

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: VID115/2021  
File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION  
& ANOR v PENINSULA HEALTH  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 18/06/2021 3:10:26 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 33  
Rule 16.32

## Defence

Federal Court of Australia  
District Registry: Victoria  
Division: Fair Work

No. VID115/2021

### **The Australian Salaried Medical Officers' Federation**

First Applicant

### **Gaby Bolton**

Second Applicant

### **Peninsula Health**

Respondent

By way of defence to the statement of claim dated 12 March 2021 (**Statement of Claim**), the respondent says as follows:

#### **Notes:**

A. Unless otherwise defined, capitalised terms have the meaning ascribed to them in the Statement of Claim.

#### **A THE PARTIES**

##### **A1 The applicants and the Group Members**

1. As to paragraph 1, the respondent:

- (a) admits that the first applicant and the second applicant purport to bring this claim pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth);
- (b) in relation to the second applicant (**Dr Bolton**):
  - (i) admits the allegations in sub-paragraphs (c) to (f);
  - (ii) does not admit the allegations in sub-paragraph (g) and (h);

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**Filed on behalf of:** The respondent

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(c) in relation to the alleged Group Members:

(i) admits that there were Doctors in Training with the characteristics alleged in sub-paragraphs (c) to (f);

(ii) otherwise does not admit the allegations in paragraph 1.

2. The respondent admits paragraph 2.

3. The respondent admits paragraph 3.

4. As to paragraph 4, the respondent:

(a) denies that the Group Members have claims against it as pleaded in the Statement of Claim for the reasons set out below;

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 4.

**A2 The respondent**

5. The respondent admits paragraph 5.

**B THE AGREEMENTS**

**B1 The 2013 Agreement**

Application and coverage

6. The respondent admits paragraph 6.

Doctor responsibilities

7. The respondent admits paragraph 7.

Hours of work, rostering and overtime

8. The respondent admits paragraph 8.

9. The respondent admits paragraph 9.

10. As to paragraph 10, the respondent:

(a) admits that the 2013 Agreement contains clauses 32.1, 32.2.1 and 32.2.2 as pleaded in the Statement of Claim;

(b) says further that the 2013 Agreement also contains the following clauses:

- 32.2.3 *Overtime may be converted into carer's leave in accordance with sub clause 47.3.3.*
- 32.3 **Protocols - Authorised Un-rostered Overtime**
- 32.3.1 *A Protocol must exist in the Hospital whereby overtime that cannot be authorised in advance but has been worked will be paid if it meets appropriate, clearly defined criteria.*
- 32.3.2 *The protocols described in sub clause 32.3.1 will be structured on the following basis:*
- (a) *the Doctor has performed the overtime due to a demonstrable clinical need and that need could not have been met by some other means;*
  - (b) *authorisation of the overtime could not reasonably have been made in advance of the Doctor performing the work;*
  - (c) *the Doctor has claimed for retrospective authorisation of overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;*
  - (d) *the Doctor has recorded the reason for working the overtime and the duties performed in a form capable of Hospital audit and review; and*
  - (e) *the claim for overtime must be reviewed by a Senior Doctor authorised by the Hospital to do so within 14 days of the claim being submitted.*

## **B2 The 2018 Agreement**

### Application and coverage

11. The respondent admits paragraph 11.

### Doctor responsibilities

12. The respondent admits paragraph 12.

### Hours of work, rostering and overtime

13. The respondent admits paragraph 13.
14. The respondent admits paragraph 14.
15. As to paragraph 15, the respondent:
- (a) admits that the 2018 Agreement contains clauses 36.1, 36.2 (a) – (c) as pleaded in the Statement of Claim;
  - (b) says further that the 2018 Agreement also contains the following clauses:

36.2(d) *Overtime may be converted into carer's leave in accordance with subclause 61.3(c).*

36.3 **Protocols - Authorised Un-rostered Overtime**

- (a) *A Protocol must exist in the Health Service whereby overtime that cannot be authorised in advance but has been worked will be paid if it meets appropriate, clearly defined criteria.*
- (b) *The protocols described in sub clause 36.3(a) will be structured on the following basis:*
  - (i) *the Doctor has performed the overtime due to a demonstrable clinical need and that need could not have been met by some other means;*
  - (ii) *authorisation of the overtime could not reasonably have been made in advance of the Doctor performing the work;*
  - (iii) *the Doctor has claimed for retrospective authorisation of overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;*
  - (iv) *the Doctor has recorded the reason for working the overtime and the duties performed in a form capable of Health Service audit and review; and*
  - (v) *the claim for overtime must be reviewed by a Senior Doctor authorised by the Health Service to do so within 14 days of the claim being submitted.*

## **C DUTIES AND RESPONSIBILITIES OF DR BOLTON AND GROUP MEMBERS**

16. As to paragraph 16, the respondent:

- (a) admits that during the Relevant Period, Dr Bolton's duties and responsibilities when providing medical services included, from time to time:
  - (i) ward round preparation;
  - (ii) ward rounds;
  - (iii) handover;
  - (iv) medical procedures preparation; and
  - (v) medical records;
- (b) otherwise denies the allegations in paragraph 16.

## **D THE SECOND APPLICANT'S CLAIM**

17. The respondent admits paragraph 17.

### **D1 First General Medicine Rotation - 14 January 2019 to 24 March 2019**

18. The respondent admits paragraph 18.

## Rosters

19. As to paragraph 19, the respondent:

- (a) admits that during the First General Medicine rotation, Dr Bolton was rostered to work a rotating roster in accordance with the Week 1 roster and the Week 2 roster;
- (b) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, as pleaded in paragraph 14 above, the Week 1 roster and the Week 2 roster factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 16(a) of the Defence.

## Ward round preparation

20. As to paragraph 20, the respondent:

- (a) admits that Dr Bolton's duties and responsibilities when providing medical services included ward round preparation;
- (b) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Week 1 roster and the Week 2 roster factored in and allowed time for the performance of ward round preparation;
- (c) otherwise denies the allegations in paragraph 20.

21. As to paragraph 21, the respondent:

- (a) says that there were occasions where Dr Bolton worked hours in excess of her rostered ordinary working hours;
- (b) says further that:
  - (i) in accordance with cl. 36.3 of the 2018 Agreement, the respondent implemented a protocol for the authorisation of and remuneration for unrostered overtime, being overtime in excess of rostered ordinary working hours that was required due to a demonstrable operational or clinical need that could not be provided in some other way (**Unrostered Overtime**);

### **Particulars**

"Overtime and Time in Lieu Policy" dated 24 July 2015, and as updated from time to time (**Overtime Protocol**)

- (ii) in accordance with the Overtime Protocol, any Unrostered Overtime must be authorised by the doctor's Department Head/Manager or delegate (either in advance of the doctor working the overtime, or retrospectively on the first occasion possible after the overtime was worked but not later than completion of that pay fortnight).

Unrostered Overtime that does not meet the criteria set out in the Overtime Protocol will not be authorised;

#### Particulars

Overtime Protocol at [4.1], [4.2]

Department of Medicine Essential Information Handbook, in effect from January 2019, at p.10

- (iii) any doctor who works Unrostered Overtime can submit a claim for authorisation and remuneration for that Unrostered Overtime (**Overtime Claim**);

#### Particulars

Overtime Protocol at [4.2], [4.3], [4.4], [4.5], [4.6], [4.13], [5].

- (iv) on the proper construction of the Overtime Protocol, authorisation must be express, and not implied;
- (v) Dr Bolton was aware of the Overtime Protocol and the respondent's approach to Unrostered Overtime;

#### Particulars

Dr Bolton's Employment Contract dated 26 October 2018.

Department of Medicine Essential Information Handbook, in effect from January 2019

- (vi) if Dr Bolton performed ward round preparation overtime as pleaded, she was able to submit an Overtime Claim;
- (vii) during the First General Medicine rotation, Dr Bolton submitted Overtime Claims for Unrostered Overtime, which were approved and Dr Bolton has not identified any such claims for which she was not paid;

#### Particulars

The Overtime Claims made by Dr Bolton and approved during the First General Medicine rotation included those set out in the table below:

Date of claim	Period for which unrostered overtime paid	Total hours of overtime claimed	Date of approval
24.02.2019	14:30 - 17:15	2.75 hours	24.02.2019

22.03.2019	Unrecorded	5 hours	Unrecorded but approved in pay period
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(c) otherwise denies the allegations in paragraph 21.

22. As to paragraph 22, the respondent:

(a) refers to and repeats paragraphs 20 and 21 above;

(b) otherwise denies the allegations in paragraph 22.

23. As to paragraph 23, the respondent:

(a) refers to and repeats paragraphs 20, 21 and 22 above;

(b) says that:

- (i) whether Dr Bolton was authorised to work any alleged ward round preparation overtime (including whether Dr Bolton worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Bolton was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
- (iii) Dr Bolton has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 23.

24. As to paragraph 24, the respondent:

(a) refers to and repeats paragraphs 20 to 23 above;

(b) says further that:

- (i) payment for Unrostered Overtime is subject to the condition that Dr Bolton make an Overtime Claim in relation to the overtime purportedly worked;



- (ii) Dr Bolton has not provided particulars of any occasions on which she allegedly:
    - A. worked ward round preparation overtime;
    - B. sought and received either advance or retrospective authorisation for such overtime;
    - C. made an Overtime Claim for that ward round preparation overtime; and
    - D. was subsequently not paid;
  - (iii) if Dr Bolton did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
    - A. Dr Bolton did not work such overtime;
    - B. Dr Bolton was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
    - C. Dr Bolton was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
  - (iv) further or alternatively, Dr Bolton is estopped from asserting the contrary of the matters in sub-paragraphs (iii)(A) and (iii)(B) above for the reasons set out in paragraphs 165 to 176 below;
- (c) otherwise denies the allegations in paragraph 24.
25. As to paragraph 25, the respondent:
- (a) says that if:
    - (i) Dr Bolton had made an Overtime Claim; and
    - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,the respondent would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
  - (b) otherwise denies the allegations in paragraph 25.
26. As to paragraph 26, the respondent:
- (a) refers to and repeats paragraphs 20 to 25 above; and

(b) otherwise denies the allegations in paragraph 26.

27. As to paragraph 27, the respondent:

(a) refers to and repeats paragraphs 20 to 25 above; and

(b) otherwise denies the allegations in paragraph 27.

#### Ward rounds

28. As to paragraph 28, the respondent:

(a) admits that Dr Bolton's duties and responsibilities when providing medical services included undertaking ward rounds;

(b) says further that in accordance with cl. 35.1(b) of the 2018 Agreement, the Week 1 roster and the Week 2 roster factored in and allowed time for the performance of ward rounds; and

(c) otherwise denies the allegations in paragraph 28.

29. As to paragraph 29, the respondent:

(a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;

(b) says further that if Dr Bolton performed ward round overtime as pleaded in the Statement of Claim, she was able to submit an Overtime Claim;

(c) otherwise denies the allegations in paragraph 29.

30. As to paragraph 30, the respondent:

(a) refers to and repeats paragraphs 28 and 29 above; and

(b) otherwise denies the allegations in paragraph 30.

31. As to paragraph 31, the respondent:

(a) refers to and repeats paragraphs 28, 29 and 30 above;

(b) says that:

(i) whether Dr Bolton was authorised to work alleged ward round overtime (including whether Dr Bolton worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Bolton was required to either seek authorisation for any ward round overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such ward round overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) Dr Bolton has not provided particulars of the circumstances of each alleged occasion of ward round overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 31.

32. As to paragraph 32, the respondent:

- (a) refers to and repeats paragraphs 28 to 31 above; and
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that Dr Bolton make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) Dr Bolton has not provided particulars of any occasions on which she allegedly:
    - A. worked ward round overtime;
    - B. sought and received either advance or retrospective authorisation for such overtime;
    - C. made an Overtime Claim for that ward round overtime; and
    - D. was subsequently not paid;
  - (iii) if Dr Bolton did not make an Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:
    - A. Dr Bolton did not work such overtime;
    - B. Dr Bolton was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

C. Dr Bolton was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Bolton is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons set out in paragraphs 165 to 176 below;

(c) otherwise denies the allegations in paragraph 32.

33. As to paragraph 33, the respondent:

(a) says that if:

(i) Dr Bolton had made an Overtime Claim; and

(ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,

the respondent would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

(b) otherwise denies the allegations in paragraph 33.

34. As to paragraph 34, the respondent:

(a) refers to and repeats paragraphs 28 to 33 above; and

(b) otherwise denies the allegations in paragraph 34.

35. As to paragraph 35, the respondent:

(a) refers to and repeats paragraphs 28 to 33 above; and

(b) otherwise denies the allegations in paragraph 35.

#### Medical records

36. The respondents admit paragraph 36.

37. As to paragraph 37, the respondent:

(a) says that, in accordance with cl. 35.1(b) of the 2018 Agreement, the Week 1 roster and the Week 2 roster factored in and allowed time for the completion of medical records;

(b) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;

- (c) says that if Dr Bolton performed medical records overtime as pleaded in the Statement of Claim, she was able to submit an Overtime Claim;
  - (d) otherwise denies the allegations in paragraph 37.
38. As to paragraph 38, the respondent:
- (a) refers to and repeats paragraphs 36 and 37 above; and
  - (b) otherwise denies the allegations in paragraph 38.
39. As to paragraph 39, the respondent:
- (a) refers to and repeats paragraphs 36, 37 and 38 above;
  - (b) says that:
    - (i) whether Dr Bolton was authorised to work any alleged medical records overtime (including whether Dr Bolton worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
    - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Bolton was required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
    - (iii) Dr Bolton has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
  - (c) otherwise denies the allegations in paragraph 39.
40. As to paragraph 40, the respondent:
- (a) refers to and repeats paragraphs 36 to 39 above; and
  - (b) says further that:
    - (i) payment for Unrostered Overtime is subject to the condition that Dr Bolton make an Overtime Claim in relation to the overtime purportedly worked;

- (ii) Dr Bolton has not provided particulars of any occasions on which she allegedly:
  - A. worked medical records overtime;
  - B. sought and received either advance or retrospective authorisation for such overtime;
  - C. made an Overtime Claim for that ward round preparation overtime; and
  - D. was subsequently not paid;
- (iii) if Dr Bolton did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
  - A. Dr Bolton did not work such overtime;
  - B. Dr Bolton was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - C. Dr Bolton was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (iv) further or alternatively, Dr Bolton is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons set out in paragraphs 165 to 176 below;
- (c) otherwise denies the allegations in paragraph 40.

41. As to paragraph 41, the respondent:

- (a) says that if:
  - (i) Dr Bolton had made an Overtime Claim; and
  - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,

the respondent would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
- (b) otherwise denies the allegations in paragraph 41.

42. As to paragraph 42, the respondent:

- (a) refers to and repeats paragraphs 36 to 41 above; and

(b) otherwise denies the allegations in paragraph 42.

43. As to paragraph 43, the respondent:

(a) refers to and repeats paragraphs 36 to 41 above; and

(b) otherwise denies the allegations in paragraph 43.

**D2 Plastic Surgery Rotation - 3 June 2019 to 11 August 2019**

44. The respondent admits paragraph 44.

Rosters

45. The respondent admits paragraph 45.

Ward round preparation

46. As to paragraph 46, the respondent:

(a) admits that Dr Bolton's duties and responsibilities when providing medical services included ward round preparation;

(b) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, Dr Bolton's rosters for the First General Medical rotation factored in and allowed for the performance of ward round preparation;

(c) otherwise denies the allegations in paragraph 46.

47. As to paragraph 47, the respondent:

(a) says that there were occasions where Dr Bolton worked Unrostered Overtime during the Plastics rotation;

(b) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;

(c) says further that:

(i) if Dr Bolton performed ward round preparation overtime during the Plastics rotation as pleaded in the Statement of Claim, she was able to submit an Overtime Claim;

(ii) during the Plastics rotation, Dr Bolton submitted Overtime Claims for Unrostered Overtime, which were approved and Dr Bolton has not identified any such claims for which she was not paid;

**Particulars**

The Overtime Claims made by Dr Bolton and approved during the Plastics rotation included those set out in the table below:

<b>Date of claim</b>	<b>Period for which unrostered overtime paid</b>	<b>Total hours of overtime claimed</b>	<b>Date of approval</b>
03/06/2019	1630-1830	2 hours	Not recorded
04/06/2019	1630-1745	1.25 hours	Not recorded
05/06/2021	1630-1800	2.5 hours	Not recorded
06/06/2019	1630-1830	2 hours	Not recorded
07/06/2019	1730-1830	1 hours	Unrecorded
11/06/2019	0615-0700	0.75	20/06/2019
11/06/2019	1630-1800	1.5	20/06/2019
12/06/2019	1630-1800	1.5	20/06/2019
13/06/2019	1630-1815	1.75	20/06/2019
14/06/2019	1700-1900	1.5	20/06/2019
17/06/2019	1630-1815	1.75	20/06/2019
18/06/2019	1630-1745	1.25	20/06/2019
19/06/2019	1630-1930	3.00	20/06/2019
20/06/2019	0630-0700	0.5	20/06/2019
20/06/2019	1730-1800	0.5	20/06/2019
25/06/2019	1630-1700	0.5	04/07/2019
26/06/2019	1630-1715	0.75	04/07/2019
27/06/2019	1630-1715	0.75	04/07/2019
28/06/2019	1630-1900	2.5	04/07/2019
01/07/2019	1630-1815	1.75	04/07/2019
02/07/2019	1630-1700	0.5	04/07/2019
03/07/2019	1630-1700	0.5	04/07/2019
04/07/2019	1630-1745	1.25	04/07/2019
08/07/2019	0645-0700	0.25	22/07/2019
08/07/2019	1630-1700	0.5	22/07/2019
09/07/2019	1630-1730	1.0	22/07/2019
10/07/2019	1630-1830	2.0	22/07/2019



<b>Date of claim</b>	<b>Period for which unrostered overtime paid</b>	<b>Total hours of overtime claimed</b>	<b>Date of approval</b>
11/07/2019	1630-1800	1.5	22/07/2019
12/07/2019	1630-1830	2.0	22/07/2019
15/07/2019	1630-1930	3.0	22/07/2019
16/07/2019	1630-1715	0.75	22/07/2019
17/07/2019	1630-1745	1.25	22/07/2019
18/07/2019	1630-1730	1.0	22/07/2019
19/07/2019	1630-1845	2.25	22/07/2019
22/07/2019	1630-1745	1.25	02/08/2019
23/07/2019	1630-1815	1.75	02/08/2019
24/07/2019	1630-1830	2.0	02/08/2019
25/07/2019	1630-1700	0.5	02/08/2019
26/07/2019	1630-1800	1.5	02/08/2019
29/07/2019	1630-1815	1.75	02/08/2019
30/07/2019	1630-1815	1.75	02/08/2019
31/07/2019	1630-1745	1.25	02/08/2019
01/08/2019	1630-1800	1.5	02/08/2019
05/08/2019	0630-0700	0.5	09/08/2019
05/08/2019	1630-1900	2.5	09/08/2019
06/08/2019	1630-1800	1.5	09/08/2019
07/08/2019	0630-0700	0.5	09/08/2019
07/08/2019	1630-2015	3.75	09/08/2019
08/08/2019	1630-0700	0.5	09/08/2019
08/08/2019	1630-1815	1.75	09/08/2019
09/08/2019	1630-1930	3.0	09/08/2019

(d) otherwise denies the allegations in paragraph 47.

48. As to paragraph 48, the respondent:

- (a) refers to and repeats paragraphs 46 and 47 above; and
- (b) otherwise denies the allegations in paragraph 48.

49. As to paragraph 49, the respondent:

- (a) refers to and repeats paragraphs 46, 47 and 48 above;
- (b) says that:
  - (i) whether Dr Bolton was authorised to work any alleged ward round preparation overtime (including whether Dr Bolton worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Bolton was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) Dr Bolton has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 49.

50. As to paragraph 50, the respondent:

- (a) refers to and repeats paragraphs 46 to 49 above; and
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that Dr Bolton make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) Dr Bolton has not provided particulars of any occasions on which she allegedly:
    - A. worked ward round preparation overtime;
    - B. sought and received either advance or retrospective authorisation for such overtime;
    - C. made an Overtime Claim for that ward round preparation overtime; and
    - D. was subsequently not paid;

(iii) if Dr Bolton did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

- A. Dr Bolton did not work such overtime;
- B. Dr Bolton was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- C. Dr Bolton was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Bolton is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below;

(c) otherwise denies the allegations in paragraph 50.

51. As to paragraph 51, the respondent:

(a) says that if:

- (i) Dr Bolton had made an Overtime Claim; and
- (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,

the respondent would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

(b) otherwise denies the allegations in paragraph 51.

52. As to paragraph 52, the respondent:

- (a) refers to and repeats paragraphs 46 to 51 above; and
- (b) otherwise denies the allegations in paragraph 52.

53. As to paragraph 53, the respondent:

- (a) refers to and repeats paragraphs 46 to 51 above; and
- (b) otherwise denies the allegations in paragraph 53.

**D3 Second General Medicine Rotation - 12 August 2019 to 20 October 2019**

54. As to paragraph 54, the respondent:

- (a) says that Dr Bolton was on conference leave from 14 October 2019 to 18 October 2019;
- (b) otherwise admits the allegations in paragraph 54.

### Rosters

55. The respondent admits paragraph 55.

### Ward round preparation

56. As to paragraph 58, the respondent:

- (a) admits that Dr Bolton's duties and responsibilities when providing medical services included ward round preparation;
- (b) says further that in accordance with cl. 35.1(b) of the 2018 Agreement, Dr Bolton's rosters for the Second General Medicine rotation factored in and allowed for the performance of ward round preparation; and
- (c) otherwise denies the allegations in paragraph 56.

57. As to paragraph 57, the respondent:

- (a) says that there were occasions where Dr Bolton worked Unrostered Overtime during the Second General Medicine rotation;
- (b) refers to and repeats sub-paragraphs subparagraphs 21(b)(i) to 21(b)(v) above;
- (c) says further that:
  - (i) if Dr Bolton performed ward round preparation overtime during the Second General Medicine rotation as pleaded in the Statement of Claim, she was able to submit an Overtime Claim;
  - (ii) during the Second General Medicine rotation, Dr Bolton submitted Overtime Claims for Unrostered Overtime, which were approved and Dr Bolton has not identified any such claims for which she was not paid;

### **Particulars**

The Overtime Claims made by Dr Bolton and approved during the Second General Medicine rotation included those set out in the table below:

<b>Date of claim</b>	<b>Period for which unrostered overtime paid</b>	<b>Total hours of overtime claimed</b>	<b>Date of approval</b>

20.08.2019	16:30 - 19:00	2.5 hours	20.08.2019
05.09.2019	16:30 - 17:30	1.0 hour	05.09.2019
04.10.2019	16:30 - 19:00	2.5 hours	04.00.2019

(d) otherwise denies the allegations in paragraph 57.

58. As to paragraph 58, the respondent:

(a) refers to and repeats paragraphs 56 and 57 above; and

(b) otherwise denies the allegations in paragraph 58.

59. As to paragraph 59, the respondent:

(a) refers to and repeats paragraphs 56, 57 and 58 above;

(b) says that:

- (i) whether Dr Bolton was authorised to work any alleged ward round preparation overtime (including whether Dr Bolton worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Bolton was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
- (iii) Dr Bolton has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 59.

60. As to paragraph 60, the respondent:

(a) refers to and repeats paragraphs 56 to 59 above;

(b) says further that:

- (i) payment for Unrostered Overtime is subject to the condition that Dr Bolton make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) Dr Bolton has not provided particulars of any occasions on which she allegedly:
    - A. worked ward round preparation overtime;
    - B. sought and received either advance or retrospective authorisation for such overtime;
    - C. made an Overtime Claim for that ward round preparation overtime; and
    - D. was subsequently not paid;
  - (iii) if Dr Bolton did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
    - A. Dr Bolton did not work such overtime;
    - B. Dr Bolton was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
    - C. Dr Bolton was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
  - (iv) further or alternatively, Dr Bolton is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below; and
- (c) otherwise denies the allegations in paragraph 60.

61. As to paragraph 61, the respondent:

- (a) says that if:
  - (i) Dr Bolton had made an Overtime Claim; and
  - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,the respondent would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
- (b) otherwise denies the allegations in paragraph 61.

62. As to paragraph 62, the respondent:

- (a) refers to and repeats paragraphs 0 to 61 above; and
- (b) otherwise denies the allegations in paragraph 62.

63. As to paragraph 63, the respondent:

- (a) refers to and repeats paragraphs 0 to 61 above; and
- (b) otherwise denies the allegations in paragraph 63.

#### Medical records

64. As to paragraph 64, the respondent:

- (a) admits that Dr Bolton's duties and responsibilities when providing medical services included completing medical records;
- (b) says further that in accordance with cl. 35.1(b) of the 2018 Agreement, Dr Bolton's rosters for the Second General Medicine factored in and allowed for the completion of medical records; and
- (c) otherwise denies the allegations in paragraph 64.

65. As to paragraph 65, the respondent:

- (a) says that there were occasions where Dr Bolton worked reasonable Unrostered Overtime during the Second General Medicine rotation;
- (b) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;
- (c) says further that if Dr Bolton performed medical records overtime in the Second General Medicine rotation as pleaded in the Statement of Claim, she was able to submit an Overtime Claim;
- (d) otherwise denies the allegations in paragraph 65.

66. As to paragraph 66, the respondent:

- (a) refers to and repeats paragraphs 64 and 65 above; and
- (b) otherwise denies the allegations in paragraph 66.

67. As to paragraph 67, the respondent:

- (a) refers to and repeats paragraphs 64, 65 and 66 above;

- (b) says that:
- (i) whether Dr Bolton was authorised to work any alleged medical records overtime (including whether Dr Bolton worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Bolton was required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) Dr Bolton has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 67.

68. As to paragraph 68, the respondent:

- (a) refers to and repeats paragraphs 64 to 67 above; and
- (b) says further that:
  - (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Bolton make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) Dr Bolton has not provided particulars of any occasions on which she allegedly:
    - A. worked medical records overtime;
    - B. sought and received either advance or retrospective authorisation for such overtime;
    - C. made an Overtime Claim for that medical records overtime; and
    - D. was subsequently not paid;
  - (iii) if Dr Bolton did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
    - A. Dr Bolton did not work such overtime;



B. Dr Bolton was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

C. Dr Bolton was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Bolton is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below;

(c) otherwise denies the allegations in paragraph 68.

69. As to paragraph 69, the respondent:

(a) says that if:

(i) Dr Bolton had made an Overtime Claim; and

(ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,

the respondent would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

(b) otherwise denies the allegations in paragraph 69.

70. As to paragraph 70, the respondent:

(a) refers to and repeats paragraphs 64 to 69 above; and

(b) otherwise denies the allegations in paragraph 70.

71. As to paragraph 71, the respondent:

(a) refers to and repeats paragraphs 64 to 69 above; and

(b) otherwise denies the allegations in paragraph 71.

#### **D4 Cardiology Rotation - 2 November 2020 to 31 January 2021**

72. The respondent admits paragraph 72.

#### Rosters

73. As to paragraph 73, the respondent:

- (a) says that Dr Bolton was on carer's leave from 24 November 2020 to 16 December 2020;
- (b) otherwise admits the allegations in paragraph 73.

Medical procedures preparation

74. As to paragraph 74, the respondent:

- (a) admits that Dr Bolton's duties and responsibilities when providing medical services included medical procedures preparation;
- (b) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, Dr Bolton's rosters for the Cardiology rotation factored in and allowed for the performance of medical procedures preparation;
- (c) otherwise denies the allegations in paragraph 74.

75. As to paragraph 75, the respondent:

- (a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;
- (b) says further that if Dr Bolton performed medical procedures preparation overtime in the Cardiology rotation as pleaded in the Statement of Claim, she was able to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 75.

76. As to paragraph 76, the respondent:

- (a) refers to and repeats paragraphs 74 and 75 above; and
- (b) otherwise denies the allegations in paragraph 76.

77. As to paragraph 77, the respondent:

- (a) refers to and repeats paragraphs 74, 75 and 76 above;
- (b) says that:
  - (i) whether Dr Bolton was authorised to work any alleged medical procedures preparation overtime (including whether Dr Bolton worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Bolton was required to either seek authorisation for any medical procedures preparation overtime in advance

of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;

- (iii) Dr Bolton has not provided particulars of the circumstances of each alleged occasion of medical procedures preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 77.

78. As to paragraph 78, the respondent:

- (a) refers to and repeats paragraphs 74 to 77 above; and
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that Dr Bolton make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) Dr Bolton has not provided particulars of any occasions on which she allegedly:
    - A. worked medical procedures preparation overtime;
    - B. sought and received either advance or retrospective authorisation for such overtime;
    - C. made an Overtime Claim for that medical procedures preparation overtime; and
    - D. was subsequently not paid;
  - (iii) if Dr Bolton did not make an Overtime Claim in respect of the alleged medical procedures preparation overtime, then it ought be concluded that either:
    - A. Dr Bolton did not work such overtime;
    - B. Dr Bolton was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
    - C. Dr Bolton was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

- (iv) further or alternatively, Dr Bolton is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below;
  - (c) otherwise denies the allegations in paragraph 78.
79. As to paragraph 79, the respondent:
- (a) says that if:
    - (i) Dr Bolton had made an Overtime Claim; and
    - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,the respondent would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
  - (b) otherwise denies the allegations in paragraph 79.
80. As to paragraph 80, the respondent:
- (a) refers to and repeats paragraphs 74 to 79 above; and
  - (b) otherwise denies the allegations in paragraph 80.
81. As to paragraph 81, the respondent:
- (a) refers to and repeats paragraphs 74 to 79 above; and
  - (b) otherwise denies the allegations in paragraph 81.

#### Ward round preparation

82. As to paragraph 82, the respondent:
- (a) admits that Dr Bolton's duties and responsibilities when providing medical services included ward round preparation;
  - (b) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, Dr Bolton's rosters for the First General Medical rotation factored in and allowed for the performance of ward round preparation;
  - (c) otherwise denies the allegations in paragraph 82.
83. As to paragraph 83, the respondent:
- (a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;

- (b) says further that if Dr Bolton performed ward round preparation overtime in the Cardiology rotation as pleaded in the Statement of Claim, she was able to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 83.

84. As to paragraph 84, the respondent:

- (a) refers to and repeats paragraphs 82 and 83 above; and
- (b) otherwise denies the allegations in paragraph 84.

85. As to paragraph 85, the respondent:

- (a) refers to and repeats paragraphs 82, 83 and 84 above;
- (b) says that:
  - (i) whether Dr Bolton was authorised to work any alleged ward round preparation overtime (including whether Dr Bolton worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Bolton was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) Dr Bolton has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 85.

86. As to paragraph 86, the respondent:

- (a) refers to and repeats paragraphs 82 to 85 above; and
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that Dr Bolton make an Overtime Claim in relation to the overtime purportedly worked;

- (ii) Dr Bolton has not provided particulars of any occasions on which she allegedly:
    - A. worked ward round preparation overtime;
    - B. sought and received either advance or retrospective authorisation for such overtime;
    - C. made an Overtime Claim for that ward round preparation overtime; and
    - D. was subsequently not paid;
  - (iii) if Dr Bolton did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
    - A. Dr Bolton did not work such overtime;
    - B. Dr Bolton was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
    - C. Dr Bolton was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
  - (iv) further or alternatively, Dr Bolton is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below;
- (c) otherwise denies the allegations in paragraph 86.
87. As to paragraph 87, the respondent:
- (a) says that if:
    - (i) Dr Bolton had made an Overtime Claim; and
    - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,the respondent would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
  - (b) otherwise denies the allegations in paragraph 87.
88. As to paragraph 88, the respondent:
- (a) refers to and repeats paragraphs 82 to 87 above; and

(b) otherwise denies the allegations in paragraph 88.

89. As to paragraph 89, the respondent:

(a) refers to and repeats paragraphs 82 to 87 above; and

(b) otherwise denies the allegations in paragraph 89.

#### Medical records

90. As to paragraph 90, the respondent:

(a) admits that Dr Bolton's duties and responsibilities when providing medical services included completing medical records;

(b) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, Dr Bolton's rosters for the Cardiology rotation factored in and allowed for the completion of medical records;

(c) otherwise denies the allegations in paragraph 90.

91. As to paragraph 91, the respondent:

(a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;

(b) says further that if Dr Bolton performed medical records overtime in the Cardiology rotation as pleaded in the Statement of Claim, she was able to submit an Overtime Claim;

(c) otherwise denies the allegations in paragraph 91.

92. As to paragraph 92, the respondent:

(a) refers to and repeats paragraphs 90 and 91 above; and

(b) otherwise denies the allegations in paragraph 92.

93. As to paragraph 93, the respondent:

(a) refers to and repeats paragraphs 90, 91 and 92 above;

(b) says that:

(i) whether Dr Bolton was authorised to work any alleged medical records overtime (including whether Dr Bolton worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Bolton was required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) Dr Bolton has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 93.

94. As to paragraph 94, the respondent:

- (a) refers to and repeats paragraphs 90 to 93 above; and
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that Dr Bolton make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) Dr Bolton has not provided particulars of any occasions on which she allegedly:
    - A. worked medical records overtime;
    - B. sought and received either advance or retrospective authorisation for such overtime;
    - C. made an Overtime Claim for that medical records overtime; and
    - D. was subsequently not paid;
  - (iii) if Dr Bolton did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
    - A. Dr Bolton did not work such overtime;
    - B. Dr Bolton was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or



C. Dr Bolton was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Bolton is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below;

(c) otherwise denies the allegations in paragraph 94.

95. As to paragraph 95, the respondent:

(a) says that if:

(i) Dr Bolton had made an Overtime Claim; and

(ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,

the respondent would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

(b) otherwise denies the allegations in paragraph 95.

96. As to paragraph 96, the respondent:

(a) refers to and repeats paragraphs 90 to 95 above; and

(b) otherwise denies the allegations in paragraph 96.

97. As to paragraph 97, the respondent:

(a) refers to and repeats paragraphs 90 to 95 above; and

(b) otherwise denies the allegations in paragraph 97.

#### Handover

98. As to paragraph 98, the respondent:

(a) admits that Dr Bolton's duties and responsibilities when providing medical services included conducting handover of patient information;

(b) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, Dr Bolton's rosters for the Cardiology rotation factored in and allowed for the conducting of handover of patient information;

(c) otherwise denies the allegations in paragraph 98.

99. As to paragraph 99, the respondent:

- (a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;
- (b) says further that if Dr Bolton performed handover overtime in the Cardiology rotation as pleaded in the Statement of Claim, she was able to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 99.

100. As to paragraph 100, the respondent:

- (a) refers to and repeats paragraphs 98 and 99 above; and
- (b) otherwise denies the allegations in paragraph 100.

101. As to paragraph 101, the respondent:

- (a) refers to and repeats paragraphs 98, 99 and 100 above;
- (b) says that:
  - (i) whether Dr Bolton was authorised to work any alleged handover overtime (including whether Dr Bolton worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Bolton was required to either seek authorisation for any handover overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) Dr Bolton has not provided particulars of the circumstances of each alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 101.

102. As to paragraph 102, the respondent:

- (a) refers to and repeats paragraphs 98 to 101 above; and
- (b) says further that:

- (i) payment for Unrostered Overtime is subject to the condition that Dr Bolton make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) Dr Bolton has not provided particulars of any occasions on which she allegedly:
    - A. worked handover overtime;
    - B. sought and received either advance or retrospective authorisation for such overtime;
    - C. made an Overtime Claim for that handover overtime; and
    - D. was subsequently not paid;
  - (iii) if Dr Bolton did not make an Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
    - A. Dr Bolton did not work such overtime;
    - B. Dr Bolton was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
    - C. Dr Bolton was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
  - (iv) further or alternatively, Dr Bolton is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below;
- (c) otherwise denies the allegations in paragraph 94.

103. As to paragraph 103, the respondent:

- (a) says that if:
  - (i) Dr Bolton had made an Overtime Claim; and
  - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,the respondent would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
- (b) otherwise denies the allegations in paragraph 103.

104. As to paragraph 104, the respondent:

- (a) refers to and repeats paragraphs 98 to 103 above; and
- (b) otherwise denies the allegations in paragraph 104.

105. As to paragraph 105, the respondent:

- (a) refers to and repeats paragraphs 98 to 103 above; and
- (b) otherwise denies the allegations in paragraph 105.

#### **D5 Loss**

106. As to paragraph 106, the respondent denies the allegations for the reasons pleaded above.

#### **E. GROUP MEMBERS' CLAIMS**

107. As to paragraph 107, the respondent:

- (a) admits that, in the course of their employment during the Relevant Period, Doctors in Training:
  - (i) worked in one or more of the services operated by the respondent as set out in paragraph 1(d) of the Statement of Claim; and
  - (ii) were rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks;
- (b) otherwise denies the allegations in paragraph 107.

#### **E1 Ward round preparation overtime**

108. As to paragraph 108, the respondent:

- (a) admits that the duties and responsibilities of Doctors in Training when providing medical services included ward round preparation;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of ward round preparation; and
- (c) otherwise denies the allegations in paragraph 108.

109. As to paragraph 109, the respondent:

- (a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;

- (b) says further that:
  - (i) in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, the respondent implemented the Overtime Protocol;
  - (ii) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and the respondent's approach to Unrostered Overtime;
  - (iii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 109.

110. As to paragraph 110, the respondent:

- (a) refers to and repeats paragraphs 108 and 109 above;
- (b) otherwise denies the allegations.

111. As to paragraph 111, the respondent:

- (a) refers to and repeats paragraph 109 above; and
- (b) otherwise denies the allegations.

112. As to paragraph 112, the respondent:

- (a) refers to and repeats paragraphs 108 and 109 above;
- (b) says that:
  - (i) whether a Doctor in Training was authorised to work any alleged ward round preparation overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - (ii) further or alternatively, pursuant to the Overtime Protocol, the Doctor in Training was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked, nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by the respondent) for retrospective

authorisation of such overtime, and the respondent cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 112.

113. As to paragraph 113, the respondent:

(a) refers to and repeats paragraphs 108 to 112 above; and

(b) says further that:

(i) payment for Unrostered Overtime is subject to the condition that a Group Member makes an Overtime Claim in relation to the overtime purportedly worked;

(ii) if a Group Member did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

A. the Group Member did not work such overtime;

B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

C. the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iii) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below;

(c) otherwise denies the allegations in paragraph 113.

114. As to paragraph 114, the respondent:

(a) refers to and repeats paragraphs 108 to 113 above; and

(b) otherwise denies the allegations in paragraph 114.

115. As to paragraph 115, the respondent:

(a) refers to and repeats paragraphs 108 to 113 above; and

(b) otherwise denies the allegations in paragraph 115.

## **E2 Ward round overtime**

116. As to paragraph 116, the respondent:

- (a) admits that the duties and responsibilities of Doctors in Training when providing medical services included undertaking ward rounds;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the undertaking of ward rounds; and
- (c) otherwise denies the allegations in paragraph 116.

117. As to paragraph 117, the respondent:

- (a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;
- (b) says further that:
  - (i) in accordance with cl. 32.2 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, the respondent implemented the Overtime Protocol;
  - (ii) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and the respondent's approach to Unrostered Overtime;
  - (iii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 117.

118. As to paragraph 118, the respondent:

- (a) refers to and repeats paragraphs 116 and 117 above;
- (b) otherwise denies the allegations.

119. As to paragraph 119, the respondent:

- (a) refers to and repeats paragraph 117 above; and
- (b) otherwise denies the allegations.

120. As to paragraph 120, the respondent:

- (a) refers to and repeats paragraphs 116 and 117 above;
- (b) says that:
  - (i) whether a Doctor in Training was authorised to work any alleged ward round overtime (including whether the Doctor in Training worked the alleged overtime due to a

demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Protocol, the Doctor in Training was required to either seek authorisation for any ward round overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round overtime worked, nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 120.

121. As to paragraph 121, the respondent:

- (a) refers to and repeats paragraphs 116 to 120 above;
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) if a Group Member did not make an Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:
    - A. the Group Member did not work such overtime;
    - B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
    - C. the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (c) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below; and
- (d) otherwise denies the allegations in paragraph 121.



122. As to paragraph 122, the respondent:

- (a) refers to and repeats paragraphs 116 to 121 above; and
- (b) otherwise denies the allegations in paragraph 122.

123. As to paragraph 123, the respondent:

- (a) refers to and repeats paragraphs 116 to 121 above; and
- (b) otherwise denies the allegations in paragraph 123.

#### **E4 Handover overtime**

124. As to paragraph 124, the respondent:

- (a) admits that the duties and responsibilities of Doctors in Training when providing medical services included conducting handover;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the conducting of handover; and
- (c) otherwise denies the allegations in paragraph 124.

125. As to paragraph 125, the respondent:

- (a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;
- (b) says further that:
  - (i) in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, the respondent implemented the Overtime Protocol;
  - (ii) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and the respondent's approach to Unrostered Overtime;
  - (iii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 125.

126. As to paragraph 126, the respondent:

- (a) refers to and repeats paragraphs 124 and 125 above;
- (b) otherwise denies the allegations in paragraph 126.

127. As to paragraph 127, the respondent:

- (a) refers to and repeats paragraph 125 above; and
- (b) otherwise denies the allegations in paragraph 127.

128. As to paragraph 128, the respondent:

- (a) refers to and repeats paragraphs 124 and 125 above;
- (b) says that:
  - (i) whether a Doctor in Training was authorised to work any alleged handover overtime (including whether the Doctor in Training worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - (ii) further or alternatively, pursuant to the Overtime Protocol, the Doctor in Training was required to either seek authorisation for any handover overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of handover overtime worked, nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 128.

129. As to paragraph 129, the respondent:

- (a) refers to and repeats paragraphs 124 to 128 above;
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) if a Group Member did not make an Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
    - A. the Group Member did not work such overtime;

- B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - C. the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (c) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below; /and
  - (d) otherwise denies the allegations in paragraph 129.

130. As to paragraph 130, the respondent:

- (a) refers to and repeats paragraphs 124 to 129 above; and
- (b) otherwise denies the allegations in paragraph 130.

131. As to paragraph 131, the respondent:

- (a) refers to and repeats paragraphs 124 to 129 above; and
- (b) otherwise denies the allegations in paragraph 131.

#### **E4 Medical procedures preparation overtime**

132. As to paragraph 132, the respondent:

- (a) admits that the duties and responsibilities of Doctors in Training when providing medical services included medical procedures preparation;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of medical procedures preparation; and
- (c) otherwise denies the allegations in paragraph 132.

133. As to paragraph 133, the respondent:

- (a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;
- (b) says further that:

- (i) in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, the respondent implemented the Overtime Protocol;
  - (ii) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and the respondent's approach to Unrostered Overtime;
  - (iii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 133.
134. As to paragraph 134, the respondent:
- (a) refers to and repeats paragraphs 132 and 133 above;
  - (b) otherwise denies the allegations.
135. As to paragraph 135, the respondent:
- (a) refers to and repeats paragraph 133 above; and
  - (b) otherwise denies the allegations in paragraph 135.
136. As to paragraph 136, the respondent:
- (a) refers to and repeats paragraphs 132 and 133 above;
  - (b) says that:
    - (i) whether a Doctor in Training was authorised to work any alleged medical procedures preparation overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
    - (ii) further or alternatively, pursuant to the Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical procedures preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
    - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical procedures preparation overtime worked, nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;

- (c) otherwise denies the allegations in paragraph 136.

137. As to paragraph 137, the respondent:

- (a) refers to and repeats paragraph 132 to 136 above;
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) if a Group Member did not make an Overtime Claim in respect of the alleged medical procedures preparation overtime, then it ought be concluded that either:
    - A. the Group Member did not work such overtime;
    - B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
    - C. the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (c) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below; and
- (d) otherwise denies the allegations in paragraph 137.

138. As to paragraph 138, the respondent:

- (a) refers to and repeats paragraphs 132 to 137 above; and
- (b) otherwise denies the allegations in paragraph 138.

139. As to paragraph 139, the respondent:

- (a) refers to and repeats paragraphs 132 to 137 above; and
- (b) otherwise denies the allegations in paragraph 139.

## **E5 Medical emergency overtime**

140. As to paragraph 140, the respondent:

- (a) admits that the duties and responsibilities of Doctors in Training when providing medical services included attending to medical emergencies;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for attendance to medical emergencies; and
- (c) otherwise denies the allegations in paragraph 140.

141. As to paragraph 141, the respondent:

- (a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;
- (b) says further that:
  - (i) in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, the respondent implemented the Overtime Protocol;
  - (ii) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and the respondent's approach to Unrostered Overtime;
  - (iii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 141.

142. As to paragraph 142, the respondent:

- (a) refers to and repeats paragraphs 140 and above;
- (b) otherwise denies the allegations in paragraph 142.

143. As to paragraph 143, the respondent:

- (a) refers to and repeats paragraph 140 above; and
- (b) otherwise denies the allegations in paragraph 143.

144. As to paragraph 144, the respondent:

- (a) refers to and repeats paragraphs 140 and 141 above;
- (b) says that:
  - (i) whether a Doctor in Training was authorised to work any alleged medical emergency overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical emergency overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) No Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical emergency overtime worked, nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 144.

145. As to paragraph 145, the respondent:

- (a) refers to and repeats paragraphs 141 to 144 above;
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) if a Group Member did not make an Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
    - A. the Group Member did not work such overtime;
    - B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
    - C. the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (c) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below; and
- (d) otherwise denies the allegations in paragraph 145.

146. As to paragraph 146, the respondent:

- (a) refers to and repeats paragraphs 141 to 145 above; and
- (b) otherwise denies the allegations in paragraph 146.

147. As to paragraph 147, the respondent:

- (a) refers to and repeats paragraphs 141 to 145 above; and
- (b) otherwise denies the allegations in paragraph 147.

## **E6 Medical records overtime**

148. As to paragraph 148, the respondent:

- (a) admits that the duties and responsibilities of Doctors in Training when providing medical services included completing medical records;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the completion of medical records; and
- (c) otherwise denies the allegations in paragraph 148.

149. As to paragraph 149, the respondent:

- (a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;
- (b) says further that:
  - (i) in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, the respondent implemented the Overtime Protocol;
  - (ii) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and the respondent's approach to Unrostered Overtime;
  - (iii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 149.

150. As to paragraph 150, the respondent:

- (a) refers to and repeats paragraphs 148 and 149 above;
- (b) otherwise denies the allegations in paragraph 150.



151. As to paragraph 151, the respondent:

- (a) refers to and repeats paragraph 148 above; and
- (b) otherwise denies the allegations in paragraph 151.

152. As to paragraph 152, the respondent:

- (a) refers to and repeats paragraphs 148 and 149 above;
- (b) says that:
  - (i) whether a Doctor in Training was authorised to work any alleged medical records overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - (ii) further or alternatively, pursuant to the Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
  - (iii) No Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical records overtime worked, nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 152.

153. As to paragraph 153, the respondent:

- (a) refers to and repeats paragraphs 149 to 152 above;
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) if a Group Member did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
    - A. the Group Member did not work such overtime;

- B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - C. the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (c) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below; and
  - (d) otherwise denies the allegations in paragraph 153.

154. As to paragraph 154, the respondent:

- (a) refers to and repeats paragraphs 149 to 153 above; and
- (b) otherwise denies the allegations in paragraph 154.

155. As to paragraph 155, the respondent:

- (a) refers to and repeats paragraphs 149 to 153 above; and
- (b) otherwise denies the allegations in paragraph 155.

#### **E7 Other medical services**

156. As to paragraph 156, the respondent:

- (a) admits that the duties and responsibilities of Doctors in Training when providing medical services included other medical services;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of other medical services; and
- (c) otherwise denies the allegations in paragraph 156.

157. As to paragraph 157, the respondent:

- (a) refers to and repeats sub-paragraphs 21(b)(i) to 21(b)(v) above;
- (b) says further that:

- (i) in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, the respondent implemented the Overtime Protocol;
  - (ii) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and the respondent's approach to Unrostered Overtime;
  - (iii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 157.
158. As to paragraph 158, the respondent:
- (a) refers to and repeats paragraphs 156 and 157 above;
  - (b) otherwise denies the allegations in paragraph 158.
159. As to paragraph 159, the respondent:
- (a) refers to and repeats paragraph 156 above; and
  - (b) otherwise denies the allegations in paragraph 159.
160. As to paragraph 160, the respondent:
- (a) refers to and repeats paragraphs 156 and 157 above;
  - (b) says that:
    - (i) whether a Doctor in Training was authorised to work any alleged other medical services overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
    - (ii) further or alternatively, pursuant to the Overtime Protocol, the Doctor in Training was required to either seek authorisation for any other medical services overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion reasonably possible after the overtime was worked but no later than completion of that pay fortnight;
    - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of other medical services overtime worked, nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by the respondent) for retrospective authorisation of such overtime, and the respondent cannot properly plead without those particulars;

- (c) otherwise denies the allegations in paragraph 160.

161. As to paragraph 161, the respondent:

- (a) refers to and repeats paragraphs 157 to 160 above;
- (b) says further that:
  - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
  - (ii) if a Group Member did not make an Overtime Claim in respect of the alleged other medical services overtime, then it ought be concluded that either:
    - A. the Group Member did not work such overtime;
    - B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
    - C. the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (c) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 165 to 176 below; and
- (d) otherwise denies the allegations in paragraph 161.

162. As to paragraph 162, the respondent:

- (a) refers to and repeats paragraphs 157 to 161 above; and
- (b) otherwise denies the allegations in paragraph 162.

163. As to paragraph 163, the respondent:

- (a) refers to and repeats paragraphs 157 to 161 above; and
- (b) otherwise denies the allegations in paragraph 163.

## **E8 Loss and damage**

164. The respondent denies the allegations in paragraph 164 for the reasons pleaded herein.

## **F ESTOPPEL BY CONDUCT**

**F1 Background to the estoppel**

165. Pursuant to the terms of their employment contracts, Dr Bolton and the Group Members were:

- (a) informed that their conditions of employment were governed by:
  - (i) the 2013 Agreement or the 2018 Agreement;
  - (ii) their individual contracts of employment;
- (b) directed to consult, and obliged to comply with all requirements of the Overtime Protocol as in force from time to time;

166. Pursuant to the Overtime Protocol, Dr Bolton and Group Members were required to:

- (a) either:
  - (i) obtain authorisation in advance for Unrostered Overtime from the appropriate employer delegate in accordance with the Overtime Protocol; or
  - (ii) where no authorisation in advance was obtained, obtain retrospective authorisation for Unrostered Overtime from the appropriate employer delegate on the first occasion possible after the Unrostered Overtime was worked but no later than completion of that pay fortnight;
- (b) document all hours of Unrostered Overtime worked on the relevant timesheet;
- (c) where pre-authorisation was impractical or not possible, provide information:
  - (i) substantiating the need for the Unrostered Overtime, namely that there was a demonstrable operational or clinical need that could not be provided in some other way; and
  - (ii) demonstrating why no prior authorisation was possible and outlining any attempts at obtaining the authorisation at the time;
- (d) submit any Overtime Claim by completing the relevant section on their timesheet or, in some units, by completing an Authorisation of Overtime Form;

**Particulars**

Overtime Protocol at [4.1], [4.2], [4.3], [4.5], [4.6], [5.2] and [5.4]

167. Dr Bolton and Group Members who commenced employment with the respondent at the beginning of their first clinical year as a medical officer, in the position of intern, participated in orientation during which they were informed of:

- (a) their ordinary hours of work (and given a copy of the 2013 Agreement or the 2018 Agreement);
- (b) the existence of, and obligation to comply with, the Overtime Protocol;
- (c) the location of the Overtime Protocol on the intranet site *ePulse* in the Prompt section;
- (d) the requirement to seek either advance, or retrospective, authorisation for any Unrostered Overtime;
- (e) the requirement to make a claim for Unrostered Overtime;
- (f) the requirements of any claim for Unrostered Overtime;
- (g) the requirement for a claim for Unrostered Overtime to be submitted on the first occasion possible after the Unrostered Overtime was worked but no later than completion of that pay fortnight;
- (h) the process for claiming Unrostered Overtime, including by timesheet or an Authorisation of Overtime Form.

#### **Particulars**

In relation to Dr Bolton:

- A. Department of Medicine Handbook, in effect from January 2019;

Particulars in relation to Group Members will be provided after the Group Members are known.

168. From time to time throughout the Relevant Period, Dr Bolton and Group Members submitted claims for Unrostered Overtime which were approved and for which they were paid (**Claimed Unrostered Overtime**).

#### **Particulars**

In relation to Dr Bolton, see the particulars of sub-paragraphs 21(b)(vii), 47(c)(ii) and 57(c)(ii).

Particulars in relation to Group Members will be provided after the Group Members are known.

169. By reason of paragraphs 165 to 168 above, Dr Bolton and Group Members were:

- (a) aware of their ordinary hours of work;

- (b) aware of the requirement to either:
  - (i) obtain authorisation in advance for Unrostered Overtime from the appropriate employer delegate in accordance with the Overtime Protocol; or
  - (ii) where no authorisation in advance was obtained, obtain retrospective authorisation for Unrostered Overtime from the appropriate employer delegate on the first occasion possible after the overtime was worked but no later than completion of that pay fortnight in accordance with the Overtime Protocol;
- (c) aware of the requirement to submit an Overtime Claim and the process for doing so; and
- (d) capable of complying with those requirements.

## **F2 Operation of the estoppel**

170. In the circumstances set out in paragraphs 165 to 169 above, to the extent that Dr Bolton and the Group Members:

- (a) attended or remained at work outside their ordinary hours of work other than for rostered overtime or authorised Unrostered Overtime, having not obtained advance authorisation in accordance with the Overtime Protocol; or
- (b) did not submit an Overtime Claim in accordance with the Overtime Protocol;

then, by that conduct, Dr Bolton and the Group Members induced the respondent to assume, and the respondent did assume:

- (c) that they were not, or were not required to be, in attendance at a hospital to carry out functions that they had been called upon to perform on behalf of the respondent during any such time;
- (d) further or alternatively, that any attendance at a hospital during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntary.

171. Dr Bolton and the Group Members did not correct any mistake in the assumptions set out in sub-paragraph 170(c) and, further or alternatively, sub-paragraph 170(d) above (**unapproved or unclaimed time assumptions**), despite being under a duty to do so:

- (a) by reason of their contractual obligations set out in paragraph 165 above;
- (b) further or alternatively, because, by reason of the matters in paragraphs 165 to 169 above:
  - (i) Dr Bolton and Group Members knew, or should reasonably have known, that the respondent would be induced by the acts or omissions referred to in sub-paragraphs

170(a) or 170(b) above to make the unapproved or unclaimed overtime assumptions;  
and

- (ii) a reasonable person would have expected Dr Bolton and Group Members to correct any mistake in those assumptions by submitting an Overtime Claim in accordance with the Overtime Protocol.

172. In the circumstances set out in paragraph 171 above, to the extent that Dr Bolton or Group Members engaged in the conduct in sub-paragraphs 170(a) or 170(b) above, it amounted to a representation by Dr Bolton and Group Members as to the matters in sub-paragraph 170(c) and, further or alternatively, sub-paragraph 170(d) above (**unapproved or unclaimed overtime representations**).

173. The respondent acted in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions, in that the respondent, by reason of the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions:

- (a) was not aware of, and did not investigate contemporaneously, any assertion that Dr Bolton or Group Members had purportedly attended at work outside their ordinary hours of work other than during the periods of Rostered Overtime and Claimed Unrostered Overtime;
- (b) did not make any payment to Dr Bolton or Group Members in relation to any purported attendance at work outside their ordinary hours of work other during the periods of Rostered Overtime and Claimed Unrostered Overtime; and
- (c) did not take steps that were available to the respondent to reduce any such time being worked by Dr Bolton and Group Members.

### **Particulars**

The steps that would have been available to the respondent included:

- A. changing roster arrangements to reduce the possibility of Unrostered Overtime arising;
- B. changing models of care and making operational changes in the delivery of health services, such as changing theatre scheduling arrangements, to address the causes of Unrostered Overtime, based on the information provided by Dr Bolton and Group Members;
- C. employing or rostering more medical officers;
- D. reallocating responsibility for some activities or functions to more senior doctors or other personnel;



- E. reinforcing policies and guidelines in relation to working or not working Unrostered Overtime or performing or not performing particular activities;
- F. forecasting Unrostered Overtime to facilitate planning and budgeting of operational changes to reduce Unrostered Overtime.

174. To the extent that Dr Bolton or Group Members engaged in the conduct in sub-paragraphs 170(a) and 170(b) above, it was reasonable for the respondent to regard that conduct as amounting to the unapproved and unclaimed time representations, to make the unapproved or unclaimed overtime assumptions, and to rely on those assumptions as set out paragraph 173 above, in circumstances in which Dr Bolton and Group Members were:

- (a) obliged to comply with the Overtime Protocol in relation to obtaining authorisation for Unrostered Overtime and submitting claims for Unrostered Overtime, as set out in paragraphs 165 to 167 above;
- (b) informed of those obligations by the respondent as set out in paragraph 165 and 167 above;
- (c) capable of complying with those obligations as set out in paragraphs 168 and 169 above; and
- (d) on notice of the respondent's reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

#### **Particulars**

Dr Bolton and the Group Members were on notice including because:

- A. they were not paid in relation to any purported attendance at work outside their ordinary hours of work other than during the periods of Rostered Overtime and Claimed Unrostered Overtime;
- B. their day-to-day work was autonomous, such that they could not reasonably expect the senior staff with authority to approve or require Unrostered Overtime on behalf of the respondent to have known they were working outside their ordinary hours unless they submitted a claim or otherwise brought that work to the respondent's attention.

175. The respondent would suffer detriment if Dr Bolton and Group Members were permitted to assert to the contrary of any of the unapproved or unclaimed overtime assumptions, to the extent that any of those assumptions is incorrect (which is not admitted), being that:

- (a) the respondent would be required to make further payments to Dr Bolton and Group Members in relation to Unrostered Overtime;

(b) further or alternatively, the respondent has lost the opportunity to avoid all or some of the Unrostered Overtime by taking the steps referred to in sub-paragraph 173(c) above,

which they did not take in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

176. By reason of paragraphs 170 to 175 above, Dr Bolton and Group Members are estopped from asserting:

(a) that they were, or were required to be, in attendance at a hospital to carry out functions that they had been called upon to perform on behalf of the respondent during any such time;

(b) further or alternatively, that any attendance at a hospital during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntary.

Date:

.....  
Signed by Andrew Morrison  
Lawyer for the respondent

This pleading was prepared by Andrew Morrison and Emma Mawson, Lawyers for the respondent and settled by Frank Parry QC and Helen Tiplady, Counsel for the Respondents.

### **Certificate of lawyer**

I Andrew Morrison certify to the Court that, in relation to the defence filed on behalf of the respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 18 June 2021



.....  
Signed by Andrew Morrison  
Lawyer for the respondent