investigating Officer to investigate the case because it appeared to be very serious.

**8.13** The Senior Nurse Manager told us:

*“[The Investigating Officer] either rang or emailed me, to say that an email, or a petition as it was, I think, as it was described to me, had been found, which had about 15 signatures on it, describing this particular patient in a way that wasn’t particularly pleasant.”*

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<sup>1</sup> This role is described as the ‘nursing professional link’. As the Investigating Officer’s line manager was a general manager rather than a nurse, she also had someone with a professional nursing background to refer to on nursing issues.

*“There was this ... signatory list [the Petition], and then on top of it was a kind of written statement... [The Investigating Officer] had made me aware of that, and I said, clearly, you need to have a look at what’s gone on here, because this patient is continuing to be admitted to that clinical area. I’m concerned that if we have this amount of staff on a ward of, I think it was 26 or 27 staff, if we have 15 or 16 of them who have all signed to say this kind of language about a patient, I am concerned for that patient’s ongoing treatment.*

*“[The Investigating Officer] then, I believe, spoke to a number of staff, one of the staff she spoke to was [Nurse Abdullah], and at the time she spoke to [him] I think he disclosed to her that not only had he signed this, but he had also been the author of this particular letter, which had been presented by another one of the Band 6 staff, [Nurse X]. At that point I said to the Investigating Officer, I think that we have something that you would look at formally here, and please go and log that with ERAS [Employee Relations Advisory Service], our Employment Advisory group, and see where it goes from there.*

#### *Comment*

*The quotation from the Senior Nurse Manager indicates that she believed that the Letter had been circulated with the Petition. As we discuss below, this does not, in fact, appear to have been the case.*

*Because of the way that the evidence emerged, the disciplinary cases of Nurse Abdullah and Nurse X were handled together. As we will explain below, this linking of the two cases continued throughout the investigation to the hearing, although it was not inevitable that the cases needed to be linked.*

*We have not seen any evidence to suggest that there were problems with the process that had been followed up to this point. The issue had been appropriately escalated and an appropriately graded senior manager was appointed to investigate.*

## The Investigation

**8.14** The Investigating Officer began her investigation on 15 September by interviewing the Ward Manager, Nurse X and Nurse Abdullah. She carried out a further seven interviews as part of the investigation before she stopped interviewing. Notes were kept of each of the interviews carried out by the Investigating Officer and we have been provided with copies of them<sup>1</sup>.

**8.15** The Investigating Officer's first interview, with the Ward Manager, was from noon to 12.40. The Ward Manager told the Investigating Officer that she had received an email from Nurse X at 08.23 on 14 September. The Ward Manager said that she had called Nurse X to explain and then send the documents to the HR partner for surgery & cancer.

**8.16** The Ward Manager then told the Investigating Officer that she sat "*in disbelief with what had just happened on my ward*". The Ward Manager then spoke to Nurse X and told her that the statement didn't address the relevant issues. The Ward Manager told Nurse X that she had very mixed feelings about the list of signatures. According to the notes of the interview the Ward Manager told Nurse X:

*"While I appreciate you are going through a difficult time and a patient complaining about you is difficult, there are ways and means of getting support correctly... while I appreciate you need support from your colleagues asking them to sign up to a petition is not the correct way".*

**8.17** The notes of the meeting between the Investigating Officer and Ward Manager show the Ward Manager as continuing:

*"I asked [Nurse X] where she got the letter from and [she] replied 'anonymously'...*

*"[Nurse X] then asked me to just delete the letter. I told her I am afraid I cannot do this and that ... something like this needs to be investigated".*

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<sup>1</sup> The notes read as a verbatim record of the interviews. However, as the interviews were not recorded they can only have been constructed from memory. In some cases, such as Nurse Abdullah's, a draft was agreed with the interviewee.

**8.18** The second interview, with Nurse X, took place between 14:10 and 15:00 on 15 September. Nurse X confirmed that she had sent the documents to the Ward Manager. With regards to the Letter, she said that she had received a hard copy in the staff room and had scanned it at home. When asked who wrote the Letter, Nurse X replied:

*"I don't know. I found it."*

**8.19** Nurse X later added:

*"It was not my intention to make a big issue. I had no intention to use the Letter, I asked [the Ward Manager] to delete it."*

**8.20** The Investigating Officer also asked Nurse X, "when you approached staff to sign the petition what did you tell them?". She replied:

*"To sign this if they disagree" [i.e. disagree with statements made in the email from the patient]*

*Comment*

*The Investigating Officer worked on the assumption that it was Nurse X who sought signatures for the Petition. Nurse X's response confirms this assumption.*

*Interview with Nurse Abdullah*

**8.21** The Investigating Officer interviewed Nurse Abdullah between 15.02 to 15.35 on the same day. We have two versions of the notes - an original version and the one that was amended by Nurse Abdullah and returned to the Investigating Officer. The quotations below are from the revised note (dated 24 September 2015).

**8.22** The Investigating Officer told us that at this point Nurse Abdullah was only being interviewed as one of the signatories of the Petition. She told us that he:

*"... was only interviewed as part of investigating the other case of [Nurse X] where he had signed the Petition"*

**8.23** We asked the Investigating Officer if there was a reason for the order in which she carried out the interviews. She told us:

*"There was no particular prioritisation for the order in which people were interviewed. Interviews were scheduled on the basis of staff availability within a complex shift rota."*

Comment

*When the interview with Nurse Abdullah began, he was primarily being interviewed as a witness, in the same way that other members of the team would later be. During the interview, however, he admitted to writing the Letter and so the nature of the interview changed. It would have been better if this interview had been terminated then, and a separate interview had been held to discuss the details of what had happened in this new context. In particular, that would have given the Investigating Officer the opportunity to ask Nurse Abdullah about what he meant by the words in the Letter and for Nurse Abdullah to reflect further on whether he needed to be accompanied. The fact that he was asked nothing else about the Letter and the circumstances around it allowed various assumptions to be made later for which there was no evidence (although we did not see evidence that anyone had suggested to the Investigating Officer that a second interview be carried out).*

**8.24** Nurse Abdullah was not accompanied at the interview. We asked the Investigating Officer whether he was given the opportunity to be accompanied. She told us:

*"I asked if he was okay to go ahead with the meeting, so I asked him if he was okay to go ahead without anybody with him and he said he was..."*

*"I also told him, because it's not Trust policy to have somebody with you at informal investigation meetings because it can delay investigation trying to get a union rep to come, but he was happy to be interviewed. I advised him at the end of this*

*meeting to get hold of a union representative as during the investigation meeting he admitted to writing the letter which [Nurse X] claimed came into her hands anonymously. I would have never gone ahead with the interview if Mr. Abdullah was not in agreement to be interviewed."*

**8.25** The questioning began as follows:

Q. *"Can you tell me who approached you to sign this document?"*

A. *"[Nurse X] did"*

Q. *"Did she say what it was referring to?"*

A. *"She said she needs to answer a complaint and she needed my support".*

Q. *"Did [Nurse X] show you the complaint?"*

A. *"No. She did tell me it was a patient who was previously in."*

*Comment*

*Nurse Abdullah says that Nurse X told him about the complaint, rather than showing him the actual complaint. His accounts are consistent on this point, although the management case against Nurse X suggests that Nurse Abdullah was actually given the complaint by Nurse X. As this point was not made in the management case against Nurse Abdullah, however, he had no opportunity to refute it before, or at, the disciplinary hearing.*

**8.26** The Investigating Officer asked Nurse Abdullah, *"how do you think this was following process to manage a complaint?"*. Nurse Abdullah responded, *"I thought I was supporting her."*

**8.27** The interview continues:

Q. *"Why as ... Deputy Ward Manager did you not inform her [the Ward Manager] of what was occurring on the ward?"*

A. *"I don't I know, I should have, I felt I was handling it myself."*

Q. *"Can you see it was wrong to sign this and how do you think you were role modelling to other staff junior to you who have seen your signature on this?"*

A. *"Yes, I am sorry, I thought I was helping a colleague."*

**8.28** The notes then suggest that the interview turned to the question of the Letter:

Q. *"Do you know anything about another document that was written in relation to [the] complaint and this petition?"*

A. *"No. Show me the document."*

Q. *"I don't need to show it to you, however my advice is if you know anything about it is be open and honest."*

A. *"Yes, I am really sorry, I do. I wrote it."*

Q. *"Have you got a copy of the document?"*

A. *"Yes."*

Q. *"Log in to that computer(office) and get me a copy."*

Comment

*Nurse Abdullah initially said that he didn't know about the Letter, but when he was shown it he said that he had written it. In her subsequent management report the Investigating Officer used Nurse Abdullah's initial, brief, denial of knowledge to raise concerns about his honesty, although it is possible that there is a more innocent explanation, such as confusion as to which document was being referred to.*

**8.29** The notes record that Nurse Abdullah logged on to the computer and printed a copy of the Letter. The notes continue:

*Q. Was this document your idea or [Nurse X]?*

*A. "It was mine, however; I did ask her not to use my copy but to do her own. This is the biggest mistake I have ever made, I should not have got involved."*

*(Amin came across very worried in the meeting.)*

*Nurse Abdullah - "Do you think I'm in trouble?"*

*Investigating Officer - "What do you think?, there is a strong possibility this will go to a Disciplinary hearing my advice is to get hold of a Union representative. I have to do further investigation."*

**8.30** Later the same day the Investigating Officer approached Nurse Abdullah to tell him that the case would be treated formally. The notes record the Investigating Officer as saying:

*"This will be a disciplinary case, in line with policy and protocol, you cannot perform night duties, weekends or be in charge, go to the ward and ask someone to take charge. ([Ward Manager] was present in the office)*

**8.31** After discussing the questioning, the interview notes include the following text:

*"Following the meeting Amin approached me, saying he was worried and upset and asked me if he should resign, I informed him No, best to take responsibility for what he has done and even if he resigned the Trust would have to put on reference he had been part of a Disciplinary Investigation. He apologised to both of us for writing the document and said he was sorry to get involved."*

**8.32** In a summary of events which Nurse Abdullah produced in the weeks after the hearing (discussed in more detail below) Nurse Abdullah says:

*"On September 15 I was eight hours into a day shift, I was nurse in charge and tired, when I was called into the office by [the Investigating Officer] ... She told me that this was an investigation into what she called the "petition" that I had signed, first she asked me to verify I had signed it, which I admitted to (assuming I had done nothing wrong) she then went on to ask about the letter, I admitted I had compiled it to help my colleague...*

*"After a break, at that meeting [the Investigating Officer] having spoken to someone else informed me this would be disciplinary and advised me to contact a rep...*

*"Please note, when [the Investigating Officer] called me in to her investigatory meeting, at no time did she tell me I was entitled to have someone there with me (confirmed even by her notes)."*

**8.33** The note goes on to say that the Investigating Officer approached Nurse Abdullah on the following day (16 September) and showed him her notes of the meeting and asked him to sign them. He says:

*"I said I could not sign them yet as I wanted them to be seen by a rep first, the lead nurse tried to pressure me into verbally agreeing the notes were ok, but ... I did not sign them".*

**8.34** The Investigating Officer refutes the suggestion that she pressurised Nurse Abdullah into signing the notes of the meeting. She points out that she accepted the version of the notes amended by Nurse Abdullah.

#### *Other interviews*

**8.35** The other seven interviews were carried out on 18 September, 22 September, 29 September and 1 October. There was then a long gap until the last interview on 2 December. The date has been omitted from two sets of notes. The Investigating Officer told us that she completed the interviews *"over a few months."* She told us:

*“Obviously I had other priorities on the other sites, and for that reason I also had to schedule it in around when they were able to meet me, so it was when staff could meet me as well.”*

**8.36** The 2 December interview related to Nurse X and did not mention Nurse Abdullah.

**8.37** The notes of the interviews all begin with questions about the Petition. All the interviewees make clear that the Petition was circulated by Nurse X. In a number of cases respondents were asked who had asked them to sign the Petition and they answered that it was Nurse X who had asked them. In some cases this information can be deduced from answers to other questions, for example:

*Q. “What date did you sign the petition?”*

*A. I can’t remember it was after a night duty Nurse X was on a long day.”*

**8.38** Respondents felt that in signing the Petition they were expressing support for Nurse X. For example:

*Q. Who asked you to sign this document and what did you understand you were signing when you signed this document?*

*A. [Nurse X] asked me to read the petition document ... and I thought I was signing to disagree with it saying [Nurse X] was lazy and arrogant.”*

**8.39** We asked the Investigating Officer whether she had seen any evidence that Nurse Abdullah was party to circulating the Petition. She replied:

*“No. If I had I would have put it in [the report].”*

Comment

*The seven interviews are consistent in the assertion that it was Nurse X who wrote the Petition and Nurse X who asked staff to sign it.*

**8.40** The interviews include other questions asking respondents whether they accepted that it was inappropriate to sign a petition of this sort and suggesting that this was an inappropriate way of responding to patient complaints. For example:

*Q. "Did you not question that it is not the correct process to deal with a patient complaint as you said you have had a complaint regards your care?"*

*A. "No not at all I was supporting [Nurse X] only, I do understand the process of dealing with patient complaints."*

**8.41** Six interviewees were asked if they knew anything about the Letter. All said that they did not know anything about it.

**8.42** The Investigating Officer told us that she chose these people to interview with the aim of getting a representative sample. The main constraint was their availability. We asked why she did not carry out further interviews. She responded:

*"It was workload and everybody was saying that they knew nothing of the Letter, other than Amin."*

Comment

*The interviews were consistent in finding that only Nurse Abdullah and Nurse X knew about the Letter. It is significant that the consistency of answers given led to the Investigating Officer conducting no further interviews.*

*Interview technique*

**8.43** The questions asked in the interviews (including that of Nurse Abdullah) were routinely closed and leading in nature. They included, for example:

*“Do you not see that signing the petition you were disagreeing with the patient and her right to raise concerns and have them investigated and answer?”*

*“Do you understand now it was wrong to sign this petition as it is not the correct process to manager complaint?”*

*“Do you now see this was not the correct way to deal with a complaint made by a patient?”*

*“Do you now see that signing the petition you were disagreeing with the patient and her right to raise concerns and have them investigated through our neutral process and answer?”*

*“Do you not see that signing the petition you were disagreeing with the patient and her right to raise concerns and have them investigated and answer?”*

**8.44** The interviews also included statements from the Investigating Officer among the questions, for example:

*“[The Investigating Officer] explained to [the nurse] that signing the petition you were disagreeing with the patient and her right to raise concerns and have them investigated and answered.”*

**8.45** The Hearing Chair told us that he thought that the quality of the investigation was “fine” and “of a standard that I would expect of investigations carried out in the trust that I have seen before”. He added:

*“That management case presumably was reviewed by the Employee Relations Advisory Service. Their role is to advise the manager in the conduct of their investigation. I also, rightly or wrongly, presumed that there had been some involvement by individuals who are more senior to me in the organisation in terms of the [Senior Nurse Manager]. It was custom and practice to review all of the investigations before they were dished out to people to hear. Sorry to use that language but I’m being frank. Rightly or wrongly, one assumes there are checks and balances in the system all along, it’s not solely my responsibility to ensure that an investigation has been conducted to a particular standard. I probably wrongly*

*assumed that there had been some QA along that process by ERS [Employee Relations] and also from people more senior to me. Whether in reality that did or didn't happen is your call."*

Comment

*The purpose of interviews of this nature during an investigation is to establish facts. Questions should be as simple and as open as possible in order to find out what interviewees know.*

*The questions quoted above are the opposite of that. Many were leading and at times come across as berating. It is important to remember the context of these interviews, i.e. between a very senior nurse and very junior nurses, some of them students.*

*Closed and leading questions tend to produce the answers that the interviewer wants to hear and are avoided by experienced interviewers unless to serve a specific purpose. Questions of this sort produce little reliable evidence. Worse, they can suggest that the person asking them has made up their mind in advance and is simply looking for information to support their point of view - rather than trying to reliably establish what happened.*

*We also note that there is some confusion as to the role of HR/Employee Relations and the extent to which they were active in checking decisions taken by managers.*

*After the interviews*

**8.46** Following the interviews, the Investigating Officer discussed the issues arising with the Senior Nurse Manager, who was her superior on professional nursing matters. The Senior Nurse Manager told us:

*"[The Investigating Officer] spoke to a number of staff, one of the staff she spoke to was Amin, and at the time she spoke to Amin I think he disclosed to her that not only had he signed this, but he had also been the author of this particular letter, which had been presented by another one of the Band 6 staff [Nurse X].*

*“... I said to [the Investigating Officer], I think that we have something that you would look at formally here, and please go and log that with ERAS, our Employment Advisory group, and see where it goes from there...”*

**8.47** The Senior Nurse Manager often heard appeals from disciplinary cases. She was scheduled to hear Nurse Abdullah’s appeal. She told us that as she knew that she might be involved in the appeal she had no further involvement in the investigation. She told us that *“until I’d have seen the management case, I was not privy to what had gone on during that investigation.”*

**8.48** The Senior Nurse Manager told us that she therefore left the case to the Investigating Officer:

*“At that point that I’ve asked someone to investigate something, I then hand the management of that case over to the investigating Officer and our employee relations rep. There were two disciplinary investigations at that time - there was one into the writing of this, and the second into the general behaviour of Nurse X, both of which had been handled by the Investigating Officer as named investigator.”*

**8.49** The Senior Nurse Manager took the decision to appoint the Hearing Chair. She told us, however, that she did not discuss the case with him:

*“We never discussed the case, what I did was appoint [the Hearing Chair] to chair the hearing... I would always appoint one of my three deputies, dependent upon workload and dependent upon their own skill set. The reason I asked [the Hearing Chair] to do this is because it was two interlinked cases, and he is ‘Mr Detail’, and of my three Deputies he was far more into the detail than the other two were, so that’s the reason I’d appointed him...”*

*“The reason he didn’t discuss detail with me was I always made it very clear to my three Deputies that if the case was looking to the point where someone might appeal, I wasn’t to be made privy to the detail, because as part of the appeals process I needed to come to something fresh, with only the knowledge I’d have had way back at the beginning, when I decreed that there might be something to look at. That was standard.”*

**8.50** The Hearing Chair disputed this account. He told us that the deputies were expected to discuss cases with the Senior Nurse Manager, and that she would therefore have known the details of the case. He was surprised that she did not tell him anything about the patient. He noted that no-one else in the trust told him of other complaints from the patient either. When we raised this with the Senior Nurse Manager she re-iterated to us that she wouldn't get involved in the details of such cases.

**8.51** Immediately after the interviews on 15 September, a decision was taken to put both Nurse Abdullah and Nurse X on restricted duties. The Investigating Officer told us that she discussed the issue of restricted hours with the Senior Nurse Manager and with an HR representative:

*"These allegations are quite serious and there was also a question of trust because they were in charge of a very busy ward which had the pressure on vacancies, and having them in charge when there was an allegation that they'd got other staff to react to a complaint like this, it would be in the best interest of patients and them to have them when their Line Manager was on duty and she could support them."*

**8.52** The Senior Nurse Manager told us:

*"We definitely discussed restricted duties for both [nurses], I think we had initially discussed whether we needed to suspend both of them."*

*"This was complicated because of the patient being involved at the centre of this, and wanting to protect the patient without the patient being made aware that a number of staff had signed something, that might have prejudiced the patient's care. I think I advised, restricted duties and not to suspend them, because despite the fact that we talk about suspension being neutral it doesn't feel like that. Also because of the number of our Band 6s on [the Ward], which is what both [Nurse X] and Amin were, because of the nature of the ward that [the Ward] is, we tend to weight our more senior staff during weekday and daylight hours anyway, because it's a very fast stay, rapid turnover surgical ward."*

*"I felt that we were removing the pair of them from being in a position at night and at the weekend when there were fewer staff around, of being exposed to a patient that they were aware had raised concerns about them, that they in turn had raised"*

*concerns about. Which is why we looked at restricting their duties for the period of time that the investigation was to take place, rather than a removal of them from the workplace, which I felt would have been unhelpful."*

### **Nurse Abdullah's reflections**

**8.53** We have seen a number of documents which set out Nurse Abdullah's perspective at this time on the charges that were made against him - a letter to the Ward Manager, a summary of events, his reflective statement and his grievance.

#### *Letter to the Ward Manager*

**8.54** In the weeks after Nurse Abdullah's interview with the Investigating Officer, he had a meeting with the Ward Manager (this was probably on 1 October). The Ward Manager suggested that he write a note to set out his thoughts on the situation. That note is undated, but the Ward Manager has confirmed that she asked Nurse Abdullah to prepare a note and that he did so around this time.

**8.55** In the note, Nurse Abdullah states his view of the email from the patient as follows:

*"Regarding the complaint, firstly, what she has said about me is her personal opinion and nothing else, not an accusation.*

*"I would like to make clear that this patient has never said these things to me to my face, never complained about me, to me before."*

**8.56** The note goes on to describe the interactions that Nurse Abdullah had with the patient on the ward.

#### *The 'summary of events'*

**8.57** We have also seen a note was included in the files of Nurse Abdullah's Royal College of Nursing representative. It is entitled simply 'summary of events'. The note begins *"On*

*September 10 at 8.30 I was about to go off shift, having performed a 12 hour night". It says that he met Nurse X who told him that she had had a complaint made against her "and she had to answer the complaint, she also said that my name was mentioned in the same complaint". The note says they met again that evening when swapping shifts. It continues that Nurse X "had written a couple of lines saying 'we the undersigned ... confirm that she is not lazy and rude'. [Nurse X] asked me to sign it and I signed it along with 16 other colleagues".*

Comment

*Nurse Abdullah is clearly referring to the Petition, although it does not in fact begin with the words "we the undersigned" (unlike the Letter which does include those words).*

**8.58** The note continues in a new paragraph:

*"I gave [Nurse X] what I had written [presumably the Letter] ... and the intention of what I had written was done in good faith.*

Comment

*Nurse Abdullah and Nurse X saw each other on the morning of 10 September 2015 as Nurse Abdullah was going off shift and Nurse X was going on shift. They had a brief conversation then, and a further conversation that evening. Nurse X showed Nurse Abdullah the Petition and asked him to sign it, which he did.*

**8.59** Nurse Abdullah goes on to explain his motivation in writing the Letter:

*"You will see from the attached copy it simply asked the management [to] place on record that this particular ex patient was a "professional complainer", meaning that she was well known for constantly given us a string of negative comments.*

*"I admitted that I had compiled it to help a colleague. Even though it was never actually used.*

*"My intentions have always been good, all I thought I was doing was helping a colleague in distress...*

*"I have apologised to the [Investigating Officer] and my line manager for anything I have inadvertently done wrong, nothing I ever did was malicious. On reflection, maybe as a Band 6 I should not have got involved".*

#### *Comment*

*Nurse Abdullah's note explains that he saw his actions as being to help a colleague and suggests that he did not think that he had done anything wrong. While this does provide some defence, it does show a lack of insight into the inappropriateness of the wording of the Letter.*

#### *The 'Reflective statement'*

**8.60** In preparation for the hearing, Nurse Abdullah also produced a 'Reflective Statement', which is dated 11 December 2015. This note is similar to the summary of events. It begins with the words *"I was approached by a colleague who was in distress"* and recounts the same events in slightly more general terms. He says:

*"I wrote a letter of support for my colleague to use as a guide only".*

**8.61** With regards to the Letter, he goes on to say:

*"There was no malicious intent on my part, what I was trying to convey, maybe using a bad choice of words, was that this particular patient does have exacting standards and wants everyone to meet them. The accusation against me has misinterpreted my meaning, I was not referring to Official written complaints. Naturally I would not be aware of how many official written complaints she has ever submitted. I was referring simply to comments made in general. On reflection I*

*realise I should never have written the letter, I am sorry I did, I was tired at the end of the shift and I was not thinking clearly."*

**8.62** Later in the statement he says:

*"I wrote a letter that was meant to help my colleague with the format of her own, there was never any intention to write anything untrue and there is nothing untrue in my letter, however I realise some of my comments may have been a bit undiplomatic and open to different interpretation, which is exactly what has happened. The lead nurse has chosen only to check recorded complaints on file. I was referring to the ex-patient's general comments that I am aware of from my own personal experience. Please note, for the record - the general comments I am referring too were usually made as only as comments rather than official complaints.*

*"On reflection I can see clearly that I was wrong to get involved, I need to bear in mind that as a nurse I must adhere to The Code and apply professional standards of practice and behaviour at all times."*

Comment

*Nurse Abdullah's statements after the event (including his interview with the Investigating Officer) were clear and consistent. He says that his motive for writing the Letter was to support a colleague and that he provided it to her as a guide. With regards to the statement about being a 'professional complainer' he says that he meant to say that the patient raised a lot of issues.*

Grievance

**8.63** Nurse Abdullah issued a grievance on 1 December 2015. In it he says:

*"I exercise my right to a grievance under the 'dignity at work' policy. I have been treated unfairly, outside of ACAS guidelines with no concern for my mental*

*wellbeing, no concern for my loss of earnings and no concern for my dignity in the eyes of my colleagues.”*

**8.64** Nurse Abdullah goes on to argue that 76 days after his interview he had “*heard nothing*” with no formal disciplinary meeting or updates. He says that at the investigatory meeting:

*“I was taken from the ward with no opportunity to prepare myself, no idea of what was going on and never given any opportunity to have a colleague with me. My mental stress has been so great, wondering what is happening that I have had to have regular counselling via the RCN counsellor. My home life and family members are also affected by my stress, I’ve also had to see my GP.”*

**8.65** Nurse Abdullah points out that he admitted to writing the Letter and signing the Petition at his interview on 15 September so that the excuse of a delay because of need for an investigation is not viable. He says that he has effectively been punished without trial because of not being able to work on nights or weekends.

**8.66** The trust has not been able to provide details of its response to the grievance. The trust’s grievance policy states:

*“If staff complaints relate to the application of other Trust policies or procedures, such as the Disciplinary or Change Management Procedures, then the processes and appeals set out within those procedures will be the ones that apply.”*

**8.67** It appears that the issues raised in the grievance were considered as part of the hearing process (see discussion of hearing below).

### **The investigation report**

**8.68** The Investigating Officer started working on an investigation report after the first interviews. This report is sometimes referred to as ‘the management case’. It is dated 22 October 2015. The Investigating Officer sent the report to the Hearing Chair on 2 December “*for decision*” on whether to hold a disciplinary hearing. The management case into Nurse X was dated 3 December. The hearing for both cases was ultimately held on 16 December.

We discuss the impact that the delay had on Nurse Abdullah in the next section of this report.

**8.69** The Investigating Officer told us that lack of support from HR was an issue in compiling her report. She told us:

*“My report was compiled over a period of time as information came to light during the ongoing investigations. I had a draft of my final report ready by the 22 October, the finished report was not able to be issued until 02 December ensuring there was nothing to add to it from the investigation meetings in the other case which was linked, it had also to be reviewed by human resource officer supporting me with the investigation. [The HR contact] was on annual leave and thus unable to provide HR support to investigations between 09/11/2015 to 20/11/2015.”*

**8.70** We have seen two versions of the investigation report. Both are dated 22 October. The first version was written by the Investigating Officer, while the second incorporates comments from HR. Most of the additions are relatively minor, for example anonymising Nurse X’s name.

**8.71** The most significant change is the addition of a sentence setting out the specific allegation made in the disciplinary. Although these issues were raised in the previous draft they were not set out using these particular words. The wording is important, as it was subsequently used in the notice of the disciplinary hearing and in the outcome letter and forms the only charge put formally to Nurse Abdullah:

*“It is alleged that on 15/09/2015 Amin Abdullah wrote an untrue letter about a patient and did not follow the complaints procedure”.*

*Comment*

**The allegation against Nurse Abdullah had two elements:**

- a) *That he “wrote an untrue letter”*
- b) *That he did not follow the complaints procedure.*

*We will discuss these specific allegations in more detail below. However, we find that the approach that the Investigating Officer has taken was misconceived. The frequency that a patient complains is not a parameter that makes any sense to measure and is therefore irrelevant to a disciplinary investigation into a nurse. While our subsequent evaluation takes the charge as it was put, this should not be taken as agreement that this was a sensible approach to take.*

**8.72** The only other major change between the drafts of the investigation report was the deletion of a paragraph relating to what Nurse X had done. This is marked with the comment *"this should be in [Nurse X's] report rather than [Nurse Abdullah's]"*.

**8.73** The investigation report is short - a little over two sides of A4. It begins with a section entitled *"Details of the allegations"*. After the allegation described above, it begins:

*"Amin Abdullah admitted during an investigation meeting to writing a letter about [a] patient which contained adverse and untrue statements."*

Comment

*It is correct to say that Nurse Abdullah admitted to writing the Letter. However, he did not agree that the statements in it were untrue. This use of words is misleading in suggesting that Nurse Abdullah admitted that the Letter contained statements which were untrue.*

**8.74** The report goes on to describe the events surrounding the Letter and says:

*"He had shared it with his colleague, however he said he did ask them not to use the letter but to create their own."*

## Comment

*As the report says, Nurse Abdullah was consistent in saying that he had asked Nurse X not to use the Letter but to create her own version of it.*

**8.75** With regards to the Petition, the report says that Nurse Abdullah:

*“signed a petition document (Appendix 1) circulated by his colleague”.*

**8.76** It goes on to say that, *“as deputy Ward Manager, he failed to inform the Ward Manager that this was happening on the ward”.*

**8.77** The second section of the report provides details about Nurse Abdullah, including his current role and length of service.

**8.78** The third section is entitled ‘Background to the allegation’ and briefly describes the events. It says that the patient complaint *“was treated as a formal complaint and was the first complaint this patient had made to the Trust according to the logged Complaints on the System. This was confirmed by Complaints Manager for the Division.”*

**8.79** The Ward Manager told us that she assumed that the 6 September email from the patient was treated as a formal complaint as it had been copied to the chief executive of the trust. The Investigating Officer also believed that it was a formal complaint and stated that in her investigation report. In fact, the 6 September email was handled informally. The director of nursing told us that she dealt with the complaint. She said that she discussed the issue with the patient and asked if she wanted to treat it as formal complaint. The director of nursing and the patient discussed the fact that the email contained as much praise as issues of concern, and the patient did not ask that the email be treated as a formal complaint.

**8.80** The fourth section of the report is entitled “Investigation”. This summarises the interviews carried out.

**8.81** The fifth section is “Statement of Findings”. This confirms that Nurse Abdullah admitted to signing the Petition in support of Nurse X and says:

*“In his position as Deputy Ward Manager, he should have realised that this petition was an inappropriate way to respond to a complaint, and not in accordance with recognised complaints handling policy. He not only should have refused to have signed it himself, but should have ensured it was not circulated further.”*

**8.82** With regards to the Letter, the report says:

*“Nurse Abdullah admitted to being the author of the letter making adverse and untrue comments about [a] patient. He also admitted sharing this letter with his nurse colleague, with the intention that she use it to aid her defence to the patient’s complaint. Producing this letter is again an action which does not sit within the normal process of complaint handling. It does not sit well with the Nursing & Midwifery Council Code of Conduct, which requires him to treat patients with respect and dignity. By including statements which were untrue (namely his assertion that the patient concerned was a serial complainer, when in fact this was the first formal complaint they had raised) this brings his honesty into question.*

**8.83** The investigation report concludes:

*“My investigation and Nurse Abdullah’s admissions of his actions raise sufficient concerns for this case to be heard at a formal disciplinary hearing.”*

**8.84** Nurse Abdullah’s RCN representative commented on the allegations, *“as often happens, the allegations that they draft are poorly worded and poorly drafted.”*

**8.85** As we have noted, there were two elements to the charge against Nurse Abdullah. The first that he wrote a letter that was untrue. This led to the accusation which was made in section five of the Investigation Report, that Nurse Abdullah was dishonest. The other element was that Nurse Abdullah had failed to follow the complaints policy.

*Was the Letter untrue?*

**8.86** The Investigating Officer told us that there were two reasons for believing that the Letter was untrue:

- a) that it contained suggestions that the patient *"had been interfering with other patients on the ward and their care"*
- b) that it contained the assertion that the patient was a *"professional"* or *"serial"* complainer.

**8.87** The first issue is not raised in the investigation report and was not referred to in the disciplinary hearing outcome letter or raised by other interviewees. The second issue, relating to frequency of complaints was the only issue relied on in the hearing and we have therefore looked at the accuracy of the statement.

Comment

*It is important to be precise about the terms used here as the words at issue can be taken in different ways.*

*Some might consider the term "complainer" to be pejorative in itself.*

*We want to make clear that for a patient to raise concerns about the NHS is entirely appropriate. Indeed, information provided from this process is important to improving NHS services and is often beneficial in the long run.*

*Complaints are a particular way of raising concerns, but the same point applies. Feedback from patients is essential to the effective running of the NHS.*

*There is therefore no suggestion that the patient in this case acted in any way improperly.*

*Clearly the term "professional complainer" is pejorative and inappropriate. It was unprofessional to use this term and it should not have happened. As we will explain, we believe that the evidence shows that Nurse Abdullah realised when challenged that this was the case.*

**8.88** The Investigating Officer told us that she tested the accuracy of the term “*professional complainer*” by contacting the complaints department to ask if the patient had previously made complaints. We have seen an email from the complaints office dated 14 September 2015, which says:

*“There are no formal complaints relating to this patient... I have also asked PALS<sup>1</sup> and they have confirmed that there is nothing on their system for this patient”.*

**8.89** The Investigating Officer told us:

*“When I called it an untrue letter I was referring to there being no ... (because that was the evidence that the Complaints Department gave me) ... that there was no reported formal or informal complaints from this [patient] - and ... the fact that she is a serial complainer... because to me a serial anything is doing it more than five times...”*

*“I called the letter an “untrue” letter because there was evidence that the patient was not a serial complainer, and I made that very clear, because the RCN rep brought that up in the hearing, and I said “No”; I was referring to the fact that this patient is not a serial complainer to the NHS.”*

**8.90** We have spoken to the patient concerned. The patient was open about the fact that she raised issues when she thought it would be helpful and that she did so on a number of occasions. Other staff at the trust told the same story. Indeed, the Investigating Officer herself told us:

*“I didn’t see [the patient] as a complainer, I’d seen [the patient] as raising concerns whenever [the patient] had a concern... [the patient] would raise when she wasn’t happy about something, which patients are entitled to, and we as professionals need to listen to them.”*

**8.91** As noted above, Nurse Abdullah had written in his reflective statement that, while accepting that the choice of words was inappropriate, the reference in the Letter to the

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<sup>1</sup> The Patient Advice and Liaison Service

patient being a “*professional complainer*” referred to comments made, rather than official complaints.

Comment

*While acknowledging that it was inappropriate to use the term “professional complainer”, that is not to say that it was completely inaccurate, or “untrue”.*

*There is no generally accepted definition of the term “professional complainer”. The Investigating Officer made no attempt to define the term in her investigation report other than to say that it related to formal complaints having been made. There was no reference in her report to the need for five complaints as she told us at interview, for example.*

*It is also odd that the Investigating Officer focussed on whether this statement was true or not. She might have made the points in her investigation report that the Letter was badly worded, inappropriate, or inaccurate, but she did not do so, focussing instead on its alleged untruthfulness.*

*The investigation report reaches its conclusion that the Letter was “untrue” solely on the basis that the complaints department had not received a formal complaint. Leaving aside the vagueness of the term, the Investigating Officer does not appear to have considered that Nurse Abdullah could have meant something else by this term, for example that the patient had asked a lot of questions on the ward, or had complained informally before to him or to other staff (as indeed he maintained). She did not ask him what he meant by the term on the single occasion she interviewed him and made no effort to check with him at a later date (despite having more than adequate time to do so). Checking the records of formal complaints was not sufficient basis on which to reach the conclusion that the Letter was “untrue”.*

*The investigation report discusses none of these nuances, or indeed a proper discussion of these issues. As they were central to the investigation and the subsequent hearing, that is a major flaw.*

*The Investigating Officer's conclusion was based on a vague definition and thin evidence. This was wrong.*

*Dishonesty*

**8.92** The investigation report says:

*"By including statements which were untrue (namely his assertion that the patient concerned was a serial complainer, when in fact this was the first formal complaint they had raised) this brings his honesty into question."*

**8.93** The investigation report is short (just over 1,000 words long including background information). The word 'untrue' appears six times. We asked the Investigating Officer why she questioned Nurse Abdullah's honesty. She told us:

*"When I refer to the untrue, I was referring to the serial professional complainer."*

**8.94** We asked whether it was possible that Nurse Abdullah simply had a mistaken belief that the patient was a serial complainer. She responded:

*"Yes, it's possible."*

Comment

*Leaving aside the question of the accuracy of the Letter, it is an enormous and inappropriate leap to conclude that a possible inaccuracy brought Nurse Abdullah's honesty into question. The Investigating Officer had no other evidence that Nurse Abdullah was dishonest and her conclusion was completely unjustified.*

**8.95** The report also says:

*"Nurse Abdullah admitted to being the author of the letter making adverse and untrue comments."*

Comment

*As we have noted, while the Investigating Officer believes that this wording only means that Nurse Abdullah admitted to being the author of the Letter, it can also be read as suggesting that Nurse Abdullah admitted the Letter was untrue. That was not the case. It could simply be that this is poorly written. However, where a disciplinary case is being built on criticisms of inaccuracy amounting to untruthfulness, the ambiguity of this wording is a major flaw that raises serious concerns about the Investigating Officer's ability to be fair to Nurse Abdullah.*

*Failure to follow the complaints procedure*

**8.96** The investigation report says of Nurse Abdullah:

*"In his position as Deputy Ward Manager, he should have realised that this petition was an inappropriate way to respond to a complaint, and not in accordance with recognised complaints handling policy."*

**8.97** The failure to follow the complaints procedure became the second main issue in the charge against Nurse Abdullah which was taken through to the disciplinary hearing. The Investigating Officer told us that it was *"just not the normal way we have been guided by the Trust, or any of my Trusts, to handle patient complaints."* She continued:

*"It's to sort of refute what a patient is saying, because the patient has the right to raise concerns. It may be that their concerns are not always upheld by us, but if we're being taught as nurses and NHS workers that you must prioritise the patient and respect their concerns and listen to them, and this isn't a normal way to treat a complaint."*

**8.98** Complaints policies deal with how complaints from patients should be responded to. The current policy, for example, says:

*“When someone expresses dissatisfaction about our services an apology must be given immediately and action taken to resolve the issues as soon as possible. The action taken should be discussed with the person raising the concern and any resolution should be to their satisfaction.”*

**8.99** The 6 September email was ultimately dealt with by the director of nursing. We asked the Investigating Officer about the correct procedure for dealing with a patient complaint and who would carry out any investigation. She told us:

*“It would be [the Ward Manager] because that would have been her role or one of her deputies to investigate the complaint. She would speak with the people that were named in the complaint and gather information from them either over an interview or ask them to write a statement around the complaint. As two of her deputies were mentioned in the complaint it was [the Ward Manager] who would investigate.”*

Comment

*The second element of the charge against Nurse Abdullah was that he didn’t follow the complaints procedure.*

*This charge is puzzling. The trust’s complaints procedure relates to responses to the person who made the complaint. This is the natural meaning of the idea of “responding to a complaint”. Nurse Abdullah was not responding to the complaint in this sense and didn’t have any contact with the patient about the complaint.*

*As the Investigating Officer says, Nurse X was asked to provide a statement to her manager. Nurse Abdullah contributed to that statement. It is difficult to construe this as responding to a complaint.*

*Furthermore, while Nurse X was asked to provide information to her manager, at this time Nurse Abdullah was not.*

*Even if it was accepted that Nurse Abdullah's actions came under the complaints policy, the policy sets out how complaints should be investigated and the outcomes communicated to the patient. The actions of Nurse X and Nurse Abdullah did not interfere with this process, which was being managed by the Ward Manager. There is no suggestion that either Nurse X nor Nurse Abdullah ever intended to communicate directly with the patient, or that they did so.*

*Thus, while the process of signing the Petition and the wording of the Letter were inappropriate, references to the complaints policy are misplaced.*

Overall comment on charge put to Nurse Abdullah

*Neither element of the charge against Nurse Abdullah has much validity: the grounds for calling the Letter "untrue" are weak and the complaints policy has little relevance.*

*Any charge as poorly worded as the one put to Nurse Abdullah has inherent problems. The vagueness of the charge leaves the accused person unclear about the required response. It is then difficult to evaluate whether any decision by the person conducting the hearing to uphold the charge is reasonable. These problems are manifest in this case.*

Delays leading up to the hearing

**8.100** The interviews with Nurse Abdullah and Nurse X took place on 15 September. The Investigating Officer subsequently wrote to HR to say that disciplinary hearings for both Nurse X and Nurse Abdullah were necessary.

**8.101** The draft of Nurse Abdullah's investigation report was dated 22 October and there appears to have been discussions to finalise the wording around this time. In an email dated 30 October, an HR manager wrote to the Investigating Officer with suggested changes to the report and asking for potential dates for a hearing. The HR manager wrote to the Investigating Officer again on 4 November asking about hearing dates. The Investigating Officer wrote to the HR manager on 24 November and the HR manager replied on 25

November with them meeting on 26 November. The emails say that delays were caused by complexities in the case relating to Nurse X, and also to holidays.

**8.102** Nurse Abdullah was notified of the hearing on 7 December and it was ultimately held on 16 December.

**8.103** We were told of a number of reasons for the delay. One of the main factors governing the handling of Nurse Abdullah's case by the Trust was that a decision was taken to link it to Nurse X's case. We have seen an email suggesting that draft investigation reports for both cases were sent to HR in late October, but there is also correspondence to suggest that the management case for Nurse X was only being completed in early December. The final staff interview relating to Nurse X's case was not held until 2 December.

**8.104** On 27 November, Nurse Abdullah's RCN representative wrote to the Investigating Officer asking about the reason for the delay. The email was resent on 30 November because an incorrect email address had been used. The Investigating Officer wrote to the HR manager on 8 December, stating:

*"Just picked this up See below email. I will call you tomorrow to how I am going to reply to [the RCN rep] I would need your input. I will basically say it did take longer than expected however, I did move it as swiftly as workload allowed and a lot of other things took priority e.g. Covering patient care due to shortage of staff. I will also inform her that I did inform Amin that it was taking longer than expected and apologised. I will point out I meet up often on the ward and he did not raise any issues with me regards how long it was taking."*

**8.105** We asked the Investigating Officer about the delays. She told us:

*"There were a few reasons for delays. There were still people to be interviewed in [Nurse X's] case, and I was advised by HR that the two cases were interlinked and that if going to a Disciplinary Hearing we needed to hear both of them back to back and on the same day. Both I and [the HR advisor] had leave. Winter pressure on beds, staff shortage due to vacancies and sickness and a lot of changes happening all at the same time increased my workload. One person to be interviewed was on leave for two weeks. I lost my admin support person. I was not allowed to access my office for a week due to estates issues and could not access my notes for the cases..."*

**8.106** We asked about the decision to link Nurse Abdullah and Nurse X's cases. The Investigating Officer told us:

*"The person in HR who was supporting me... She asked that both cases would be heard together if decision was to hear them at a Disciplinary Hearing, and I did tell Mr. Abdullah that that was one of the reasons for the delay (another case which is interlinked to his needs further investigation). I met with him in an office and I told him that.*

*"Email of the 02/12/2016 refers to this meeting. 'Amin to keep you in the loop an update from our conversation a few weeks back. I have now sent the Investigation Report to [the Hearing Chair] for his consideration to if it needs to go further under the Disciplinary Policy. He will contact you if he decides to take it further. I am sorry it has taken longer than I expected due to my workload and shortage of staff.'*

**8.107** A report produced in April 2016 by a Senior HR Manager (the summary report, discussed below) comments:

*"The investigation took longer than it should have done. It took 91 days to set up a disciplinary hearing from the date on which the petition was reported to the manager. The reasons given by the investigating manager [Investigating Officer] for the delay were twofold, 1) a second individual was being investigated who was subsequently dismissed, the case against this second individual was more complex and necessitated a greater number of people to be interviewed; 2) the investigating manager has also said that she didn't have sufficient time to devote to the investigation because of the implementation of Cerner within her area and a lack of administrative resource. As a result, the two investigations were not concluded until the end of November.*

*"I believe there were legitimate reasons for hearing the two cases together before a final decision could be reached. If more resource had been dedicated to the investigation process in both cases the hearing could have been heard in October or November without the need for chasing from AA [Nurse Abdullah] and his representative. This delay needs to be put in the context of the investigation manager's high workload. Secondly it should be noted that the average length of*

*time for the Trust to manage disciplinary cases in 2015-6 was 72 days. This particular case took 91 days to manage.*

*“Although there is evidence that the investigation manager kept [Nurse Abdullah] informally updated I believe there was insufficient communication in October and November about this issue. [Nurse Abdullah] could have asked the investigating manager to be updated however, it was the responsibility of the manager to keep him better updated after the investigatory meeting in September.*

#### *Comment*

*It is always easy to point out the undesirability of delays of this sort after the fact. From Nurse Abdullah’s point of view all the information for his hearing was available on 15 September or shortly afterwards. The decision to hold his hearing on the same day as Nurse X’s was clearly a factor. With hindsight this was unnecessary, although it was an understandable decision at the time.*

*Even allowing for that, however, the justification for the delay to Nurse X’s case is weak and the delay was excessive. We would have expected the trust’s HR team to be more active in managing this sort of delay. In particular it is unclear what caused the delay for the whole of November. While it appears that this was related to carrying out the final interview in early December, the specific cause remains unexplained.*

#### **24 September complaint**

**8.108** On 24 September the same patient who sent the email on 6 September sent a further email to the trust. This raised seven or eight issues, included a complaint specifically relating to the Investigating Officer. We asked the Investigating Officer if she thought it was relevant that the same patient had raised a complaint about her. She told us that it wasn’t relevant:

*“It was after the incident. I can’t recall fully, but I would have let HR know about that complaint, and it was related to her being unhappy because we had to cancel a bed because the consultant had an emergency and wasn’t able to go ahead with*

*her procedure. The staff called me to support because she was refusing to leave the ward."*

**8.109** At a later interview we asked the Investigating Officer again why she had not raised the issue of the complaint about her. She told us:

*"That came in after the letter [ie after the Letter drafted by Nurse Abdullah].*

*"It was her [the patient] raising her concerns.*

*"I did discuss with HR putting in the complaint, that had come in later, but they said that was after this incident and it wasn't relevant."*

**8.110** The Investigating Officer told us that she did not have any intention to hide or conceal evidence. She told us that she raised the issue with HR who told her that the 24 September email was not relevant:

*"I took their advice that it wasn't, because it was after what we were investigating. So at the time, my thinking was, it wasn't relevant."*

**8.111** The Investigating Officer told us the name of the HR manager that she had asked for advice. We asked the HR manager if the Investigating Officer had told her about the complaint made on 24 September. She said that the Investigating Officer had not told her about it and told us:

*"I have not seen that before, I've not heard of it."*

**8.112** The HR manager told us that she thought that the existence of the complaint on 24 September was relevant to the case. She told us:

*"As it's still an investigation process, I would expect anything like that would be brought to the attention of management or someone, to bring it to my attention, to maybe review the case and see what would be the most appropriate way going forward."*

**8.113** We told the Investigating Officer that the HR manager had said she didn't know about the 24 September complaint. We also pointed out to us that she made no mention of having sought the opinion of HR in her first interview with us and only raised it when we interviewed her on another occasion. She responded:

*"The complaint about me was discussed with [the HR manager]. She may not have seen the complaint. I have actually never seen the full complaint, I just got an email saying "This patient has said this about you, can you respond?", and I responded to my part of it, so I never saw the full complaint from [the patient], but I definitely discussed it with [the HR manager] and she said it was after the event, it is not in the scope, it is not relevant."*

**8.114** The Investigating Officer also pointed out to us that the complaints co-ordinator had copied a number of people into an email about the 24 September complaint including the Hearing Chair. The Investigating Officer also said that she had copied the same people into her reply (the Hearing Chair has no recollection of these emails).

**8.115** Having seen a draft of this report, the Investigating Officer told us:

*"To the best of my recall, my recollection is that the 24/09/2015 complaint was mentioned in the hearing. I believe it would have been mentioned in my summary of the management case, when I think I referred to it being quite commonplace to have to deal with patients who could be challenging, but that there was always a responsibility on us to deal with them professionally."*

**8.116** The others present in the hearing have no recollection of the 24 September complaint being mentioned in the hearing.

*Comment*

*As a senior member of staff, the Investigating Officer is professionally responsible for carrying out her role in an open and honest manner, whatever advice she claims to have received. Leaving aside the disputed issue of the advice, the actions of the Investigating Officer nonetheless give us serious concerns on two levels.*

*First, the complaint about her was relevant. The complaint presented a clear conflict of interest that could affect her handling of the investigation. The Investigating Officer had a personal interest as the patient had also made a complaint about her. Whatever the implications of that conflict, the Investigating Officer should have formally declared it in the investigation report and to the Hearing Chair and Nurse Abdullah at the hearing, as it put her in a position where she could not carry out an investigation and give evidence at the hearing objectively. Her failure to do so raises serious issues about her professional judgement. We find her recent claim that she may have raised the issue at the hearing unconvincing.*

*Second, the central issue in the investigation report and at the hearing was Nurse Abdullah's honesty. The allegation of dishonesty in the investigation report was based on the argument that it was untrue for Nurse Abdullah to say that the patient complained often. In the context of the investigation report's failure to provide any evidence that Nurse Abdullah was dishonest, the Investigating Officer's failure to disclose this piece of evidence in the investigation report casts doubt on her ability to judge Nurse Abdullah's case honestly, and therefore the reliability of her entire investigation.*

#### Notice of the hearing

**8.117** The Hearing Chair wrote to Nurse Abdullah on 7 December 2015 with notice of the hearing. The letter begins:

*"As you are aware, an investigation has been conducted by [the Investigating Officer] in order to investigate the following allegations:*

- 1. It is alleged that on 15/09/2015 Nurse Amin Abdullah wrote an untrue letter about a patient and did not follow the complaints procedure.*

*"You are therefore required to attend a disciplinary hearing..."*

**8.118** The letter says that *"the outcome of the hearing could result in formal action being taken up to and including dismissal"*.

**8.119** The letter explains that the Investigating Officer would present the findings of her investigation and that an HR manager would also be present.

**8.120** Nurse Abdullah's hearing was set for 16 December at 11.00am. The hearing for Nurse X was held the same afternoon, with the same team (Investigating Officer, Hearing Chair, HR manager) present.

**8.121** The letter goes on to say that the Ward Manager, "*is the only witness that have been requested to attend the hearing [sic]*". In fact, the Ward Manager was called as a witness at the hearing of Nurse X, but not at that of Nurse Abdullah. We asked the Hearing Chair how that came about. He told us:

*"I am not sure. As I said earlier, there was a script at the time at the back of the disciplinary policy, which I followed and part of that is confirming whether witnesses want to be called. During the hearing no witnesses were called. If they'd have wanted [the Ward Manager] to be there that would have been very easy. She was available because she was called as a witness at the second hearing. I can't explain that error in the letter. The letters weren't directly prepared by me. I am not trying to blame someone else."*

**8.122** We asked the Hearing Chair if, having expected the Ward Manager to be present, Nurse Abdullah may have been relying on her to give evidence. He told us:

*"I think that's a fair point, but I did explore that in some detail at the beginning of the hearing that she was there, we could call her in if she wanted to. Yes, we covered that in a lot of depth."*

**8.123** Nurse Abdullah's partner said that he had discussed with him the benefit of having the Ward Manager present at the hearing as the Ward Manager had a favourable opinion of Nurse Abdullah. He pointed out to us that Nurse Abdullah had worked with the Ward Manager previously and had moved down to work on the Ward with the Ward Manager.

**8.124** The Ward Manager told us:

*“I very much liked Amin. He was a slightly more mature student, which provides us with different skills and sometimes we have had life skills. He was always very willing, kind to the patients and then performed well as a Band 5.”*

**8.125** The Ward Manager told us that she was a witness at Nurse X’s hearing, but she has no recollection of being invited to attend Nurse Abdullah’s hearing.

*Comment*

*The reference to the Ward Manager attending Nurse Abdullah’s hearing appears to be an error, perhaps arising because she was a witness at Nurse X’s hearing. This was unfortunate, and there is evidence that the Ward Manager would have said favourable things about Nurse Abdullah had she been called as a witness.*

*Although the Ward Manager might have been able to provide evidence in mitigation for Nurse Abdullah’s actions, it is not possible to say how this would have changed the outcome of the hearing. The central facts of Nurse Abdullah having written the Letter and signed the Petition would not have changed, and it is noticeable that Nurse Abdullah made no reference to the Ward Manager in his notice of appeal. On the other hand, her attendance might have led to Nurse Abdullah’s overall account being believed.*

*Previous record*

**8.126** Linked to the issue of the non-attendance by the Ward Manager at the hearing is the weight given to Nurse Abdullah’s training and work record. There is no reference to these issues in the investigation report other than to record where Nurse Abdullah worked in the trust.

**8.127** Nurse Abdullah clearly felt that this area was not sufficiently discussed at the hearing, as he says in his appeal letter:

*“I believe the panel has been very selective in what they considered. I don’t believe my exemplary record has been any or sufficient weight.”*

**8.128** The Hearing Chair wrote the following in his management response:

*“Amin Abdullah’s sickness record was not presented as mitigation, nor would I consider a sickness record as mitigation in the case of the allegations being heard. [The Investigating Officer] stated that there had been no concerns regarding Amin Abdullah’s conduct or performance before the incident or during the investigation and took this into account; however I note that Amin Abdullah had only been employed on [the Ward] for nine weeks prior to the incident occurring and note that this is a short period of service to take into consideration.”*

**8.129** There is only one reference to this issue in the hearing outcome letter. The letter says that the Investigating Officer said in the hearing that Nurse Abdullah “*co-operated with the investigation*” and that there have been no concerns with regards Nurse Abdullah’s conduct or performance at work prior to this investigation.

Comment

*It would have been proper for the Trust to consider Nurse Abdullah’s actions against the standards expected of his grade and experience (to which his training and work experience point). His record of unblemished conduct and service could also have been presented and considered as mitigation in any plea for a reduced penalty. The Hearing Chair’s response on this issue is overly dismissive. Nevertheless, it is difficult to believe that these issues would ever have been decisive in deciding whether it was appropriate to dismiss Nurse Abdullah in the context of the larger issues which we discuss below.*

## The hearing

### *Background*

**8.130** Nurse Abdullah's hearing was attended by the following people, in addition to himself:

- The Hearing Chair
- An HR manager (a different manager than had been dealing with the case up to now as the first manager was on holiday)
- The Investigating Officer
- Nurse Abdullah's Royal College of Nursing (RCN) representative.

**8.131** It has been difficult to collect documentary evidence about the hearing. The key record that we have seen is the disciplinary hearing outcome letter ('the outcome letter'). That letter was written by the Hearing Chair on 21 December 2015. At some hearings there is a notetaker, but there was not one available for this hearing, so the Hearing Chair also took handwritten notes. He told us:

*"There was an issue on the day in that the member of staff, routinely the PA for the Senior Nursing Team in the Division, would take notes. She was off sick that morning, so I established at the beginning of the hearing whether everyone was happy for it to go ahead without a formal note-taker and everyone said there that they were happy."*

**8.132** The HR manager told us:

*"The Chair is responsible for minuting and the Chair sometimes takes their own notes. Sometimes they have an assistant but on this occasion, from what I can remember, he was taking quite extensive notes."*

**8.133** The Hearing Chair told us that he gave his notes to the trust's HR department for inclusion in the file. The HR department told us that the notes were subsequently lost. However we were also able to draw information from the management response to Nurse Abdullah's appeal which was written in early January when the Hearing Chair still had access to his notes.

Comment

*The lack of a proper record of the hearing is totally unsatisfactory and has made the task of carrying out this investigation more difficult.*

**8.134** We asked the RCN representative about the hearing. He told us:

*"I think in terms of my recollection of it, anything I said they weren't really too persuaded by or didn't really share my view of the nature of the complaint. They seemed to really think it was a very, very serious matter indeed. In the hearing we struggled a bit because Amin really struggled to express his reflections on the incident. Always when I represent nurses, or when I represented nurses previously, I would always encourage them to reflect that 'You need to treat this as a learning point, you need to consider what you think you have done wrong, how you can ensure it doesn't happen again in the future', and I was trying to get him to draft a reflective statement and I believe he did one in this case.*

*"But then he was very quick to turn it around to 'You're victimising me, you've done this, how can you get away with not following the disciplinary policy to the T?'. I don't know if other people were saying things in his ear about what the Trust were doing, but he was very much of the view that he was being victimised, and then that came across in the way that he presented at the hearing. I would say he wasn't the contrite, reflective, apologetic nurse that perhaps I would want to see at a hearing, and then they took further umbrage against him because of that in their outcome."*

Comment

*It is noticeable that the issues Nurse Abdullah raises relate to the interpretation of the evidence rather than procedural issues. This is consistent with Nurse Abdullah's appeal letter (which we will discuss in more detail below) which raises issues such as the outcome being disproportionate and whether the weight given to certain evidence was appropriate.*

*Taken together with the other evidence we have seen (although the lack of proper records makes it difficult to be certain) we do not believe that there were major issues with the procedural aspects of the hearing, with the possible exception of the issue of Nurse Abdullah applying for another job, which we discuss below.*

#### *Conduct of the hearing*

**8.135** As we have noted, the outcome letter from the Hearing Chair to Nurse Abdullah is the primary record of the hearing. We asked the Hearing Chair whether the outcome letter included all the significant issues that came up at the hearing and that was taken account of in the final decision. The Hearing Chair told us that the letter was "*the best that I could do at the time*" and that it does not contain any significant omissions. He told us:

*"I don't think there were things that were missed out that I didn't put in the outcome letter. I'm confident the outcome letter is a reasonable reflection of what was discussed in the hearing, my thought process behind my decision and the outcome."*

**8.136** The HR manager told us that she used her notes to refer to the outcome letter, but that the letter captured much more than her notes, she told us "*It was very comprehensive, so I didn't feel the need to [produce a separate note].*"

**8.137** We have not heard any suggestion that the outcome letter contains inaccuracies as a record of the hearing and it is not challenged in the appeal note.

#### *Comment*

*As the outcome letter is the only contemporaneous record of the hearing and those present believe it to be accurate, we have used it as our main source of information about the hearing. As we discuss later, some attendees have recollections of issues raised in the hearing that are not recorded in the outcome letter. That evidence needs to be weighed against the fact that it is based on recollections long after the fact and is not reflected in the records made at the time.*

**8.138** The outcome letter explains the charge and who was present at the hearing. It goes on to describe the process that was followed:

*"I [the Hearing Chair] have considered the case presented by [the Investigating Officer], your response to the allegations, and the mitigating circumstances put forward. I found the investigation process fair; During the hearing, you and your union representative were also given a fair opportunity to state your mitigation in full and you were allowed to submit further documentation to support your case and you submitted a 'reflective statement' for me to consider in advance of the hearing. You were given the opportunity to call witnesses but none were called to the meeting.*

**8.139** The outcome letter says that the Investigating Officer presented the management case at the start of the meeting and that the RCN representative asked questions of the Investigating Officer on it. One issue raised was that of delay. The outcome letter says that the Investigating Officer explained the reason for delays.

**8.140** The outcome letter then describes the issues raised in Nurse Abdullah's defence:

*"On your behalf, [the RCN representative] stated that the allegation was incorrect in referring to an "untrue" letter. [The Investigating Officer] responded by clarifying that the letter was untrue because you alleged in the letter that the patient was a "professional complainer against the NHS". [The Investigating Officer] stated that she had received confirmation from Complaints department that this was the first time this patient had made a complaint about her treatment in the organisation and therefore this statement was untrue."*

Comment

*The outcome letter records that Nurse Abdullah's representative challenged the central issue in the allegation - the alleged untruthfulness of the Letter. It also demonstrates that that this issue was considered by the Hearing Chair.*

*The outcome letter does not, however, demonstrate that the Hearing Chair critically examined the charge laid against Nurse Abdullah. For example, the letter does not include any discussion of what the term "professional complainer" might mean. Neither does it discuss whether the lack of formal complaints is sufficient evidence to conclude that the Letter was untrue. There is no consideration of whether the inclusion of this phrase demonstrates dishonesty.*

*There is also no analysis in the outcome letter of whether the complaints policy was relevant to Nurse Abdullah's conduct.*

**8.141** The outcome letter goes on to say:

*"On your behalf, [RCN representative] also stated that the correct procedure had not been followed in that you had not been sent an invite letter nor were you given the opportunity to have a trades union representative at the informal 1:1 meeting held on 16th September 2015. Investigation meetings are informal fact gathering exercises hence right to representation is not always offered. [The Investigating Officer] stated that at the end of her investigation she advised you to seek union support as the investigation may proceed towards a formal hearing. I am satisfied that the correct procedure has been followed in line with Trust policy."*

Comment

*This is the main procedural issue that appears to have been raised at the hearing. While it is correct to point out that it might have been fairer if Nurse Abdullah was represented at the initial meeting, this is a relatively minor issue.*

**8.142** The outcome letter then says that the RCN representative raised the issue of Nurse Abdullah being put on restricted hours.

Comment

*Again, while there may be an arguable point here, it does not go to the heart of the issues before the hearing.*

The hearing outcome

*Truthfulness*

**8.143** The outcome letter goes on to set out the decision that the Hearing Chair made on the allegations. It says:

*"You admitted to writing the letter referred to in the management case, containing several statements with regards to a particular patient who had named you in a written complaint. I accept [the Investigating Officer's] findings that the letter you wrote contains untrue accusations against a patient, namely that she is a "professional complainer against NHS staff" for the reasons outlined above.*

**8.144** The letter continues, *"Furthermore, I was presented with no further evidence during the hearing to substantiate any of the very serious allegations you make in your letter against the patient."*

Comment

*The Investigating Officer's failure to disclose the patient complaint of 24 September is material here.*

*We note that the Hearing Chair was not made aware of any other interactions that the trust had with the patient which might have substantiated the point made by Nurse Abdullah, whether by the Investigating Officer or by anyone else.*

**8.145** The HR manager who was present in the hearing told us:

*“Obviously, the allegation and what we were exploring to begin with was that he wrote an untrue letter and, from my understanding of how the investigation proceeded and the angle we looked at in this entire issue was the fact that she is a serial complainer against the NHS. When we did investigate a bit further, Amin admitted that he doesn't know the entire NHS and he doesn't know the complaints logged by individual Trusts throughout the country. What we do know is what our Trust has logged as a formal, official complaint, and when we went back to the Complaints Manager, there was no official complaint. That was the untrue element, saying she was a serial complainer against the NHS where, sorry, we haven't even received one formal complaint against the Trust. So the untrue element went as far as that and then we stopped.”*

**8.146** We asked the Hearing Chair why he concluded that the Letter was untrue. He told us:

*“I guess it is that I didn't see anything that suggested to me otherwise during the hearing. The evidence that had been presented to me was the evidence from the Complaints Department.”*

**8.147** The Hearing Chair went on to say:

*“I just don't think you can use the term professional complainer. I don't think it means anything. It's derogatory.*

*“It is completely inappropriate language.”*

**8.148** We asked the Hearing Chair whether the issue was the appropriateness of the language or its accuracy:

*“I guess it is partly inappropriate because it doesn't mean anything. If it doesn't mean anything, how can you determine whether it is accurate or not I guess would be my point.”*

Comment

*The rationale here has become muddled.*

*There can be little dispute that the language in the Letter was inappropriate. However, the use of inappropriate language was not a charge laid against Nurse Abdullah. It is not clear why the charge focussed on lack of truth rather than inappropriateness, but once that decision had been taken, it would be wrong for the trust to judge Nurse Abdullah's behaviour against an issue that was not formally put to him.*

*The charge that was made against Nurse Abdullah was that the Letter he wrote was untrue. The Hearing Chair told us that he didn't hear anything to suggest otherwise. This reasoning is back to front - a lack of evidence to the contrary is not sufficient evidence on which to dismiss someone.*

*No attention appears to have been given to Nurse Abdullah's explanation of what he meant by the Letter - that the patient was someone who raised a lot of concerns.*

NMC code

**8.149** The outcome letter goes on to refer to the Nursing & Midwifery Council code ('the NMC code'), which sets professional standards for nurses. It references the section of the code which says:

*"make sure you do not express your personal beliefs (including political and moral beliefs) to people in an inappropriate way."*

**8.150** It continues:

*"in preparing an unsolicited statement containing untrue statements against a patient and passing this on to a colleague to use in an unspecified way, I find that you have fallen well short of this expectation as a Band 6 nurse and deputy Ward Manager."*

Comment

*The reference to the NMC code is spurious. The issue here does not have anything to do with expressing personal beliefs.*

*The question of whether the code was breached is important, however. Breach of the code is a serious matter which is grounds for dismissal under the trust's disciplinary policy and is quoted by the Hearing Chair as one of the reasons leading to the decision to dismiss Nurse Abdullah.*

**8.151** The outcome letter notes that Nurse Abdullah says in his reflective statement that *"there is nothing untrue in my letter"*. The outcome letter then says:

*"I therefore conclude that you still do not recognise that what you wrote against a patient was untrue, unsubstantiated and therefore completely inappropriate."*

Comment

*Again, the reasoning here is weak.*

*As we have noted above, Nurse Abdullah emphasised in his reflective statement that he was referring to statements that were comments rather than official complaints.*

*The first conclusion is that the Letter was "untrue", which as we have discussed, is based on little evidence. That there is a lack of evidence is supported by the next word in the outcome letter, "unsubstantiated". Although it is a fairer conclusion to say that the allegation was unsubstantiated, the Hearing Chair does not appear to see that this means something different from "untrue". Neither does he reflect that the role of proving things in this context falls to the trust, rather than to a nurse. Finally, the idea of inappropriateness has been spliced back in again. This appears to be an attempt to avoid the problem that the inappropriateness of the language in the Letter was not put as a charge against Nurse Abdullah.*

## *Response to policy questions*

**8.152** The next section of the outcome letter touched on whether Nurse Abdullah understood his "*primary duty to protect patients*". It concluded that his answers did not demonstrate this. The outcome letter says:

*"I therefore find again that you still do not recognise your primary duty to protect patients following these events."*

**8.153** The letter continues on to the issue of complaints handling. It says that Nurse Abdullah was asked to explain his understanding of how complaints should be responded to but that his answers did not mention issues such as the right of patients to complain.

## Comment

*Nurse Abdullah's own representative told us that he struggled in the hearing. It is clear that this view was shared by the HR manager and Hearing Chair. We are not convinced however, that a failure to recall the contents policies in a pressurised environment of a hearing where your job is at risk is probative. We note that the complaints policy itself is complex and not all interviewees that we spoke to had a clear understanding of it. Furthermore, what Nurse Abdullah did was nothing to do with complaints handling - it is easy to see why he would be confused by this focus on an issue which appears to be irrelevant.*

**8.154** The letter turns to the issue of failure to follow the complaints policy. It says:

*"The fact that you took it upon yourself to respond to a complaint that had been passed to you by a colleague - in writing - without being asked for a statement by the Ward Manager completely outside of any recognised process leads me to find that you did not follow the complaints procedure nor respect the patients right to confidentiality, which I would reasonably expect you to know and understand in your role. Indeed, effectively and sensitively managing complaints is a fundamental aspect of a nurse's role and I would expect an individual in a Band 6 (deputy ward manager) role to be able to do this confidently and competently."*

Comment

*As we noted above, we find the characterisation of Nurse Abdullah's behaviour as failing to follow the complaints policy to be incorrect an odd one. He said that his motivation was to support a colleague and he took no action to directly interact with a patient in any way.*

*On the other hand, it is correct to say that writing the Letter did not respect patient confidentiality, notwithstanding that Nurse Abdullah wrote it with the intention that only Nurse X should see it and in the knowledge that Nurse X already knew the patient.*

*Key finding in outcome letter*

**8.155** The outcome letter reaches the following conclusion:

*"It was established during the hearing that you passed your letter over to your colleague, and that you then signed a petition circulated by your colleague."*

Comment

*Although the exact order in which the events took place is unclear (i.e. whether Nurse Abdullah signed the Petition before or after writing the Letter) this finding is completely consistent with all the evidence presented up to now. It is the conclusion of the investigation report, which itself is based on the consistent findings of all the interviews carried out by the Investigating Officer.*

*Signing the Petition*

**8.156** The outcome letter criticises Nurse Abdullah for signing the Petition. It says:

*"When asked how you should have responded to being asked to sign this petition, you stated that you wished that you had never signed it, and that if a similar situation occurred again you would escalate to your line manager, speak to the*

*individuals concerned, get them to read through the complaints procedure and ask them to reflect. You were unable to provide me with a reason as to why you did not do this at the time, stating in your 'reflective account' that you were a junior Band 6 and that you "weren't thinking straight."*

**8.157** The outcome letter says that this action is in breach of the NMC code with refers to the need to nurses to "*act as a role model*" for more junior staff.

Comment

*This is, to an extent, a valid point. Nurse Abdullah was a more senior member of staff than many of those who signed the Petition and it was inappropriate to do so. At the same time, eighteen nurses signed the Petition, some of whom were also senior staff and more experienced than Nurse Abdullah, including the first person to sign the Petition. None of the others was formally disciplined.*

## *Tone of the Letter*

**8.158** The hearing outcome then addresses the contents of the Letter:

*“I am deeply concerned with regards the actual content of the letter which you wrote. The sentiment that you express is disrespectful to the patient and demonstrates an absence of compassion or kindness. I asked you what the patient may have thought if she had read the response that you had written and you stated that that she would have been very upset which leads me to believe that you have a good awareness of how inappropriate your comments were...”*

*The NMC Code states, you must:*

- *Not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or a member of the public who wants to raise a concern, and (section 16.5)*
- *Protect anyone you have management responsibility for from any harm, detriment, victimisation or unwarranted treatment after a concern is raised (section 16.6)*

*In colluding with another member of staff in response to you both being named in a patient complaint, I find you in breach of the NMC code in that your actions constitute victimisation of a patient who has made a complaint.”*

## *Comment*

*Again, there is no doubt that the language used in the Letter was inappropriate. Nevertheless, it was wrong to characterise Nurse Abdullah’s behaviour as either hindering the response to a complaint or as “victimisation” of a patient.*

*The reference to protecting managed staff appears to be entirely irrelevant to these circumstances.*

*We therefore do not believe that there is sufficient evidence to support the finding that Nurse Abdullah breached either section 16.5 or 16.6 of the code.*

### *Application for another job*

**8.159** We were told that another issue that was taken into account at the hearing was the fact that Nurse Abdullah had applied for another job, but had not disclosed the pending disciplinary issue. The outcome letter says:

*"In her summing up, [the Investigating Officer] disclosed that you have made a successful application for a post on another ward at Charing Cross Hospital within Imperial College Healthcare NHS Trust. I asked you when you had attended for the interview for this post and you stated that it had occurred in October 2015, but that you weren't able to recall the exact date. I noted that you had had your initial investigatory meeting with [the Investigating Officer] on 16<sup>th</sup> September during which she informed you that this will be managed as a disciplinary. I asked you whether you had disclosed any information regarding your involvement with this investigation at your interview or to the recruiting manager at any stage after the interview - such as when you had been offered the post - and you stated that you had not. I would expect that when you are applying for a post within the organisation you would be open and honest with the recruiting manager in terms of informing them of any disciplinary action that you are involved in. When I asked you why you had not done this on this occasion, you stated that "nobody asked me" and "I wasn't thinking straight". I therefore have serious concerns about your understanding of your professional duties to be open and honest at all times, and question the degree to which you have genuinely reflected and learnt from your experiences and have sufficient insight on your professional obligations outlined in the code and your on-going trustworthiness.*

**8.160** The Investigating Officer told us that the intention of raising this issue was to demonstrate that Nurse Abdullah "was looking to the future of his nursing career". She said that she had had no intention to bring in new evidence at this stage.

**8.161** The Hearing Chair told us:

*"That was in the outcome letter because that was raised towards the end of the hearing, the issue around the recruitment to the new post. I do remember this. It was raised in the context of it was in the management case that Amin had initially denied his involvement in writing the letter and had then admitted that he'd done*

*it. So then the issue around his recruitment was raised as another concern by [the Investigating Officer] around his honesty."*

**8.162** The Hearing Chair told us that the hearing was adjourned to give Nurse Abdullah and his representative the opportunity to discuss this issue.

**8.163** The HR manager also told us that this was an issue of honesty. Discussing Nurse Abdullah's hearing as a whole, she said that *"there was an element of untruthfulness, of not telling the correct facts, of not being open and honest."* We asked for specific examples of this. She told us:

*"He would say something and then stop, and then try to change his version of events. I think that the resulting letter does say that on a few occasions. There is a reference to a recruitment campaign internally in the Trust where - there are several versions that were presented. When he was asked whether he informed the recruiting manager that he was subject to an investigation, he initially said 'why should I have?', and then he said, 'nobody asked me', then he said, 'oh did I have to? I am sorry I am not aware of the policy'. Then, ultimately, he said 'maybe, yes, I should have'."*

**8.164** We suggested that his answers were not, in fact, contradictory, just evidence of someone thinking something through out loud. The HR manager responded:

*"I don't agree with that because there was an element of trying to think about it and then saying, 'nobody asked me', deliberately hiding the information which he thought would have been detrimental to his employment. That is how it came across."*

**8.165** Candidates for posts in the trust are provided with a model declaration form. The HR manager drew our attention to Section 8 of the form, which asks:

*"Are you subject to any other prohibition, limitation, or restriction that means we are unable to consider you for the position for which you are applying? Applicants are required to circle 'yes' or 'no' as the appropriate answer."*

**8.166** The HR manager told us, *“If their answer is ‘yes’ they are required to provide further written detail for the interview panel to consider. A blank copy of the model declaration form is provided.”* She also told us:

*“[The Hearing Chair] asked [Nurse Abdullah] if he had informed the recruiting manager that he is subject to a disciplinary procedure and is currently placed on restricted duties. [Nurse Abdullah] indicated that he had not. It is unclear whether he knew he had to make such a declaration and deliberately did not or whether he was not aware of the Trust recruitment policy.*

**8.167** The HR manager also told us:

*“There is an indication that he was successful at the interview but no written offer of employment has been found in the Trust records.”*

**8.168** We asked the Senior Nurse Manager about this issue. She told us:

*“We don’t explicitly ask people at interview to disclose if they are subject to any ongoing disciplinary issues. At that time, we did ask when seeking references, however you would not always seek a full set of references on someone who was applying for an internal post.”*

Comment

*At the time of the interview, we do not believe that Nurse Abdullah was subject to a “prohibition, limitation, or restriction” that would have prevented him from applying for another job in the trust or that he believed that he was (unless it had been made clear to him that this was an implication of being put on restricted hours). It was therefore wrong to question his honesty on this point.*

*Given that he hadn’t been asked to declare the on-going disciplinary process, Nurse Abdullah’s confusion at being asked why he hadn’t declared it is understandable - as was his entirely natural response that nobody had asked him.*

*We note that Nurse Abdullah was given no prior notice of this allegation before the hearing. It was therefore unfair of the Hearing Chair to deal with it in this way. Holding his confusion against him when he had no opportunity to prepare was particularly unfair.*

*We note that this issue was raised at the hearing by the Investigating Officer.*

## *Conclusion*

**8.169** The outcome letter reached the following conclusion:

*“I have therefore upheld the allegation that you wrote an untrue letter and did not follow the Trust complaints procedure and have concluded that your actions constitute a serious breach of your professional code of conduct and a breach of trust with us as your employer which amounts to gross misconduct under section 8.2 of the Trust disciplinary policy and procedure. I consider your actions serious enough to warrant summary dismissal. I have no confidence in your ability to recognise and follow the nursing code of conduct, and your responses during the hearing have confirmed my lack of trust and confidence in you. This dismissal is effective from today (21<sup>st</sup> December 2015). You are entitled to receive any annual leave that is due to you, but you will not receive any pay in lieu of notice.”*

## *Comment*

*The Hearing Chair gives his grounds for dismissal as a breach of the professional code and a breach of trust. He set out the breaches of the code in more detail in his response to Nurse Abdullah’s appeal letter, so we discuss those issues in that section (below). The suggestion of a breach of trust goes back to the questions of dishonesty - in the contents of the Letter and the application for another job. As we have noted, all these grounds are weak.*

**8.170** The outcome letter goes on to explain the appeals process, which involved writing to the Senior Nurse Manager within 15 days.

## Evidence at Nurse X's hearing

**8.171** Nurse X's hearing was held immediately after Nurse Abdullah's hearing. It was therefore not until the end of the day that the Hearing Chair and the HR manager sat down to discuss what action to take in Nurse Abdullah's case.

**8.172** Nurse Abdullah gave evidence at Nurse X's hearing. It appears that some evidence given at Nurse X's hearing may have differed from that given in Nurse Abdullah's hearing.

**8.173** The Investigating Officer told us that Nurse Abdullah "*admitted to lying*" in Nurse X's hearing. She told us that Nurse Abdullah had initially said in Nurse X's hearing that she didn't know about the Letter, but then admitted that he did. She told us:

*"Basically he [Nurse Abdullah] said that [Nurse X] knew nothing. No, sorry. He came in to [Nurse X]'s hearing as a witness - excuse me, I've got that wrong. He came in to [Nurse X]'s hearing as a witness because we had called him as a witness, and she said she knew nothing about the letter, and he concurred with that, so when I was asking him how would [Nurse X] have got the letter. So he was still in her hearing backing up that he hadn't given her the letter. I had no further questions for him so [the Hearing Chair] asked him a question, and then [the Hearing Chair] said I have further questions. He said how would [Nurse X] have come around with this letter if you hadn't discussed it with her, and then he admitted to discussing it with her."*

**8.174** We asked the Investigating Officer again about this point:

*"I can't recall the exact words, but he basically was saying he hadn't discussed the Letter. He initially said he hadn't discussed it with [Nurse X], which was backing up what she was saying, and then he retracted that and said "I'm really sorry, I was lying. I don't know what I was thinking of. I did discuss it with her..."*

*"... he was basically asked, because the whole point of bringing him in as a witness was to let [Nurse X] know that somebody else is saying "You did know about this letter", but when he was in front of her he was saying that he hadn't."*

**8.175** The Hearing Chair told us that he did not recall Nurse Abdullah lying in Nurse X's hearing. He told us:

*"My recollection is that she [Nurse X] said that it [the Letter] was his suggestion and he had volunteered it to her. There was nothing in his hearing that would suggest that that wasn't the case..."*

*"My impression was that they were still very much endeavouring to support one another. He said very little, and she [Nurse X] said that."*

**8.176** The disciplinary hearing outcome letter for Nurse X was written by the same Hearing Chair who presided at Nurse Abdullah's hearing. That letter is also dated 21 December 2015. It says:

*"In his witness testimony, Amin Abdullah stated that he wrote the letter referred to in this allegation, in response to a written patient complaint where the complainant had named you and him. He stated that he had been on night duty and that on coming onto relieve him on the corresponding day duty you had told him that both you and he had been named in a complaint. He stated that you were upset and that he had wanted to help you by writing a letter that would help you. He stated that he had written this letter at the end of his night shift whilst on the ward on a Trust computer, and that he printed it out and put it into your pigeon-hole before going home. He also stated that he said to you "I have put a letter in your box as guidance". Amin Abdullah confirmed this in his statement in the management case. I found Amin Abdullah to be a credible witness and therefore uphold the allegation that you found the letter anonymously."*

**8.177** The HR manager said that Nurse Abdullah's evidence was consistent between the two hearings and that she did not recall Nurse Abdullah lying in Nurse X's hearing.

*Comment*

*The recollections of the Hearing Chair and the HR manager are consistent with the written record. All indicate that Nurse Abdullah gave the same account as he had consistently done at every stage.*

*We note that the Investigating Officer is the only person who says that Nurse Abdullah lied during Nurse X's hearing.*

**The impression that Nurse Abdullah made at the hearing**

**8.178** The three members of the 'staff-side' team at the hearing all made comments about the way in which Nurse Abdullah came across in the hearing.

**8.179** We asked the Investigating Officer if she felt that the decision to dismiss Nurse Abdullah was unreasonable. She told us that it was not, referring to the issue of him lying in Nurse X's hearing:

*"No. Not in the sense of the way he conducted himself in the actual hearing. He also showed that you would have an issue with his integrity because he admitted to lying in the hearing."*

**8.180** We asked the HR manager about her perception of Nurse Abdullah in the hearing. She told us:

*"Once Amin left the hearing, we discussed the allegations and the evidence that was presented during the meeting. By his own admission, both the allegations were substantiated: the fact that he wrote an untrue letter and the fact that he did not follow the complaints procedure but for us what we saw in the meeting went beyond the allegations. It went to a territory where this employee was completely breaching trust and confidence. There was an element of untruthfulness, of not telling the correct facts, of not being open and honest."*

**8.181** We asked how she knew he wasn't open and honest. She told us:

*"He would say something and then stop, and then try to change his version of events. I think that the resulting letter does say that on a few occasions."*

**8.182** We asked the HR manager for example and she raised the issue of Nurse Abdullah's application for another job.

**8.183** We asked the HR manager if the decision to dismiss was clear cut. She told us:

*"This is an interesting one because if we just look at the allegations, they may not appear as serious as perhaps the sanction but when you go into the meeting and you see the conduct as a whole, you trace back to the allegations and then that substantiates the lack of trust even more. It is one of those cases where there was an overarching allegation but then everything that we heard and saw just made the case for this breach of trust even stronger."*

**8.184** The HR manager told us that she was "satisfied that he had been untrustworthy during the course of the hearing". She told us:

*"It wasn't an open admission of facts. There was this underlying concern about truthfulness, about body language and about how you say something and you stop, then you try to think in your head and then you rephrase. It was not completely honest, genuine and open as we would expect."*

*"I have seen anxious people and I know how anxiety completely overtakes you but then it also means that throughout the discussion you are anxious. It cannot be that in some conversations or when presenting your point in some aspects you are very confident but only in response to certain questions the anxiety takes over, so there is a bit of inconsistency there. If you are anxious, you are anxious throughout. It is not that certain aspects of the conversation make you more anxious but with other aspects you are absolutely normal."*

**8.185** Summing up, the HR manager told us:

*"We don't get this a lot, we have allegations, the evidence is substantiated, but what we saw on the day was a lot more than the allegations on paper. It is the way the hearing developed because, ultimately, we started questioning how much this employee can be trusted to go forward, to go onto the wards and do his duty, so it actually came to that."*

**8.186** The Hearing Chair told us that Nurse Abdullah "didn't put his case very clearly" in the hearing:

*"I asked him questions about his reflective statement and my impression was that someone else had written it for him. When I asked him specific questions about it he couldn't really articulate. Not the answers, but it seemed that he was having it read back to him for the first time. For example, 'how would you show me that you would act differently if this happened to you again?' He just said, 'I would escalate and I would follow policy'. We had a follow-up question around what policy would he follow. 'The Trust policy.'"*

**8.187** The Hearing Chair also said Nurse Abdullah's responses focussed too much on the impact on him, rather than on patients:

*"The reflective statement is one thing, but in the verbal interaction that we had in the hearing, there was very little insight into his roles and responsibilities as a registrant, his responsibility to the patient care first, his responsibility as a deputy ward manager to look after potentially vulnerable patients in his care.*

*I had little assurance and was anxious that, had he gone back into practice the following day, this wouldn't have happened again ... his primary concern seemed to be about him and his own reputation and the impact that this would have on him, with very little insight.*

**8.188** We suggested that the way Nurse Abdullah came across was important to the decision made. The Hearing Chair told us:

*"It was. That's the point of having a hearing, isn't it?"*

*"I could have made a decision on the paper that was presented to me... [the hearing] was nigh on three hours, which would be an average time that I would spend chairing a disciplinary hearing, so I'm reasonably confident that he had ample opportunity to challenge any of the evidence that had been presented in the management case. He was there with a representative.*

*"Another really important thing is that it's the first stage in the process. I made the best decision I could with the evidence that was available to me at the time, with the support or otherwise that I had from the HR services. He could have appealed. He did appeal. It's unfortunate what happened. However, his appeal*

*letter was extremely long, extremely articulate. There was nothing in that to indicate -. I responded to the appeal letter, and again I'm sure you've seen that. To the best of my ability I followed due process.*

#### *Comment*

*It is unusual for a lot of weight to be given to an employee's demeanour during a disciplinary interview. Evidence about an employee who is "unconvincing" at interview tends to be looked for where dishonesty or lack of integrity are suspected. Unconvincing answers to questions in these areas can often lead investigating managers to doubt a person's reliability, and may create a negative halo around the person leading the employer to infer lack of competence or honesty in other areas. It would be risky to extrapolate these findings alone to determine that the trust could no longer trust him, in any circumstances, to do his job to the required standards. Due allowance would also need to be made for the nervousness of an employee under investigation for a potentially job-threatening conduct offence.*

*It is also important to note that interpretations of other people's feelings and body language is inherently subjective and open to cultural biases. This sort of approach should be treated with great caution. The weight given to this sort of 'evidence' as opposed to the little attention that is given real evidence about Nurse Abdullah's performance in his role was unfair.*

*These issues highlight the importance of the false allegation of dishonesty made in the investigation report. Having seen Nurse Abdullah's integrity questioned made it harder for the Hearing Chair and the HR manager to be objective. This context also makes Nurse Abdullah's anxiety easy to understand.*

#### *Overall Comment about the hearing*

*We have identified a number of weaknesses in the hearing process. The Hearing Chair and the HR manager should have been more thorough about evaluating the evidence against Nurse Abdullah against the actual charge that was made. In particular, they should have paid more attention to what Nurse Abdullah says he meant by the term*

*“professional complainer”. They may also have given too much weight to subjective feelings about how Nurse Abdullah came across under the pressure of the hearing interview. The handling of the issue relating to Nurse Abdullah’s application for another job was also poor and it was given too much weight in the decision taken.*

*Nevertheless, it is difficult to criticise the Hearing Chair and the HR manager too strongly. It is important to remember that, at the time, this was simply one of a number of cases that they were dealing with and the evidence that they were given by the Investigating Officer was poor.*

### The appeal letter

**8.189** Nurse Abdullah submitted a letter of appeal on 8 January 2016. On 14 January he was notified that the appeal date was set for 4 February, which was subsequently postponed to 11 February.

**8.190** Nurse Abdullah’s appeal letter is five sides of A4. It identifies three grounds for appeal:

- “Outcome received is disproportionate to the misconduct
- Undue weight attached to factors not relevant to allegations
- Failure to consider mitigation, including a failure to consider impact of A Abdullah’s health at the hearing.”

**8.191** On the issues of the disproportionate outcome, the appeal argues that an *“employer should not automatically jump from a finding of gross misconduct to summary dismissal”*, and that *“the misconduct and the consequences of it were not so serious that summary dismissal was the only suitable outcome.”*. The letter says:

*“I admitted to writing a letter to support my distressed colleague and in doing so acted wholly out of character. I quickly realized that this was the wrong thing to do, it was wholly inappropriate, unacceptable, and failed to properly care for the patient in line with my NMC commitments. At the end of a long and tiring shift my judgment was clouded by feeling sorry for my colleague. I lost sight of my wider*

*responsibilities and on reflection I realize I stupidly put my colleague before the patient."*

**8.192** With regards to the Petition the appeal says:

*"I also signed my colleague's petition, agreeing she was not lazy and rude (in my opinion). I should have realized it was an odd way to do things and not in line with correct practice."*

**8.193** The appeal goes on to say that a number of issues were given undue weight, including the application for another post.

**8.194** With regards to the Letter, the appeal says:

*"The panel lost sight of the essence of the allegation by becoming fixated on the 'untrue letter' element of it. They then subsequently dismissed my reflections as I maintained that the patient was somebody who complained and that by failing to agree it was untrue I showed a lack of insight. They concluded that because the patient had only formally complained once that she did not have a history of complaining and therefore what I said was untrue, entirely discounting my personal experience of the patient day to day and the reality of the situation."*

**8.195** In mitigation the appeal says that Nurse Abdullah's "exemplary record" has not been given sufficient weight, or the fact that he had only been a nurse on the Ward for nine weeks when the incident occurred.

**8.196** Regarding Nurse Abdullah's performance at the hearing, the appeal letter says:

*"I am not used to being in situations like a hearing and find it very difficult to answer questions when put on the spot. I believe my stressed condition, mental state and medication exacerbated this further and were not considered by the panel."*

**8.197** The appeal concludes by saying:

*"I am fully aware I have made a serious mistake and take full responsibility for that, naturally I expect there to be consequences, however, I believe that the sanction is disproportionate to the misconduct, when all of the facts and my reflections have been properly considered."*

### The management response

**8.198** The Hearing Chair submitted a management response to the appeal letter. It is eleven sides of A4.

**8.199** The RCN representative told us:

*"I don't think in all my cases, and I have done hundreds of cases, I've ever received such a lengthy and targeted response."*

**8.200** The RCN representative agreed that "rebuttal" was a good way of describing the document:

*"Yes, rebuttal is the right word, isn't it? 'This is why you're wrong about this, this is why you're wrong about this, this is why you're wrong about this', rather than considering things."*

**8.201** We asked the Senior Nurse Manager about the purpose of the management response. She told us:

*"It's for the person who is hearing the appeal, it was exactly the same in this case, Amin appealed to me, and he wasn't in a place at that time where he could do what we call "Grounds for appeal", which were the specific points he wanted to appeal against, so I said, that's fine, come back to me when you have them, at that point then we will move forward and plan to hear it."*

*"As soon as I got his grounds for appeal I gave those to [the Hearing Chair] to say, these are his grounds for appeal, please respond to them. He responded back, in terms of the management case, that then goes to Amin to say, this is what the*

*manager will be presenting at your appeal, and that's the kind of appeal starting point."*

**8.202** The Hearing Chair told us that the response was written in the normal style used by the trust and that it was approved by the trust's Employee Relations Advisory Service (ERAS). It begins with a summary of the case:

*"Amin Abdullah's employment was terminated on the grounds that his actions constitute a serious breach of professional code of conduct (Nursing and Midwifery Council (NMC) Code) and a breach of trust with Imperial College Healthcare NHS Trust as his employer, which amounts to gross misconduct under section 8.2 of the Trust disciplinary policy and procedure. Amin Abdullah was issued with summary dismissal on 21<sup>st</sup> December 2015 when he was informed of this decision in writing."*

**8.203** The management response then goes through each of the grounds of appeal. Addressing the question of whether dismissal was a proportionate response, it says:

*"I consider Amin Abdullah's actions in writing an untrue letter about a patient who had made a complaint a very serious breach of the professional conduct expected of a registered nurse outlined in the NMC Code, namely that:*

- you must make sure you do not express your personal beliefs (including political and moral beliefs) to people in inappropriate way*
- you must act as a role model of professional behaviour for students and newly qualified nurses and midwives to aspire to*
- you must not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or a member of the public who wants to raise a concern, and*
- you must protect anyone you have management responsibility for from any harm, detriment, victimisation or unwarranted treatment after a concern is raised.*

*"In particular, evidence was presented to suggest that Amin Abdullah had colluded with another member of nursing staff to present untrue information in the form of a letter in response to them both being named in a complaint from a patient. This had the effect of discrediting the patient who had every right firstly to make a*

*complaint, and secondly for this complaint to be investigated and managed in accordance with the Trust Complaint policy. In doing this his actions were outside of the Trust Complaints policy and of the NMC Code and served to obstruct and victimise a person he was caring for who wanted to raise a concern."*

**8.204** Later in the management response it says:

*"Amin Abdullah's admitted providing a copy of his letter to another member of staff, who used it as the basis of her complaint response and to garner signatures from a petition against the patient from ward staff - which was signed by Amin Abdullah."*

**8.205** The management response also says:

*"Your colleague ... had informed you that a patient had complained and had mentioned both you and her personally in the complaint. You chose to write an untrue letter about this patient in response to your conversation with [Nurse X] and in doing so both failed to follow the correct complaints procedure and failed in your professional duty to 'prioritise people' and 'promote professionalism and trust' outlined in the NMC code. I consider that understanding how to correctly respond to complaint is fundamental to the practice of nursing. Your colleague ... had informed you that a patient had complained and had mentioned both you and her personally in the complaint. You chose to write an untrue letter about this patient in response to your conversation with [Nurse X] and in doing so both failed to follow the correct complaints procedure and failed in your professional duty to 'prioritise people' and 'promote professionalism and trust' outlined in the NMC code. I consider that understanding how to correctly respond to complaint is fundamental to the practice of nursing."*

Comment

*Many of these points replicate the issues raised in the hearing as recorded in the outcome letter. However, a number of points stand out.*

*The repetition of the word “untrue”, which is used seven times in the management response (“untrue letter”, “untrue information” etc).*

*The emphasis on breaches of the NMC code. This is despite the fact that most of the references to the code have little or no connection to the facts of this case, for example references to the expression of personal beliefs and “victimisation”.*

*The presentation of the facts in a particularly negative light, for example the suggestion that Nurse Abdullah “colluded” to discredit the patient.*

*While it might be understandable that a Hearing Chair feels defensive about the decision that they have made, it is important that they remain objective and dispassionate and do not make claims that cannot be clearly supported by the evidence.*

**8.206** The management response continues to rely on the lack of evidence about other complaints by the patient as the basis of Nurse Abdullah’s dishonesty:

*“No evidence that the patient was a vexatious or serial complainant was presented to me as mitigation during the hearing.”*

*Comment*

*This confirms the importance to Nurse Abdullah’s case of the Investigating Officer failing to disclose the evidence of the complaint made against her.*

**8.207** The management response deals directly with Nurse Abdullah’s explanation of what he meant by the term “*professional complainer*”. In the appeal letter Nurse Abdullah says that he wasn’t “*seeking to justify what I did, nor excuse my deeply regrettable actions, I simply want to clarify*” what I meant. The management response says, however, that:

*“I am concerned that Amin Abdullah has failed to reflect and learn and is continuing to justify his actions.”*

Comment

*This criticism appears odd - it is appropriate to attempt to justify ones' actions in an appeal letter.*

*What the Hearing Chair really appears to be objecting to, however, is Nurse Abdullah's contention that the Letter was not "untrue". Nurse Abdullah was entirely consistent in what he meant and why he said it, yet this consistency has been held against him. He has thus been put in a 'Catch 22' situation where he can only demonstrate his honesty if he changes his version of events.*

*The origin of this paradox lies in the Investigating Officer's mistaken contention that having a different interpretation of events is reliable evidence of dishonesty, i.e. that the only explanation for Nurse Abdullah believing that the patient was a "professional complainer" was that he was dishonest. The problem is exacerbated by the failure of the Hearing Chair to challenge it.*

**8.208** On the Petition, the management response says:

*"Furthermore, Amin Abdullah signed a petition circulated by the colleague also named in the complaint, which makes reference to this patient, below twelve other members of staff - the majority of whom are more junior to him (including healthcare assistants and student nurses). Amin Abdullah made no effort to remove this petition from circulation or to escalate its existence to his line manager. I found that it is likely that he would have had a detailed understanding of the background to this petition, which was eventually sent to his line manager by his colleague accompanied by a copy of his letter as part of the complaint response from her."*

**8.209** The management response goes on to say:

*“Amin Abdullah stated in the hearing that he had lost all confidence in his ability to perform his job as a registered nurse on [the Ward] as a result of the investigation.”*

*Comment*

*The Hearing Chair refers to Nurse Abdullah’s loss of confidence twice in the management response, although he does not make clear what he considers its significance to be. It does not, however, appear to have raised concerns about Nurse Abdullah’s mental state and the need to give him extra support.*

**8.210** This section of the letter concludes:

*“The Trust disciplinary policy outlines the offences that are serious enough to warrant summary dismissal. These include:*

- *Serious breach of a professional code of conduct*
- *Breach of Trust - Any act which causes irreparable damage to the relationship of trust and confidence between the employee and the Trust.*

*“I consider that Amin Abdullah’s actions fit the criteria of what is defined as gross misconduct in the Trust disciplinary policy and therefore the sanction of summary dismissal was reasonable and proportionate.”*

*Comment*

*The issue of breach of trust is emphasised here. We presume that this relates to Nurse Abdullah’s alleged lack of truthfulness.*

**8.211** The management response also makes several references to the other job which Nurse Abdullah applied for (in response to his suggestion that this issue was given undue weight). The management response says:

*“The allegations called into question Amin Abdullah’s professionalism and ability to adhere to Trust policy which is an expectation of him in his role. I consider that Amin Abdullah has a professional duty to be open, honest and transparent with colleagues in the Trust, including a recruiting manager and he failed to do this. I considered this when reaching my decision, but did not give it undue weight in reaching my outcome.”*

**8.212** Later the response says:

*“I felt that his actions were relevant in that they demonstrate a lack of openness, honesty and transparency”*

**8.213** It goes on to link this to pattern of dishonesty:

*“I note that in his investigatory meeting with [the Investigating Officer] he initially denied writing the letter and only admitted to this when [the Investigating Officer] prompted him as to the importance of being honest ... I feel that this demonstrates a pattern of hiding relevant information from colleagues.”*

Comment

*Even if we were to accept that Nurse Abdullah had done something wrong in his job application (for which we can find no evidence), references to the professional duty to be open and honest with colleagues is an exaggerated response to what may just be seen as an administrative issue. As we have noted this issue was raised without notice at the hearing and Nurse Abdullah was not given a proper opportunity to respond to it. This was unfair.*

**8.214** The management response continues:

*“My impression from the evidence submitted and from Amin Abdullah’s mitigation presented at the hearing was that his on-going priority is in protecting his own professional reputation and the reputation of his colleague at the expense of*

*responding to a patient complaint in a confidential and professional manner in accordance with Trust policy and the NMC code.”*

**8.215** The management response addresses Nurse Abdullah’ s comment that he has worked professionally by saying:

*“I have a record of [the Investigating Officer] stating that Amin Abdullah had acted professionally since the complaint had been received and that he had been asked not to discuss the case with colleagues and that he had adhered to that request. I have no record or recollection of [the Investigating Officer] saying in the hearing that it was her impressions that Amin Abdullah was a good nurse either before or since the incident.”*

**8.216** We asked the Senior Nurse Manager how any inaccuracies in the management response would have been dealt with at the appeal hearing. She told us:

*“Those are the kind of questions I would ask at appeal, an appeal in this organisation we hear in the same way as we hear a disciplinary, so it’s the presentation of two cases and then an ability to question those. One of the questions we would always ask to the manager, if you were aware of this, this and this, if that had been disclosed to you - it’s a standard question - would that have changed the sanction you were given? That’s part of what we would sit and unpick.”*

#### *Comment*

*The management response comes across as defensive and presents a very negative response to Nurse Abdullah’s case. It reads as if the intention is to re-state the case against Nurse Abdullah, rather than to summarise the issues and explain why the initial hearing reached the conclusion that it did. The opportunity to reflect on some of the weaknesses of the case against Nurse Abdullah is not taken.*

*In at least one case (see below), the narrative in the management response differs from the outcome letter. While this is problematic, such inconsistencies would, we hope, have been picked up by the person chairing the hearing.*

*In some instances, the response refers to issues, not having been raised at the hearing - particularly points that Nurse Abdullah has raised in mitigation. While it is valid to point out that these issues were not raised at the hearing, the response might be read as saying that it was too late to raise those issues or that they will not be considered. It would have been helpful if these comments were balanced with the idea that although an issue wasn't raised at the hearing, it is appropriate for the appellant to raise it at the appeal hearing and that it will be considered there.*

## The appeal process

**8.217** It was planned for the Senior Nurse Manager to hear the appeal. She gave us some thoughts on the processes. She told us that its purpose is:

*"To look at the process and the judgement around someone's decision to dismiss, or whatever sanction is appealed against. I would have looked at the initial management case and reasonableness of that, but also, we would look very strongly at appeal as to mitigation. My understanding from Amin's appeal grounds is, he was presenting significant mitigation for what might have been poor or clouded judgement at the time, and had also submitted a highly reflective appeal document that was suggestive that he was aware that he had made a significant mistake. He had reflected on why he might have made that mistake, and what he might do going forward.*

*"In appeal, you are almost pro the appellant, it's their final opportunity. I would have listened to all of that, I can't say for definite what my judgement would have been, but he had very strong grounds for appeal.*

## Analysis: the Letter and the Petition

**8.218** The lack of records makes this a difficult issue to untangle. Up to the hearing on 16 December, all the accounts share a common view on the role played by the Petition and the Letter. In our interviews, however, this consensus broke down and we were told various alternative theories, both about what happened to the Letter and Petition and with Nurse Abdullah's role with respect to them.

**8.219** Although the Hearing Chair told us that the outcome letter was a complete and accurate record of the hearing, he also had other recollections of what happened to the Letter. He told us that he understood that it was "*displayed on the ward*". He later told us of his recollection that:

*"That document [the Letter] was pinned on to the notice board in the staff room and the staff were canvassed to sign that. [Nurse X] and Amin had gone round asking staff to sign it, and that was discussed at the hearing."*

**8.220** The HR manager told us that there had been evidence at the hearing that the Letter and the Petition had been stapled to each-other. She told us:

*"We did hear that in the hearing to say that because they were stapled together, and I am not sure if my memory serves me correctly but there were 15 or 17 people he eventually went to for signatures, and by the time it was circulated around the staple broke or something, so some people saw both and other people saw just this. They were told that it is about the deputy ward manager producing a defence against a patient and signatures are required. I am not sure what personal interaction would have happened between the staff and Amin at the time."*

**8.221** We asked the Ward Manager her understanding was that the Petition was a piece of paper which Nurse X passed round for people to sign. We asked if it was put on the noticeboard in the ward. She responded:

*"Not that I remember, because if it had been on the noticeboard I would have taken it down."*

*Comment*

*It is interesting that, two and a half years later, the recollection of both the Hearing Chair and the HR manager is so different from the written evidence and the conclusions that they recorded as having reached at the time. It is not possible to say, however, whether this results from errors in the documentation at the time, or failures of recollection now.*

*It seems unlikely that if the Petition had been displayed on the ward's noticeboard that none of the staff on the Ward would recall that, and in particular that the Ward Manager has no recollection of it. Similarly, if the Letter had a wider circulation, given its inappropriate language and controversial contents, it is surprising that none of the people who might have seen it recalled doing so.*

**8.222** In the management response to Nurse Abdullah's appeal (dated 12 January 2016), the Hearing Chair did not suggest that Nurse Abdullah had done anything more than to provide the Letter to Nurse X, but did introduce the idea that Nurse X had used the Letter to gather support for the Petition:

*"Amin Abdullah's admitted providing a copy of his letter to another member of staff, who used it as the basis of her complaint response and to garner signatures from a petition against the patient from ward staff."*

Comment

*The management response was written a fortnight after the hearing. There is no change in the narrative with regards to Nurse Abdullah's action, but the suggestion that Nurse X shared the Letter more widely is introduced for the first time. This is not consistent with the evidence produced up to that point.*

**8.223** We asked the Senior Nurse Manager for her understanding of the role of the Letter and the Petition. She recalled her initial conversation with the Investigating Officer:

*"There was this ... which is the signatory list [the Petition], and then on top of it was a kind of written statement [the Letter] ... I think he [Nurse Abdullah] disclosed to her [the Investigating Officer] that not only had he signed this, but he had also been the author of this particular letter, which had been presented by another one of the Band 6 staff [nurse X]."*

**8.224** We told the Senior Nurse Manager that our understanding was that only the Petition was circulated. She told us:

*“What I was made aware of is both. What order they were given out in, I wouldn’t know.*

*Q. When you say “both” -*

*A. What was shown to me was the letter and the signatories. Now, I believe as part of the investigation, that a number of people signed this, not realising that this would have been attached to this.*

**8.225** We asked the Senior Nurse Manager if she thought the Letter and Petition were connected. She told us:

*“Absolutely, in my mind they were absolutely connected ... connected in the sense that they went together, I don’t think I necessarily even thought about whether you could have signed this without seeing this, I think I made an assumption that the people who had signed this had read this, and therefore in signing it were saying, and we agree.*

*Comment*

*The Senior Nurse Manager was shown the Letter and the Petition together. It is not surprising that she therefore associated them together in her mind.*

*In both her investigation report and current recollection, the Investigating Officer is clear that the two documents are separated and that the signatories to the Petition had not seen the Letter. Nevertheless, it is notable that the people who learnt about the case from the Investigating Officer gained a different impression. This demonstrates both the poor quality of the investigation that the Investigating Officer carried out and leaves open the possibility that the Hearing Chair and the Senior Nurse Manager gained a different impression about the relationship between the Petition and the Letter from the Investigating Officer verbally.*

## Analysis

*Accounts diverge about the distribution and visibility of the Letter and Petition. It is clear, however, that as time passed and the disciplinary case against Nurse Abdullah was pursued, the description of his behaviour became worse.*

*Up until the point of the hearing, the evidence is unequivocal. The Petition was put together by Nurse X. The Letter was written by Nurse Abdullah for Nurse X and provided with the request that she not use it, but for it to form the basis for her own letter. That consensus is based on:*

- *Nurse Abdullah's consistent statements, including his reflective statement and notice of appeal*
- *the evidence collected by the Investigating Officer, including all her interviews*
- *the investigation report*
- *the hearing outcome letter, which says that these points were "established" at the hearing.*

*The Investigating Officer told us that she still has this understanding of events (although, as we have noted, she does not appear to have corrected the Senior Nurse Manager's misunderstanding gained after speaking to her).*

*The outcome letter, which both the Hearing Chair and HR manager told us was complete and accurate and is the only authoritative record of the hearing says that "It was established during the hearing that you [Nurse Abdullah] passed your letter over to your colleague [Nurse X], and that you then signed a petition circulated by your colleague"*

*It is not easy to reconcile these contradictions. The accounts of the Hearing Chair and HR manager veered between certainty and vagueness and are not consistent with the written records which they maintain are accurate.*

*It is of concern that so many versions of these events have circulated. It would have been better if staff in the trust who were not directly involved in the case when asked to comment on factual issues either referred back to the authoritative records (such as the outcome letter) or avoided commenting altogether.*

## Whistleblowing

**8.226** We have been asked to consider whether the Letter constitutes whistleblowing.

### *Comment*

*We believe that the evidence is clear that Nurse Abdullah thought that the purpose of the Letter was to support his colleague, rather than to raise issues with patient care or safety. Furthermore, having reviewed the contents of the Letter, we do not believe that it raises concerns about patient care or safety that could be considered to be whistleblowing.*

## 9. Other actions taken by the trust

**9.1** In the previous section we considered Nurse Abdullah's disciplinary process. In this section we discuss how the process was handled from the perspective of the impact on Nurse Abdullah, and at subsequent actions taken by the trust.

### Support for Nurse Abdullah before the hearing

**9.2** As we have noted there was a long delay between Nurse Abdullah's initial interview and the hearing. Nurse Abdullah's partner told us that Nurse Abdullah found the delay stressful and that he became distressed. Nurse Abdullah was put on medication in September to manage his stress. He was given a standard dose of Diazepam which he continued to take over the period covered by this report. Nurse Abdullah's partner is concerned that this might have affected how he came across at subsequent hearings.

**9.3** On 30 November Nurse Abdullah's RCN representative emailed the Investigating Officer as follows:

*"I am emailing on behalf of RCN member Amin Abdullah.*

*"I understand allegations against Mr Abdullah are being investigated under the Trust disciplinary policy.*

*"The investigation seems to have protracted, and I am disappointed to hear that Mr Abdullah has not been communicated with, or provided with reasonable updates.*

*"The impact of this has been detrimental to his health, so much so that I believe an urgent referral to Occupational Health may be required.*

*"I have attempted to telephone you to discuss this, but switchboard have put me through to an unidentified answerphone, so I have not left messages.*

*"Please provide an update on the investigation status, and/or outcome.*

**9.4** The Investigating Officer wrote to her contact in the trust's HR department on 8 December saying that she had just picked up the email and asking for assistance in replying. She goes on to say:

*"I will basically say it did take longer than expected however, I did move it as swiftly as workload allowed and a lot of other things took priority eg. Covering patient care due to shortage of staff. I will also inform her that I did inform Amin that it was taking longer than expected and apologised. I will point out I meet up often on the ward and he did not raise any issues with me regards how long it was taking."*

**9.5** The Investigating Officer replied to the RCN representative on 15 December in those terms.

**9.6** The Investigating Officer told us that she was not Nurse Abdullah's line manager but that she discussed the reference to occupational health with his line manager who told her that Nurse Abdullah had declined the referral. She also said that she spoke to Nurse Abdullah directly and he again declined the referral.

#### *Comment*

*The main focus of the response from the Investigating Officer was on the reasons for delays. There appears to be little reaction to the request for an urgent referral to occupational health (although she told us that she did deal with that in another way).*

*It is noticeable that while Nurse Abdullah raised his anxiety with his representative he does not appear to have done so with colleagues in the trust. However it would not be surprising if he found it difficult to confide in the Investigating Officer while she was in the process of investigating him.*

**9.7** Nurse Abdullah also highlighted the strain that he was under in his grievance, submitted on 1 December. This makes specific reference to the stress caused by the delay in the process and the lack of updates that he had been given. It also says that he sought counselling support from the RCN.

**9.8** The hearing outcome letter says that in the hearing the Investigating Officer gave an explanation of the delay and apologised for it.

**9.9** The outcome letter also noted that:

*"On your behalf, [the RCN representative] expressed concern about you not being kept updated on the progress of the investigation. [The Investigating Officer] stated that she had outlined the purpose of the investigation during the initial meeting with you held on 15<sup>th</sup> September. She then met with you approximately six weeks ago and also emailed you on 2<sup>nd</sup> December to say that her investigation had been sent to a senior manager to consider. I note that as [the Investigating Officer] regularly works with you at the Ward you had the opportunity to contact her for updates however you did not avail of this option."*

**9.10** In his appeal letter, Nurse Abdullah wrote:

*"This hearing took 3 months to be heard, I had little to no contact regards progress and I was suffering deeply from stress, so much so that I was under my GP, having counselling from the RCN and taking Diazepam, consequently at my hearing, on reflection I was too unwell and medicated to answer questions properly. I am aware I spoke a lot of nonsense and I am sorry for that also."*

**9.11** In her interview with us, the Investigating Officer told us:

*"Amin was offered to go to both Occupational Health and also the Contact Service (this is a counselling service to support staff in difficult times), and his line manager also had one-to-ones with him, supporting him."*

**9.12** A colleague of Nurse Abdullah told us that Nurse Abdullah was "a quiet person". She said that while he was confident in himself, he was quiet, so didn't come across as an outwardly confident person.

Comment

*Although there were clear signs of Nurse Abdullah's anxiety, it could be that his demeanour meant that this was not identified.*

**9.13** The colleague told us that they spoke to Nurse Abdullah before the hearing and told him:

*"You'll be fine, don't worry about it, it's fine. Whatever you've done, you gave that letter to [ Nurse X], that was for her personal use only, that's it. You'll be fine, and it was just a bit of support - don't be writing things down for nurses, because it can backfire on you, so you just make sure.*

*"He was like, yes, and he kept going on, he's done his chemo [training] and he's applying for a job at chemo.*

*"With Amin, he would put on this brave face, but you'd know that he was really worried, he'd say, I'm fine, I'm fine, I'm okay, I'll be alright."*

**9.14** The Ward Manager described Nurse Abdullah as "very private". She told us

*"He was fairly [shy], he wasn't an overbearing person ... his personality was fairly mellow.*

**9.15** The Ward Manager also noted that during the disciplinary process Nurse Abdullah did not take time off sick and continued to work as normal. She described this behaviour as "exemplary".

**9.16** The Hearing Chair addressed the issue of stress in the management response to Nurse Abdullah's appeal document. He says:

*"In the hearing Amin Abdullah stated that you had found the investigatory process stressful. [The Investigating Officer] explained that her investigation was a lengthy one as several staff had to be interviewed as part of this investigation. Additionally she had needed to complete another related and complex investigation in tandem*

*with the investigation into the allegations made against you, that with no administrative support which had delayed the process further. She apologised to you for any delay this may have caused. Amin Abdullah did not state that he was having counselling from the RCN before the hearing to myself nor did your line manager state that you had had this discussion with her as part of her witness statement, nor did you present this as mitigation during the hearing. Amin Abdullah did not state that he was taking diazepam or that he was not in a fit state for the hearing to proceed, either before or during the hearing. I note that the NMC Code states that "you must maintain the level of health you need to carry out your professional role" and I am concerned that despite presenting this as mitigation here, Amin Abdullah is also presenting a good sickness record as mitigation ...."*

Comment

*The management response is unduly harsh.*

*It is obviously correct to point out that issues that were not raised at the hearing could not be taken account of. However, if this is seen as a trust response, there is no sense of the trust being open to taking account of these issues, or showing compassion for them.*

*Furthermore, although the final sentence is slightly cryptic, it appears to imply that because Nurse Abdullah had not taken any time off work (which his manager says is "exemplary"), it is somehow "concerning" that he is saying that he was stressed during the hearing. This is unfair.*

**9.17** The RCN representative that supported Nurse Abdullah at the hearing told us:

*"I never got the impression they cared too much about his wellbeing."*

## The dismissal

**9.18** Interviewees expressed concern about the way in which Nurse Abdullah's dismissal was communicated to him. Rather than anyone speaking to him directly, he was sent an email and the Ward Manager was asked to tell him to open it. The Ward Manager told us:

*"If I remember rightly, [the Hearing Chair] called me because Amin was on duty, he called me and he said, I believe - this is obviously from memory - I know he asked me to ask Amin to access his emails and to open up his emails. I was extremely nervous about that and I felt quite - that is pretty something, isn't it? I am a Band 7 and at the time I remember, and I can't remember why, there was another Investigating Officer around, yes, I think she was the Matron in the Division, and I specifically asked her if she would support me in that and she said 'No', she didn't want to get involved. I had to and I was instructed, in so many words, I had no choice but to tell Amin to open his emails, not to tell him that he had been dismissed, but to bring him in [to my office] and ask him to open up his email.*

*"I believe that he should have been told personally by someone who had been leading the investigation. I don't believe it is a case of 'I will just get the Ward Manager or the person around to do that' ... I think that was deeply insensitive."*

**9.19** The Ward Manager told us that she left the room and left Nurse Abdullah to open the email on his own. She told us *"I just gave him a moment"*.

**9.20** The RCN representative that supported Nurse Abdullah at the hearing said that he considered this to be an *"appalling"* way of dealing with the dismissal.

**9.21** The Hearing Chair told us regarding the dismissal:

*"I couldn't have informed him at the end of the hearing because I needed to hear the second case and I needed to think on it, and also go through the process of getting it signed off through ERS [Employee relations].*

*"Custom and practice would be, when I've been involved in cases before, that that letter is sent or emailed to the individual, and support to that individual is offered by their line manager, who was [the Ward Manager]. I do remember ringing [the Ward Manager] and saying I've made a decision to dismiss him, he will get that*

*information today, are you available to offer him support, and she said yes. There were no concerns around that being a concern. I also rang the Investigating Officer for surgery to say that a member of staff was being dismissed, that [the Ward Manager] had been asked to offer support but to keep an eye on [the Ward Manager] in case she needed support. Rightly or wrongly, that was the way we did things at the time."*

**9.22** The Hearing Chair added that his office was in another hospital on another site. He told us that he had to remain on that other site due to capacity issues which he had to manage on that day as a more senior manager was off. He told us that he made every effort to ensure that local managers were available to support Nurse Abdullah.

### **Support after the dismissal**

**9.23** Nurse Abdullah's RCN representative told us that he had concerns about the process after the dismissal:

*"They were very difficult after that. Obviously, it was going into the Christmas and New Year period as well, by which time it was very difficult to get dates. The initial date they finally settled on for the appeal was one that I couldn't do and I had to kick up a fuss and say 'It's ridiculous to go through all this process and then not give him the chance to reschedule which you should do', and then eventually they did and it was set for a day I could attend. But, nothing was made easy for him after, that was my feeling."*

### **Comment**

*Although there is no specific guidance in the Trust's disciplinary procedure or ACAS documents, it is generally regarded as poor practice to dismiss someone by email or letter, unless their absence from work gives the employer no alternative.*

*Employees should always be treated fairly and with respect and be left in no doubt about the reasons behind their dismissal. The best way to ensure this is to communicate the decision face-to-face, rather than by allowing the employee to read*

*it solely in a letter or email. Details such as notice period and what the employee is meant to do during notice (if given) are better communicated in person and appropriate security measures can be taken if an employee needs to be escorted from the workplace. Only when face-to-face communication is not possible should the written notification stand alone. Nurse Abdullah was at work and on site so the dismissal should have been handled better.*

**9.24** The Ward Manager told us that after the dismissal Nurse Abdullah contacted staff on the Ward. She told us that these conversations indicated that he was in a distressed state. She was surprised that this information was not passed on to her.

#### The summary report

**9.25** After Nurse Abdullah's death, a Senior HR Manager at the trust was asked by an associate director of human resources to review the case and the actions of the trust up to that time. The Senior HR Manager had not had any involvement in the case up to that point. She wrote a report that was dated 26 April 2018. She told us:

*"I was asked to look at the details of the case and what had happened in and around that time. I can't remember when I was asked to do that, there were some discussions with Amin's partner ... and he was obviously very concerned about aspects of the case and he challenged that quite robustly...*

*"I was then asked to put together a summary report just to have a look into the case. I took that as a desktop review of the case, have a look at what happened, and see whether or not it was carried out in line with the trust policy, if there is anything there that might be of concern to the trust in the way that it was handled, if there were any lessons that we can learn from it, to make sure that these things don't happen again. I put together that summary report."*

**9.26** The report says that the Senior HR Manager "reviewed all the paperwork generated by the disciplinary case". At interview we asked what specific documents she looked at. She told us:

*"I looked at probably the investigation report into Amin's case, the outcome letter. I reviewed the appeal documents as well, so that included the investigation notes that [the Investigating Officer] had taken from her meeting with Amin, and Amin's reflective statement."*

**9.27** We asked the Senior HR Manager if she had read the notes of the interviews that the Investigating Officer had carried out. She said that she had not.

**9.28** The summary report says that the Senior HR Manager spoke to the Hearing Chair and the HR advisors, *"but not in any detail"*. She told us:

*"I didn't consider that I was carrying out a thorough investigation of the process, so I didn't take statements and present it in that way."*

**9.29** We asked about the purpose of the report. She told us:

*"The purpose was to look at the case, see whether or not there were any concerns about how it was handled in line with trust policy, make some recommendations if need be, but I would also consider it to inform the Board about the case and what had happened, because it became apparent to us that there might be some publicity around the case."*

**9.30** She also told us:

*"The report itself was, as I said earlier, to provide the detail of the case to the Executive team; I wasn't even sure who, to be honest, at the time, and so I have tried to be very clear about this. This was not an investigation looking into what had happened or the validity of the allegations or the decision to dismiss. I think I was asked to just provide a chronology and a bit of a summary about the case, so I drew out things that I thought were relevant. There was no suggestion at the time of any misconduct on the part of anybody involved."*

**9.31** The report itself is short (three sides of A4 text) although there are also a number of appendices including a copy of the Petition, the Letter and the disciplinary hearing outcome letter. It begins with a summary of the events which takes one and a half sides. There is then one side of text on findings and half a side of text with recommendations.

**9.32** The findings begin with the following:

*"The allegations against AA [Nurse Abdullah] were serious and warranted the ensuing investigation. The allegations were presented to AA who had the opportunity to respond.*

*"A review of the investigation interview notes indicates that the investigator was aware of AA's anxiety and took this into account in the manner in which the interview was conducted. I also note that the investigator advised AA to contact his trade union representative for support."*

**9.33** The report goes on to discuss the reason for delays. It then notes the issue of the Ward Manager not attending the hearing, which it describes as an *"administrative error"*. It also refers to communication between the trust and Nurse Abdullah after the hearing which it says was conducted *"in a professional and friendly manner"*, and says:

*"There is nothing in the communication about the appeal hearing that gives any cause for concern."*

**9.34** The substantive issues in the case are dealt with in a single paragraph, which says:

*"A patient exercised her legitimate right to complain about the care that she was receiving. Her complaint criticised both AA and his Band 6 colleague by name. As a result, AA agreed with his Band 6 colleague that they should circulate a petition which was prompted by their unhappiness about the patient's decision to submit a complaint. It was also clear from the content of the uncirculated letter/petition that at some point it was AA's intention that a statement should be circulated which explicitly criticised the patient. I believe it was reasonable for a manager to dismiss in these circumstances. The rationale for this decision was clearly described in the letter confirming the outcome.*

## Comment

*This is a very brief summary of the case that led to Nurse Abdullah's dismissal. It does not reflect any of the nuances relating to the differing views about who the criticism was aimed at in the patient's original email. Furthermore, despite its brevity, the summary of the case includes important inaccuracies:*

- *It is incorrect to say that the Petition was "prompted by ... unhappiness" about the complaint. In fact it was a response to a request from the Ward Manager.*
- *The summary report says that Nurse Abdullah "agreed" with Nurse X "that they should circulate a petition". Neither the investigation report nor the hearing outcome letter (which the Senior HR Manager read), found that Nurse Abdullah was involved in circulating the Petition. This also contradicts the evidence from the interviews with staff who signed the Petition.*
- *The report says that "it was clear" from the Letter and Petition that "at some point" it was Nurse Abdullah's intention that "a statement should be circulated which explicitly criticised the patient" (presumably the Letter, or something along the same lines). Again, this conclusion contradicts the findings of the investigation report, the hearing outcome letter and Nurse Abdullah's consistent statements as to his intention in writing the Letter.*

**9.35** We asked the Senior HR Manager if the conclusions that she reached about Nurse Abdullah's involvement in circulating the Petition was just an assumption. She told us:

*"It's hard to say. I read Amin's interview on the 15 September and I can't remember if I read any of the documents from [Nurse X's] case. I don't know if I read [Nurse X's] statement, so without looking back over that to see if there was anything in there that made me think that, it is difficult to say whether or not I have assumed it from reading it or whether there was something in there that made me think that."*

**9.36** We asked the Senior HR Manager on what basis she had said that Nurse Abdullah was party to circulating the Petition. She told us that was "because of the letter that he said he wrote. He wrote a letter that said "With regard to patient" - whoever - "recently

*discharged from the Ward, we, the undersigned, would like it on the record". She said that her understanding was that the Letter was the first draft for the Petition:*

*"It is possible I have assumed it based on stuff that I have read, but I can't remember anything specific that made me think that at the time."*

**9.37** The Senior HR Manager subsequently told us that Nurse Abdullah's statement, *"It was mine, however; I did ask her not to use my copy but to do her own"* gave her the impression that this was the first draft, rather than Nurse Abdullah having written it at the same time as signing Nurse X's Petition.

*Comment*

*Despite saying that it was not her role to comment on the facts of the case, in the summary report the Senior HR Manager made findings that contradicted the evidence that she had been given. She also developed new theories about the factual basis of the case that were not supported by the evidence. She was unable to give us a satisfactory explanation of her basis for doing so.*

**9.38** We asked the Senior HR Manager why the summary report didn't address the specific allegations made against Nurse Abdullah:

*Q. You didn't think about the allegations made against Amin at all? You didn't consider them?*

*A. "Probably I know I didn't cover them off in any detail. I have thought about them since ... but it was difficult to know what I was being asked to do with the report, so I do see what you are saying - I have drawn some conclusions as in I think I have tried to tie things together in terms of the process."*

**9.39** The summary report concludes by saying:

*"In general I believe that the case was handled in a sensitive manner and in line with the Trust procedures. However, there were delays in managing the case which*

*is a cause for concern. This is not an uncommon issue and the Trust needs to take further action to reduce the amount of time it takes to manage such cases. There is nothing in the way in which the case was managed that causes me to question the competency of the managers involved to handle similar situations in the future.*

## Comment

*It is possible to review the way in which a disciplinary case has been conducted without looking at the evidence itself. However, such a process needs to be handled carefully. Most importantly it needs to be made clear on the face of any report what its scope is.*

*The summary report provides no such clarity. There is no description of what the purpose of the report is and little discussion of the process followed to produce it. The Senior HR Manager was not able to describe clearly the purpose of the report that she wrote. That lack of clarity is evident from the report itself.*

*The distinction between a review of process and a review of the facts is particularly problematic in a case such as this where the evidence was seriously flawed, but the process followed was generally uncontroversial.*

*The report therefore fell into the trap that it purported to give the work previously carried out by the trust a clean bill of health despite not being in a position to do so.*

*Responsibility for this failing falls partly to the commissioner of the report, but mainly with the Senior HR Manager. If she was unclear of the purpose of her report, she should have sought clarity. She should also have made clear in her report what she had done and what she had not done. Finally, she should have made clear in her report the scope of her conclusions.*

*The summary report gave the trust false assurance that it had done nothing wrong. It is therefore unsurprising that the trust's responses to questions after Nurse Abdullah's death were seen by those close to Nurse Abdullah as a 'cover up' as it was working on incorrect information. The summary report was unacceptable.*

## Quality of Imperial's policies

**9.40** We reviewed the trust's policies, including the disciplinary procedure. The procedure appears to be broadly comparable with others that we have seen in the NHS. It

is up-to-date, regularly reviewed and there is nothing in it that would be inconsistent with, the recommendations of bodies such as ACAS in this area.

**9.41** The disciplinary procedure gives managers the responsibility to apply the policy "fairly". Its application is monitored by ethnicity, gender, disability and age by the HR department.

*Comment*

*The standard of the investigation in this case was poor, and there appears to have been little or no quality assurance of it. However, we have no particular concerns with the trust's policies, as opposed to their application. The issues in this case were largely about decision-making, rather than problems with policies and procedures.*

## **10. Conclusions and learning**

**10.1** It is clear from the evidence that Nurse Abdullah was treated unfairly.

**10.2** Collecting signatures was not the right response from staff to the issues that arose here. Nurse Abdullah was a relatively senior nurse (by grade, if not by length of service at this level) and should have known that signing the Petition was not appropriate. However, he was by no means alone in signing it and was in fact the thirteenth person to do so. None of the other signatories was disciplined.

**10.3** Writing the Letter was a mistake. The language used was inappropriate and disrespectful and it was wrong to use the patient's name. However, the evidence indicates that Nurse Abdullah wrote it for a specific purpose and intending only Nurse X to see it. This may have been naive, but we found no evidence that it was malicious.

**10.4** Nurse Abdullah had a strong commitment to nursing and his concerns about what had happened are evident as early as his initial interview with the Investigating Officer on 15 September. The impression Nurse Abdullah made at his hearing was interpreted negatively and was used as evidence against him. This is a difficult area to comment on both because it is impossible for people who were not there to judge what impression was made, and because it is hard for people who were there to objectively measure the state of mind of others.

**10.5** The evidence shows that the Investigating Officer repeatedly raised questions about Nurse Abdullah's honesty on the basis of little or no evidence. She also failed to disclose evidence which was critical of her but which tended to exculpate Nurse Abdullah. The trust should consider the implications for the Investigating Officer's integrity and, ultimately, her suitability for her role as a senior member of staff in the trust.

**10.6** The Hearing Chair and HR manager present at the hearing did not have all the information they needed available to them. However, they should have been more rigorous in their examination of the evidence they did have and more rigorous in testing it against the charges which had been put. The Hearing Chair in particular fell short in a number of ways:

- Failing to question the relevance of the complaints policy and making spurious references to the NMC code
- Poor handling of the fact of Nurse Abdullah's application for another job
- Writing a management response to Nurse Abdullah's appeal that was unduly harsh.

It is difficult to be overly critical of the Hearing Chair or the HR manager, however, because the evidence that they were given was so poor.

**10.7** Whether the trust gave adequate support to Nurse Abdullah is difficult to comment on objectively with the hindsight that we all have of the tragic events that followed. A delay of three months between the events and the hearing is troubling. We would have expected the trust's HR department to be more proactive in managing the case. The trust should work to minimise such delays in future.

**10.8** We heard evidence that Nurse Abdullah was a private man, and it was not necessarily evident to others that he was going through such a difficult time. However, his RCN representative's plea to the trust to provide support did not produce an appropriate response. The trust's HR team should in future take the initiative in ensuring that it fulfils its duty of care by ensuring the wellbeing of staff involved in processes like these.

**10.9** Staff involved in appeals note that the appeals are a normal part of the disciplinary process which may well lead to a decision to dismiss being reversed. Such an appeal may have succeeded in this case. It is not clear, however, that this is the impression given to staff who are going through the process and might get the idea that they have little hope. The trust should ensure that their communications with staff in the run up to appeal hearings give a balanced assessment of the possible outcomes.

**10.10** The summary report the trust produced after the events was poor. In judging the work of most trust staff in this investigation we are aware that we are looking back with the knowledge of a tragic event which they could not foresee. The same is not true of the Senior HR Manager who wrote the summary report after Nurse Abdullah's death. The lack of a clear mandate made her task harder but the mistakes in her report are all to the benefit of the trust's case. The summary report is a whitewash. It served to reassure the trust that it had handled the case with due care and attention. It failed to tell the trust what it needed to know. This is regrettable and did a disservice to the trust. The trust's response

to this case subjected those connected to Nurse Abdullah to unnecessary pain. The trust must be assured that any future review like the summary report presents an honest and complete picture.

## Recommendations

**10.11** In the light of these conclusions, we make the following recommendations:

**R10** The trust should ensure that investigations are given sufficient resources, that reports are of good quality and that allegations are properly defined.

**R11** Managers conducting disciplinary hearings should show greater rigour in evaluating evidence, particularly when allegations are poorly defined.

**R12** Better training should be provided to those who conduct investigations and hearings about how to ask questions, gather evidence, record, classify and evaluate it. Such training should ensure that staff are aware of the danger of relying too heavily on impressions of how people come across at interview.

**R13** Management responses to appeal letters should not be overly defensive and should allow for the fact that evidence is open to different interpretations.

**R14** Communications after a hearing where a punishment has been imposed should make clear that this is not the end of the process and that the appeal process is a genuine one, which will look at all representations fairly.

**R15** The trust should take active steps to support staff going through a disciplinary process.

**R16** The trust should provide regular written updates to staff under investigation if their case is not dealt with within the agreed time.

**R17** The trust should provide clear guidance on the purpose of internal reviews which should be carried out professionally and with objectivity. It needs to be made clear to

authors that their primary objective is to determine the truth rather than tell the organisation what they think it wants to hear.

**R18** The trust should give higher priority to ensuring that records of disciplinary cases are properly stored for future reference.

### Terms of reference and cross-reference to findings

#### Terms of reference for the independent investigation into the management of the Trust's disciplinary process resulting in the dismissal of Mr Amin Abdullah

An investigation is being commissioned into the disciplinary process and procedure that led to the dismissal of a Trust employee Mr Amin Abdullah on 16<sup>th</sup> December 2015. Tragically Mr Abdullah took his own life in February 2016.

The aim of the independent investigation is to establish firstly, whether there was any failure or weakness in the process and governance regarding the disciplinary procedure and what action was taken as a result and secondly if there is any learning for the Trust and the wider NHS and what that learning might be. Any learning captured will be made available to the NHS as a whole via NHS Improvement and other national bodies as appropriate.

#### Terms of reference for the investigation

1. Determine whether the process followed in dealing with Mr Abdullah's case was fair and whether it was conducted in line with the Trust disciplinary policy. The key areas of focus will be:
  - a. Provide a chronology of events relating to Amin Abdullah's disciplinary hearing.
  - b. Review the allegations against Amin Abdullah. Identify how they were determined, their truthfulness, timeliness and seriousness. Review whether they were proven in the context of the Trust's disciplinary procedures.
  - c. Review whether the investigation carried out was sufficient, thorough and fit for purpose. Review whether the investigation was carried out in line with the Trust disciplinary policy and procedures.
  - d. Outline the background history relating to Mr Abdullah and his nurse training and work at Imperial College Healthcare NHS Trust before he was subject to the investigation that led to his dismissal. Review whether the investigation should have taken his training and work record into account. Review how this related to the Trust disciplinary policy.
  - e. Review whether the Trust disciplinary policy was followed when identifying the investigation manager and disciplinary hearing chair. Identify whether there was any conflict of interest or bias that should have excluded either from being involved in the case.
  - f. Review the role of the Trust Human Resources department in respect of Amin Abdullah's disciplinary hearing. Review their role in relation to their responsibility for each step in the process and whether their actions were appropriate.

- g. Identify whether there were any oral or written communications with Mr Abdullah throughout the investigation and disciplinary hearing stages. Ascertain whether they were sufficient to ensure that he was up to date on the progress of the investigation and likely timeframe for the disciplinary hearing to take place.
  - h. Where there were delays in the process, explore why they occurred and ascertain the nature and justification. Identify whether action could have been taken sooner to expedite the conclusion of the case.
  - i. Review whether the Trust was aware that Mr Abdullah's mental health had deteriorated. If so, outline whether any adjustments within the disciplinary process and its timing should have been implemented as a result.
  - j. Was the quality of evidence used in the decision to dismiss robust? Was it in line with the advisory, conciliation and arbitration service (ACAS) guidance? Was the dismissal decision proportionate to the disciplinary hearing findings? If the evidence that led to the findings was considered to be flawed, was the dismissal decision fair and proportionate?
2. Consider whether the letter that Amin Abdullah confirmed at an investigation meeting on 15<sup>th</sup> September 2015 that he had written should have been treated as a case of whistleblowing in line with the Trust procedure for raising concerns. Review whether Amin Abdullah raised patient care concerns. If so, review whether they should have been considered in line with the Trust whistleblowing policy.
  3. Review the handling of the grievance raised by Mr Abdullah on 1<sup>st</sup> December 2015. Report on whether it was addressed in line with the relevant Trust procedure.
  4. Assess the extent to which the Trust's disciplinary policies and procedures align with the following ACAS guidance documents. Report on any deficiencies, and any recommendations for improvement. Review whether the Trust adhered to these guidelines in the case of Amin Abdullah.

Discipline and grievance hearing  
 Discipline and grievance: Code of practice  
 Discipline and grievances at work: the ACAS guide  
 Dismissing employees

- a. Comment on whether the Trust policy includes a requirement for consideration of an employee's background, and if not should such a requirement be included?
  - b. Review the support offered to Amin Abdullah and staff during the disciplinary process involving him. Review how this relates to the Trust disciplinary procedure. Report whether this reflects best practice such as that recommended by ACAS.
  - c. Review the Trust's approach to ensuring appropriate mechanisms are in place to check that dismissal decisions are fair and reasonable. Review the constitution of the disciplinary and appeal hearing panels and the training of panel staff. Offer any recommendations for improvement.
5. Identify whether there are any further learning opportunities for the Trust.

## Cross-reference of terms of reference to findings

Provide a chronology of events relating to Amin Abdullah's disciplinary hearing.	Section 7.
Review the allegations against Amin Abdullah. Identify how they were determined, their truthfulness, timeliness and seriousness. Review whether they were proven in the context of the Trust's disciplinary procedures.	Section 8.
Review whether the investigation carried out was sufficient, thorough and fit for purpose. Review whether the investigation was carried out in line with the Trust disciplinary policy and procedures.	Paras 8.14 - 8.45.
Outline the background history relating to Mr Abdullah and his nurse training and work at Imperial College Healthcare NHS Trust before he was subject to the investigation that led to his dismissal. Review whether the investigation should have taken his training and work record into account. Review how this related to the Trust disciplinary policy.	Section 5, Section 8.
Review whether the Trust disciplinary policy was followed when identifying the investigation manager and disciplinary hearing chair. Identify whether there was any conflict of interest or bias that should have excluded either from being involved in the case.	Para 8.12 - 8.13 and comment.
Review the role of the Trust Human Resources department in respect of Amin Abdullah's disciplinary hearing. Review their role in relation to their responsibility for each step in the process and whether their actions were appropriate.	Section 8.
Identify whether there were any oral or written communications with Mr Abdullah throughout the investigation and disciplinary hearing stages. Ascertain whether they were sufficient to ensure that he was up to date on the progress of the investigation and likely timeframe for the disciplinary hearing to take place.	Para 9.02 - 9.16
Where there were delays in the process, explore why they occurred and ascertain the nature and justification. Identify whether action could have been taken sooner to expedite the conclusion of the case.	Para 8.98 - 8.105
Review whether the Trust was aware that Mr Abdullah's mental health had deteriorated. If so, outline whether any adjustments within the disciplinary process and its timing should have been implemented as a result.	Para 9.02 - 9.23

Was the quality of evidence used in the decision to dismiss robust? Was it in line with the advisory, conciliation and arbitration service (ACAS) guidance? Was the dismissal decision proportionate to the disciplinary hearing findings? If the evidence that led to the findings was considered to be flawed, was the dismissal decision fair and proportionate?	Section 8.
Consider whether the letter that Amin Abdullah confirmed at an investigation meeting on 15 <sup>th</sup> September 2015 that he had written should have been treated as a case of whistleblowing in line with the Trust procedure for raising concerns. Review whether Amin Abdullah raised patient care concerns. If so, review whether they should have been considered in line with the Trust whistleblowing policy.	Para 8.222.
Review the handling of the grievance raised by Mr Abdullah on 1 <sup>st</sup> December 2015. Report on whether it was addressed in line with the relevant Trust procedure.	Para 8.63 - 8.67.
Assess the extent to which the Trust's disciplinary policies and procedures align with the following ACAS guidance documents. Report on any deficiencies, and any recommendations for improvement. Review whether the Trust adhered to these guidelines in the case of Amin Abdullah.	Para 9.40.
Comment on whether the Trust policy includes a requirement for consideration of an employee's background, and if not should such a requirement be included?	Para 9.41.
Review the support offered to Amin Abdullah and staff during the disciplinary process involving him. Review how this relates to the Trust disciplinary procedure. Report whether this reflects best practice such as that recommended by ACAS.	Paras 9.2 to 9.23 and 9.40
Review the Trust's approach to ensuring appropriate mechanisms are in place to check that dismissal decisions are fair and reasonable. Review the constitution of the disciplinary and appeal hearing panels and the training of panel staff. Offer any recommendations for improvement.	Section 8 and para 9.40
Identify whether there are any further learning opportunities for the Trust.	Section 10.

### Team biographies

#### Kieran Seale

Kieran joined Verita in 2014. He is an experienced consultant with a passion for improving public services. Following a varied career encompassing local government, government agencies and the private sector, Kieran spent five years working in NHS commissioning. He was involved in the setting up of four central London Clinical Commissioning Groups, advising on areas such as governance, risk management and conflicts of interest. Legally qualified, he has wide experience of delivering solutions to governance issues in the NHS and outside. While at Verita he has led a review of a conflict of interest issue at a CCG for NHS England and has been involved in a number of investigations into meeting government targets for Emergency Department performance and referral to treatment times for acute trusts. He also manages Verita's work supporting the British Council and the Lottery Forum in handling complaints.

#### Lucy Scott-Moncrieff

Lucy Scott-Moncrieff CBE is the House of Lords commissioner for standards, a mental health and human rights lawyer, an experienced judge and a long standing Verita associate. Her previous roles include commissioner at the Mental Health Act Commission, member of the QC Appointments Panel, president of the Law Society and commissioner on the Judicial Appointments Commission.

Lucy has carried out a number of complex and high profile reviews with Verita including a report into the death of a patient during routine day surgery for the States of Jersey, an investigation into paediatric cardiac surgery in Leeds and a governance review commissioned by Cambridge University Hospitals NHS foundation trust following the conviction of Myles Bradbury. Lucy worked with Verita to produce work for the Secretary of state for Education: a quality assurance review into allegations about Jimmy Savile and a report on risks of sexual abuse and exploitation in schools and children's homes.

More recent work Lucy has completed for Verita includes an investigation, published by NHS Improvement, at the request of the Secretary of State for Health into the handling of whistleblowing allegations at a hospital trust in the West Midlands.

Lucy has written and broadcast regularly on legal issues over the years.

### **David Scott**

David Scott is an experienced human resources director, having worked at Board/Executive level for more than 20 years, including senior positions at British Telecommunications plc, HM Prison Service and United Utilities plc. David has been interim HR director of First Group, the Strategic Rail Authority and was interim Director of Workforce and Strategic HR at Kent and Medway Strategic Health Authority from 2004-2005. David has been a Non-Executive Director of the Whitehall and Industry Group and, until 2016, a Trustee of the Duke of Edinburgh's Award, where he also served as interim Chief Executive in 2005.

### **Peter Killwick**

After graduating from Cambridge University, Peter worked in the IT industry for three years before spending the next two years travelling in Asia, the Far East, Oceania, North America and Africa. For the subsequent 25 years, Peter has worked in consulting covering a variety of strategic and operational issues in a wide range of sectors including healthcare, automotive, financial services, manufacturing, retail, telecommunications and government. In Verita, Peter has a particular focus on the development and evolution of our diagnostic tools including the Organisational Resilience Assessment and Complaints diagnostic. He heads the Verita Operations Group, the internal body in day to day control of the business across the London and Leeds offices.

He has extensive experience of project managing teams, strategy development, and complex investigation. Within healthcare, he has significant experience of working with both providers and commissioners and their umbrella bodies both in the UK and overseas.

## **Bethany Simpson**

Bethany Simpson joined Verita at the beginning of October 2017 and is a project and marketing manager. Bethany currently leads Verita's level three investigation into a complaints procedure for the Big Lottery Fund. She has supported a variety of projects at Verita including a governance review into reporting radiography. She is also responsible for the marketing of the company. Before Bethany joined our team, she graduated from the University of Northumbria with a first class degree in English Literature and subsequently spent two years travelling America, South East Asia, western and eastern Europe, and Canada before returning to England.

### List of interviewees

A nurse in the trust

A nurse on the Ward

Deputy director of patient experience

Director of nursing

Former associate director of complaints and PALS

Former deputy director of Human Resources

Former head of security at the trust

Senior HR Manager

HR advisor at the hearing

HR advisor who supported the investigation

Nurse Abdullah's RCN representative at the hearing

Nurse Abdullah's RCN representative prior to the hearing

Nurse Abdullah's partner

The Advocate of Nurse Abdullah's partner

The patient

The Senior Nurse Manager

The Hearing Chair

The Investigating Officer

The Ward Manager

### Document list

#### Policies

The policies we requested were those in place during the time of Nurse Abdullah's disciplinary. We looked at the following:

- Appeals policy
- Complaints and concerns policy
- Current complaints policy
- Disciplinary policy
- Grievance policy
- Performance management policy
- Sick absence policy
- Stress at work policy
- Whistleblowing policy

#### Incident specific documents

- Nurse Abdullah's disciplinary case file, including:
  - the Initial email
  - the Letter
  - the Petition
  - a letter to the Ward Manager
  - Nurse Abdullah's reflective statement
  - Nurse Abdullah's appeal letter
  - the management response to the appeal letter
  - the grievance
- Nurse Abdullah's personnel files, including training and development records, performance management information, latest appraisals, attendance/ sickness absence records, career history
- Occupational Health records for Nurse Abdullah
- Organisation charts for Nurse Abdullah's line management

- Organisation charts for HR department, including details of roles and responsibilities for key staff involved in Nurse Abdullah's case.
- Other correspondence between the patient and staff on the Ward
- Nurse X's email correspondence with the Ward Manager
- Nurse X's disciplinary hearing report
- The transcript of Nurse Abdullah's inquest

#### Previous reports

- The Investigation report, appendixes and evidence gathered
- The summary report and appendixes

#### Other

- A summary of Trust's previous disciplinary cases