

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: VID700/2021  
File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION  
& ANOR v ALFRED HEALTH & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 10/03/2022 4:04:19 PM AEDT

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.

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## Defence

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

No. VID700/2021

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

First Applicant

#### **James Lisik**

Second Applicant

#### **Alfred Health**

First Respondent

#### **St Vincent's Hospital (Melbourne) Limited (ACN 052 110 755)**

Second Respondent

By way of defence to the amended statement of claim dated 21 December 2021 (**Statement of Claim**), the respondents say 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 respondents:

- (a) admit 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 Lisik**):
- (i) admit the allegations in sub-paragraphs (c) to (f);

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**Filed on behalf of:** The respondents

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- (ii) do not admit the allegations in sub-paragraph (g) and (h);
- (c) in relation to the alleged Group Members:
  - (i) admit that there were persons with the characteristics alleged in sub-paragraphs (c) to (f) (**Doctors in Training**);
  - (ii) otherwise do not admit the allegations in paragraph 1.
- 2. The respondents admit paragraph 2.
- 3. As to paragraph 3:
  - (a) the second respondent, St Vincent's Health (**SVH**):
    - (i) admits paragraph (a);
    - (ii) says further that during the period 1 June 2015 to 9 August 2015, Dr Lisik was:
      - A. seconded to Werribee Mercy Hospital, which is managed by Mercy Health; and
      - B. paid by Mercy Health;
  - (b) the first respondent, Alfred Health (**AH**) admits paragraphs (b) and (c).
- 4. As to paragraph 4, the respondents:
  - (a) deny that the Group Members have claims against them as pleaded in the Statement of Claim for the reasons set out below;
  - (b) otherwise do not know and therefore cannot admit the allegations in paragraph 4.

## **A2 The respondents**

- 5. As to paragraph 5:
  - (a) SVH admits the allegations in paragraph 5;
  - (b) AH does not plead to paragraph 5 as it contains no allegation of material fact against it.
- 6. As to paragraph 6:
  - (a) AH admits the allegations in paragraph 6;
  - (b) SVH does not plead to paragraph 6 as it contains no allegation of material fact against it.

## **B THE AGREEMENTS**

### **B1 The 2013 Agreement**

#### Application and coverage

7. The respondents admit paragraph 7.

#### Doctor Responsibilities

8. The respondents admit paragraph 8.

#### Hours of Work, Rostering, and Overtime

9. The respondents admit paragraph 9.

10. The respondents admit paragraph 10.

11. As to paragraph 11, the respondents:

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

12. The respondents admit paragraph 12.

### Doctor Responsibilities

13. The respondents admit paragraph 13.

### Hours of Work, Rostering, and Overtime

14. The respondents admit paragraph 14.

15. The respondents admit paragraph 15.

16. As to paragraph 16, the respondents:

- (a) admit that the 2018 Agreement contains clauses 36.1, 36.2(a) to (c) as pleaded in the Statement of Claim;
- (b) say 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 LISIK AND GROUP MEMBERS**

17. As to paragraph 17:

(a) SVH:

(i) admits that during the Relevant Period, Dr Lisik's duties and responsibilities when providing medical services included, from time to time:

- A. ward round preparation; and
- B. medical records;

(ii) otherwise does not admit the allegations in paragraph 17;

(b) AH:

(i) admits that during the Relevant Period, Dr Lisik's duties and responsibilities when providing medical services included, from time to time:

- A. ward round preparation;
- B. ward rounds;
- C. medical records;
- D. outpatient care; and
- E. other medical services;

(ii) otherwise does not admit the allegations in paragraph 17.

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

18. As to paragraph 18:

(a) SVH:

(i) admits the allegations in sub-paragraphs (a) and (b);

(ii) does not plead to sub-paragraphs (c) to (f) as they contain no allegation of material fact against it;

(b) AH:

- (i) admits the allegations in sub-paragraphs (c) to (f);
- (ii) does not plead to sub-paragraphs (a) and (b) as they contain no allegation of material fact against it.

**D1 St Vincent's General Medicine Rotation – 12 January 2015 to 22 March 2015**

19. As to paragraph 19:

- (a) SVH admits paragraph 19;
- (b) AH does not plead to paragraph 19 as it contains no allegation of material fact against it.

Rosters

20. As to paragraph 20:

- (a) SVH:
  - (i) admits that during the SVH General Medicine Rotation, Dr Lisik was rostered to work as pleaded;
  - (ii) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 10 above, the SVH General Medicine Rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(a) of the Defence;
- (b) AH does not plead to paragraph 20 as it contains no allegation of material fact against it.

Ward round preparation

21. As to paragraph 21:

- (a) SVH:
  - (i) admits that Dr Lisik's duties and responsibilities when providing medical services included undertaking ward round preparation;
  - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the SVH General Medicine Rotation roster factored in and allowed time for undertaking ward round preparation;
  - (iii) otherwise denies the allegations in paragraph 21;
- (b) AH does not plead to paragraph 21 as it contains no allegation of material fact against it.

22. As to paragraph 22:

- (a) SVH:
- (i) says that there were occasions where Dr Lisik was present at St Vincent's Hospital during the SVH General Medicine Rotation outside of his rostered ordinary working hours;
  - (ii) says further that:
    - A. in accordance with cl. 32.3 of the 2013 Agreement and cl 36.3 of the 2018 Agreement, SVH 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**) (the **SVH Overtime Protocol**);

#### **Particulars**

- 1) Between 27 November 2015 and February 2017, the SVH Overtime Protocol was partly written and partly to be implied. Insofar as it was in writing, it was contained in the Unrostered Overtime Claim form which was required to be submitted by a Doctor in Training to his or her Clinical Director for authorisation. Insofar as it was implied, it was implied from the fact that in order to be paid for Unrostered Overtime, a Doctor in Training had to first submit the Unrostered Overtime Claim form for authorisation;
  - 2) Between March 2017 and July 2019, the SVH Overtime Protocol was written and contained in the Junior Medical Staff Unrostered Overtime Policy, as amended from time to time;
  - 3) From July 2019 onwards, the SVH Overtime Protocol was written and contained in the Junior Medical Staff Unrostered Overtime and Recall Policy, as amended from time to time;
- B. any Doctor in Training who works Unrostered Overtime can submit a claim for authorisation and remuneration for that Unrostered Overtime using the Unrostered Overtime Claim form (**SVH Overtime Claim**);
- C. in accordance with the SVH Overtime Protocol, any Unrostered Overtime must be authorised by:
- 1) between 27 November 2015 and February 2017, the Doctor in Training's Clinical Director;

- 2) between March 2017 and July 2019, the Doctor in Training's Head of Unit or another Senior Medical Staff;
  - 3) from July 2019 onwards, the Medical Workforce Unit;
- D. in accordance with the SVH Overtime Protocol, any Unrostered Overtime should be authorised prior to or at the time the Doctor in Training works the Unrostered Overtime, alternatively:
- 1) between 27 November 2015 and July 2019, within two working days;
  - 2) from July 2019 onwards, within the pay period in which the Unrostered Overtime was worked;
- E. in accordance with the SVH Overtime Protocol, the SVH Overtime Claim should be submitted on the Monday following the relevant pay period;
- F. on the proper construction of the SVH Overtime Protocol, authorisation must be express, and not implied;
- G. Dr Lisik was aware of the SVH Overtime Protocol and SVH's approach to Unrostered Overtime;

#### **Particulars**

Information about the SVH Overtime Protocol was available from Dr Lisik's roster coordinator.

- H. if Dr Lisik performed ward round preparation overtime as pleaded in the Statement of Claim, he was able to submit a SVH Overtime Claim;

(iii) otherwise denies the allegations in paragraph 22.

(b) AH does not plead to paragraph 22 as it contains no allegation of material fact against it.

23. As to paragraph 23:

(a) SVH:

(i) refers to and repeats paragraphs 21 and 22 above;

(ii) otherwise does not admit the allegations in paragraph 23;

(b) AH does not plead to paragraph 23 as it contains no allegation of material fact against it.

24. As to paragraph 24:

- (a) SVH:
- (i) refers to and repeats paragraphs 21, 22 and 23 above;
  - (ii) says that:
    - A. whether Dr Lisik was authorised to work any ward round preparation overtime (including whether Dr Lisik 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;
    - B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any ward round preparation overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
    - C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 24;
- (b) AH does not plead to paragraph 24 as it contains no allegation of material fact against it.

25. As to paragraph 25:

- (a) SVH:
- (i) refers to and repeats paragraphs 21 to 24 above;
  - (ii) says further that:
    - A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make a SVH Overtime Claim in relation to the overtime purportedly worked;
    - B. Dr Lisik has not provided particulars of any occasions on which he allegedly:

- 1) worked ward round preparation overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made a SVH Overtime Claim for that ward round preparation overtime; and
  - 4) was subsequently not paid;
- C. if Dr Lisik did not make a SVH Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
- 1) Dr Lisik did not work such overtime;
  - 2) Dr Lisik 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
  - 3) Dr Lisik was in attendance at the St Vincent's Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 292 to 303 below;
- (iii) otherwise denies the allegations in paragraph 25;
- (b) AH does not plead to paragraph 25 as it contains no allegation of material fact against it.
26. As to paragraph 26:
- (a) SVH:
- (i) says that if:
    - A. Dr Lisik had made a SVH Overtime Claim; and
    - B. the SVH Overtime Claim satisfied the criteria set out in the SVH Overtime Protocol,
  - (ii) SVH would have considered and processed the SVH Overtime Claim in accordance with the SVH Overtime Protocol;
  - (iii) otherwise denies the allegations in paragraph 26;

(b) AH does not plead to paragraph 26 as it contains no allegation of material fact against it.

27. As to paragraph 27:

(a) SVH:

(i) refers to and repeats paragraphs 21 to 26 above; and

(ii) otherwise denies the allegations in paragraph 27;

(b) AH does not plead to paragraph 27 as it contains no allegation of material fact against it.

28. As to paragraph 28:

(a) SVH:

(i) refers to and repeats paragraphs 21 to 26 above; and

(ii) otherwise denies the allegations in paragraph 28;

(b) AH does not plead to paragraph 28 as it contains no allegation of material fact against it.

Medical records

29. As to paragraph 29:

(a) SVH:

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

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the SVH General Medicine Rotation roster factored in and allowed time for the completion of medical records;

(b) AH does not plead to paragraph 29 as it contains no allegation of material fact against it.

30. As to paragraph 30:

(a) SVH:

(i) refers to and repeats paragraph 22(a)(ii)A to 22(a)(ii)G above;

(ii) says further that if Dr Lisik performed medical records overtime as pleaded, he was entitled to submit a SVH Overtime Claim;

(iii) otherwise denies the allegations in paragraph 30;

(b) AH does not plead to paragraph 30 as it contains no allegation of material fact against it.

31. As to paragraph 31:

(a) SVH:

(i) refers to and repeats paragraphs 29 and 30 above;

(ii) otherwise denies the allegations in paragraph 31;

(b) AH does not plead to paragraph 31 as it contains no allegation of material fact against it.

32. As to paragraph 32:

(a) SVH:

(i) refers to and repeats paragraphs 29, 30 and 31 above;

(ii) says that:

A. whether Dr Lisik was authorised to work any medical records overtime (including whether Dr Lisik 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;

B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any medical records overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;

C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 32;

(b) AH does not plead to paragraph 32 as it contains no allegation of material fact against it.

33. As to paragraph 33:

(a) SVH:

(i) refers to and repeats paragraphs 29 to 32 above;

(ii) says further that:

A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make a SVH Overtime Claim in relation to the overtime purportedly worked;

B. Dr Lisik has not provided particulars of any occasions on which he allegedly:

1) worked medical records overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made a SVH Overtime Claim for that medical records overtime; and

4) was subsequently not paid;

C. if Dr Lisik did not make a SVH Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

1) Dr Lisik did not work such overtime;

2) Dr Lisik 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

3) Dr Lisik was in attendance at the St Vincent's Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 33;

(b) AH does not plead to paragraph 33 as it contains no allegation of material fact against it.

34. As to paragraph 34:

(a) SVH:

(i) says that if:

A. Dr Lisik had made a SVH Overtime Claim; and

B. the SVH Overtime Claim satisfied the criteria set out in the SVH Overtime Protocol,

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

(ii) otherwise denies the allegations in paragraph 34;

(b) AH does not plead to paragraph 34 as it contains no allegation of material fact against it.

35. As to paragraph 35:

(a) SVH:

(i) refers to and repeats paragraphs 29 to 34 above; and

(ii) otherwise denies the allegations in paragraph 35;

(b) AH does not plead to paragraph 35 as it contains no allegation of material fact against it.

36. As to paragraph 36:

(a) SVH:

(i) refers to and repeats paragraphs 29 to 34 above; and

(ii) otherwise denies the allegations in paragraph 36;

(b) AH does not plead to paragraph 36 as it contains no allegation of material fact against it.

**D2 St Vincent's Plastic Surgery Department Rotation - 23 March 2015 to 31 May 2015**

37. As to paragraph 37:

(a) SVH admits paragraph 37:

(b) AH does not plead to paragraph 37 as it contains no allegation of material fact against it.

Rosters

38. As to paragraph 38:

(a) SVH:

(i) says that during the SVH Plastic Surgery Rotation, Dr Lisik was rostered to work as follows:

A. Monday and Tuesday, from 7:30am - 3.30pm;

B. Wednesday, from 8:00am - 6:30pm;

C. Thursday, from 8:00am - 1.00pm; and

D. Friday, from 8:00am - 4.30pm.

(ii) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 10 above, the SVH Plastic Surgery Rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(a) of the Defence;

(b) AH does not plead to paragraph 38 as it contains no allegation of material fact against it.

Ward round preparation

39. As to paragraph 39:

(a) SVH:

(i) admits that Dr Lisik's duties and responsibilities when providing medical services included undertaking ward round preparation;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the SVH Plastic Surgery Rotation roster factored in and allowed time to undertake ward round preparation;

(iii) otherwise denies the allegations in paragraph 39;

(b) AH does not plead to paragraph 39 as it contains no allegation of material fact against it.

40. As to paragraph 40:

(a) SVH:

(i) says that there were occasions where Dr Lisik was present at St Vincent's Hospital during the Plastic Surgery Rotation outside of his rostered ordinary working hours;

- (ii) refers to and repeats sub-paragraphs 22(a)(ii)A to 22(a)(ii)G above;
  - (iii) says further that if Dr Lisik performed ward round preparation overtime as pleaded in the Statement of Claim, he was able to submit a SVH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 40.
- (b) AH does not plead to paragraph 40 as it contains no allegation of material fact against it.
41. As to paragraph 41:
- (a) SVH:
    - (i) refers to and repeats paragraphs 39 and 40 above;
    - (ii) otherwise does not admit the allegations in paragraph 41;
  - (b) AH does not plead to paragraph 41 as it contains no allegation of material fact against it.
42. As to paragraph 42:
- (a) SVH:
    - (i) refers to and repeats paragraphs 39, 40 and 41 above;
    - (ii) says that:
      - A. whether Dr Lisik was authorised to work any ward round preparation overtime (including whether Dr Lisik 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;
      - B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any ward round preparation overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
      - C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved

by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 42;

(b) AH does not plead to paragraph 42 as it contains no allegation of material fact against it.

43. As to paragraph :

(a) SVH:

(i) refers to and repeats paragraphs 39 to 42 above;

(ii) says further that:

A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make a SVH Overtime Claim in relation to the overtime purportedly worked;

B. Dr Lisik has not provided particulars of any occasions on which he allegedly:

1) worked ward round preparation overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made a SVH Overtime Claim for that ward round preparation overtime; and

4) was subsequently not paid;

C. if Dr Lisik did not make a SVH Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

1) Dr Lisik did not work such overtime;

2) Dr Lisik 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

3) Dr Lisik was in attendance at the St Vincent's Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 43;

(b) AH does not plead to paragraph 43 as it contains no allegation of material fact against it.

44. As to paragraph 44:

(a) SVH:

(i) says that if:

A. Dr Lisik had made a SVH Overtime Claim; and

B. the SVH Overtime Claim satisfied the criteria set out in the SVH Overtime Protocol,

(ii) SVH would have considered and processed the SVH Overtime Claim in accordance with the SVH Overtime Protocol;

(iii) otherwise denies the allegations in paragraph 44;

(b) AH does not plead to paragraph 44 as it contains no allegation of material fact against it.

45. As to paragraph 45:

(a) SVH:

(i) refers to and repeats paragraphs 39 to 44 above; and

(ii) otherwise denies the allegations in paragraph 45;

(b) AH does not plead to paragraph 45 as it contains no allegation of material fact against it.

46. As to paragraph 46:

(a) SVH:

(i) refers to and repeats paragraphs 39 to 44 above; and

(ii) otherwise denies the allegations in paragraph 46;

(b) AH does not plead to paragraph 46 as it contains no allegation of material fact against it.

Medical records

47. As to paragraph 47:

(a) SVH:

- (i) admits that Dr Lisik's duties and responsibilities when providing medical services included completing medical records;
- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the SVH Plastic Surgery Rotation roster factored in and allowed time to complete medical records;

(b) AH does not plead to paragraph 47 as it contains no allegation of material fact against it.

48. As to paragraph 48:

(a) SVH:

- (i) refers to and repeats sub-paragraphs 22(a)(ii)A to 22(a)(ii)G above;
- (ii) says further that if Dr Lisik performed medical records overtime as pleaded, he was entitled to submit a SVH Overtime Claim;
- (iii) otherwise denies the allegations in paragraph 48;

(b) AH does not plead to paragraph 49 as it contains no allegation of material fact against it.

49. As to paragraph 49:

(a) SVH:

- (i) refers to and repeats paragraphs 47 and 48 above;
- (ii) otherwise denies the allegations in paragraph 49;

(b) AH does not plead to paragraph 49 as it contains no allegation of material fact against it.

50. As to paragraph 50:

(a) SVH:

- (i) refers to and repeats paragraphs 47, 49 and 48 above;
- (ii) says that:

A. whether Dr Lisik was authorised to work any medical records overtime (including whether Dr Lisik 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;

- B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any medical records overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
- C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 50;

(b) AH does not plead to paragraph 50 as it contains no allegation of material fact against it.

51. As to paragraph 51:

(a) SVH:

(i) refers to and repeats paragraphs 47 to 49 above;

(ii) says further that:

- A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make a SVH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Lisik has not provided particulars of any occasions on which he allegedly:
  - 1) worked medical records overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made a SVH Overtime Claim for that medical records overtime; and
  - 4) was subsequently not paid;
- C. if Dr Lisik did not make a SVH Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
  - 1) Dr Lisik did not work such overtime;

- 2) Dr Lisik 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
- 3) Dr Lisik was in attendance at the St Vincent's Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 51;

(b) AH does not plead to paragraph 51 as it contains no allegation of material fact against it.

52. As to paragraph 52:

(a) SVH:

(i) says that if:

A. Dr Lisik had made a SVH Overtime Claim; and

B. the SVH Overtime Claim satisfied the criteria set out in the SVH Overtime Protocol,

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

(ii) otherwise denies the allegations in paragraph 52;

(b) AH does not plead to paragraph 52 as it contains no allegation of material fact against it.

53. As to paragraph 53:

(a) SVH:

(i) refers to and repeats paragraphs 47 to 52 above; and

(ii) otherwise denies the allegations in paragraph 53;

(b) AH does not plead to paragraph 53 as it contains no allegation of material fact against it.

54. As to paragraph 54:

(a) SVH:

- (i) refers to and repeats paragraphs 47 to 52 above; and
  - (ii) otherwise denies the allegations in paragraph 54;
- (b) AH does not plead to paragraph 54 as it contains no allegation of material fact against it.

### **D3 Orthopaedics Department at the Alfred Hospital - 1 February 2016 to 1 May 2016**

55. As to paragraph 55:

- (a) AH admits paragraph 55;
- (b) SVH does not plead to paragraph 55 as it contains no allegation of material fact against it.

#### Rosters

56. As to paragraph 56:

- (a) AH:
  - (i) admits that during the Orthopaedics Rotation, Dr Lisik was rostered to work as pleaded;
  - (ii) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 10 above, the Orthopaedics Rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(b) of the Defence;
- (b) SVH does not plead to paragraph 56 as it contains no allegation of material fact against it.

#### Ward round preparation

57. As to paragraph 57:

- (a) AH:
  - (i) admits that Dr Lisik's duties and responsibilities when providing medical services included undertaking ward round preparation;
  - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Orthopaedics Rotation roster factored in and allowed time to undertake ward round preparation;
  - (iii) otherwise denies the allegations in paragraph 57;
- (b) SVH does not plead to paragraph 57 as it contains no allegation of material fact against it.

58. As to paragraph 58:

- (a) AH:
- (i) says that there were occasions where Dr Lisik was present at the Alfred Hospital during the Orthopaedics Rotation outside of his rostered ordinary working hours;
  - (ii) says further that:
    - A. in accordance with cl. 32.3 of the 2013 Agreement, AH 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**

- 1) Between 4 June 2013 and 3 May 2017, the AH Overtime Protocol was written and contained in the Guideline – HMO Overtime, approved June 2013;
- 2) Between 4 May 2017 and 23 August 2018, the AH Overtime Protocol was written and contained in the Guideline - Junior Medical Staff Overtime, approved May 2017;
- 3) Between 24 August 2018 and 22 September 2021, the AH Overtime Protocol was written and contained in the Guideline - Junior Medical Staff Unrostered Overtime, approved August 2018;
- 4) From 23 September 2021, the AH Overtime Protocol was written and contained in the Guideline - Junior Medical Staff Unrostered Overtime, approved September 2021;

(the **AH Overtime Protocol**).

- B. in accordance with the AH Overtime Protocol, any Doctor in Training who works Unrostered Overtime can submit a claim for authorisation and remuneration for that Unrostered Overtime (**AH Overtime Claim**);
- C. in accordance with the AH Overtime Protocol, unless the Unrostered Overtime was performed: (a) after 23 September 2021; and (b) for an endorsed reason as set out in the AH Overtime Protocol:
  - 1) any Unrostered Overtime must be authorised either prior to, or at the time of, its commencement by the unit head or their nominated delegate;

- 2) where authorisation in advance or at the time has not been provided, retrospective authorisation will only be given when:
  - a) the Doctor in Training has performed the overtime due to a demonstrable clinical need that required the ongoing presence of the Doctor in Training and that need could not have been met by some other means;
  - b) authorisation of the Unrostered Overtime could not have been made in advance of the Doctor in Training performing the work;
  - c) the Doctor in Training has claimed for retrospective authorisation of the Unrostered Overtime on the first occasion possible after the Unrostered Overtime was worked and no later than completion of the pay fortnight in which it was worked;
  - d) the Doctor in Training has described, on the AH Overtime Claim, the requirement for working the Unrostered Overtime including the clinical reason, patient identifier and details of duties performed.

D. in accordance with the AH Overtime Protocol, if the Unrostered Overtime was performed after 23 September 2021 and it was performed for one of the following reasons: (a) attending to a clinically deteriorating patient; (b) an early starting or late finishing ward round where attendance is required by the supervising consultant; (c) compulsory unit activities are scheduled outside of rostered shift times at the request of the supervising consultant; (d) completion of urgent unit patient admissions or urgent discharges, then:

- 1) authorisation of the Unrostered Overtime either prior to, or at the time of, its commencement is not required;
- 2) retrospective authorisation will be given when:
  - a) the Doctor in Training has performed the overtime due to a demonstrable clinical need that required the ongoing presence of the Doctor in Training and that need could not have been met by some other means;
  - b) the Doctor in Training has claimed for retrospective authorisation of the Unrostered Overtime on the first occasion possible after the Unrostered Overtime was worked and no later than completion of the pay fortnight in which it was worked;

- c) the Doctor in Training has described, on the AH Overtime Claim, the requirement for working the Unrostered Overtime including the clinical reason, patient identifier and details of duties performed;
- E. in accordance with the AH Overtime Protocol, if the Unrostered Overtime was performed after 23 September 2021 and it was performed in order to cover sick leave or other unscheduled absences, then the Doctor in Training is required to sign a declaration of that fact, and forward it to the Medical Workforce Unit;
- F. on the proper construction of the AH Overtime Protocol, authorisation must be express, and not implied;
- G. Dr Lisik was aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;

#### Particulars

Dr Lisik's offers of appointment dated 6 November 2015, 22 September 2016 and 3 February 2017.

The AH Overtime Protocol was also available to Dr Lisik on the AH intranet.

- H. if Dr Lisik performed ward round preparation overtime as pleaded in the Statement of Claim, he was able to submit an AH Overtime Claim;
- I. during the Orthopaedics Rotation, Dr Lisik submitted AH Overtime Claims for Unrostered Overtime, which were approved and paid;

#### Particulars

The AH Overtime Claims made by Dr Lisik and approved during the Orthopaedics Rotation included those set out in the table below:

Date overtime worked	Period for which unrostered overtime paid	Total hours of overtime claimed	Date paid
24.02.2016	17:00 - 18:45	1.45	06.03.2016
25.02.2016	13:00 - 17:45	4.45	06.03.2016
11.03.2016	13:00 - 14:45	1.75	20.03.2016
17.03.2016	13:00 - 16:00	3.00	20.03.2016

Date overtime worked	Period for which unrostered overtime paid	Total hours of overtime claimed	Date paid
31.03.2016	13:00 - 14:00	1.00	03.04.2016
12.04.2016	13:00 - 14:30	1.50	17.04.2016
13.04.2016	17:00 - 18:00	1.00	17.04.2016
29.04.2016	17:00 - 19:15	2.25	01.05.2016
01.05.2016	12:00 - 17:00	5.00	01.05.2016

(iii) otherwise denies the allegations in paragraph 58.

(b) SVH does not plead to paragraph 58 as it contains no allegation of material fact against it.

59. As to paragraph 59:

(a) AH:

(i) refers to and repeats paragraphs 57 and 58 above;

(ii) otherwise does not admit the allegations in paragraph 59;

(b) SVH does not plead to paragraph 59 as it contains no allegation of material fact against it.

60. As to paragraph 60:

(a) AH:

(i) refers to and repeats paragraphs 57, 58 and 59 above;

(ii) says that:

A. whether Dr Lisik was authorised to work any ward round preparation overtime (including whether Dr Lisik 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;

B. further or alternatively, pursuant to the AH Overtime Protocol, Dr Lisik was required to either seek authorisation for any ward round preparation overtime in advance of, or at the time of, working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than completion of the pay fortnight in which it was worked;

C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 60;

(b) SVH does not plead to paragraph 60 as it contains no allegation of material fact against it.

61. As to paragraph 61:

(a) AH:

(i) refers to and repeats paragraphs 57 to 60 above;

(ii) says further that:

A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make an AH Overtime Claim in relation to the overtime purportedly worked;

B. Dr Lisik has not provided particulars of any occasions on which he allegedly:

1) worked ward round preparation overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made an AH Overtime Claim for that ward round preparation overtime; and

4) was subsequently not paid;

C. if Dr Lisik did not make an AH Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

1) Dr Lisik did not work such overtime;

2) Dr Lisik 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

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

D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 61;

(b) SVH does not plead to paragraph 61 as it contains no allegation of material fact against it.

62. As to paragraph 62:

(a) AH:

(i) says that if:

A. Dr Lisik had made an AH Overtime Claim; and

B. the AH Overtime Claim satisfied the criteria set out in the AH Overtime Protocol,

(ii) AH would have considered and processed the AH Overtime Claim in accordance with the AH Overtime Protocol;

(iii) otherwise denies the allegations in paragraph 62;

(b) SVH does not plead to paragraph 62 as it contains no allegation of material fact against it.

63. As to paragraph 63:

(a) AH:

(i) refers to and repeats paragraphs 57 to 62 above; and

(ii) otherwise denies the allegations in paragraph 63;

(b) SVH does not plead to paragraph 63 as it contains no allegation of material fact against it.

64. As to paragraph 64:

(a) AH:

(i) refers to and repeats paragraphs 57 to 62 above; and

(ii) otherwise denies the allegations in paragraph 64;

- (b) SVH does not plead to paragraph 64 as it contains no allegation of material fact against it.

Medical records overtime

65. As to paragraph 65:

(a) AH:

- (i) admits that Dr Lisik's duties and responsibilities when providing medical services included completing medical records;
- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Orthopaedics Rotation roster factored in and allowed time to complete medical records;

- (b) SVH does not plead to paragraph 65 as it contains no allegation of material fact against it.

66. As to paragraph 66:

(a) AH:

- (i) refers to and repeats sub-paragraphs 58(a)(ii)A to 58(a)(ii)H above;
- (ii) says further that if Dr Lisik performed medical records overtime as pleaded, he was entitled to submit an AH Overtime Claim;
- (iii) otherwise denies the allegations in paragraph 66;

- (b) SVH does not plead to paragraph 66 as it contains no allegation of material fact against it.

67. As to paragraph 67:

(a) AH:

- (i) refers to and repeats paragraphs 65 and 66 above;
- (ii) otherwise denies the allegations in paragraph 67.

- (b) SVH does not plead to paragraph 67 as it contains no allegation of material fact against it.

68. As to paragraph 68:

(a) AH:

- (i) refers to and repeats paragraphs 65, 66 and 67 above;
- (ii) says that:

- A. whether Dr Lisik was authorised to work any medical records overtime (including whether Dr Lisik 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;
- B. further or alternatively, pursuant to the AH Overtime Protocol, Dr Lisik was required to either seek authorisation for any medical records overtime in advance of, or at the time of, working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of the pay fortnight in which it was worked;
- C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 68;

(b) SVH does not plead to paragraph 68 as it contains no allegation of material fact against it.

69. As to paragraph 69:

(a) AH:

(i) refers to and repeats paragraphs 65 to 68 above;

(ii) says further that:

- A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make an AH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Lisik has not provided particulars of any occasions on which he allegedly:
  - 1) worked medical records overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made an AH Overtime Claim for that medical records overtime; and

4) was subsequently not paid;

C. if Dr Lisik did not make an AH Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

1) Dr Lisik did not work such overtime;

2) Dr Lisik 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

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

D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 69;

(b) SVH does not plead to paragraph 69 as it contains no allegation of material fact against it.

70. As to paragraph 70:

(a) AH:

(i) says that if:

A. Dr Lisik had made an AH Overtime Claim; and

B. the AH Overtime Claim satisfied the criteria set out in the AH Overtime Protocol,

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

(ii) otherwise denies the allegations in paragraph 70;

(b) SVH does not plead to paragraph 70 as it contains no allegation of material fact against it.

71. As to paragraph 71:

(a) AH:

(i) refers to and repeats paragraphs 65 to 70 above; and

- (ii) otherwise denies the allegations in paragraph 71;
  - (b) SVH does not plead to paragraph 71 as it contains no allegation of material fact against it.
72. As to paragraph 72:
- (a) AH:
    - (i) refers to and repeats paragraphs 65 to 70 above; and
    - (ii) otherwise denies the allegations in paragraph 72;
  - (b) SVH does not plead to paragraph 72 as it contains no allegation of material fact against it.

#### Outpatient care overtime

73. As to paragraph 73:
- (a) AH:
    - (i) admits that Dr Lisik's duties and responsibilities when providing medical services included the provision of outpatient care;
    - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Orthopaedics Rotation roster factored in and allowed time to provide outpatient care;
  - (b) SVH does not plead to paragraph 73 as it contains no allegation of material fact against it.
74. As to paragraph 74:
- (a) AH:
    - (i) refers to and repeats sub-paragraphs 58(a)(ii)A to 58(a)(ii)H above;
    - (ii) says further that if Dr Lisik performed outpatient care overtime as pleaded, he was entitled to submit an AH Overtime Claim;
    - (iii) otherwise denies the allegations in paragraph 74;
  - (b) SVH does not plead to paragraph 74 as it contains no allegation of material fact against it.
75. As to paragraph 75:
- (a) AH:
    - (i) refers to and repeats paragraphs 73 and 74 above;
    - (ii) otherwise denies the allegations in paragraph 75;

(b) SVH does not plead to paragraph 75 as it contains no allegation of material fact against it.

76. As to paragraph 76:

(a) AH:

(i) refers to and repeats paragraphs 73, 74 and 75 above;

(ii) says that:

- A. whether Dr Lisik was authorised to work any outpatient care overtime (including whether Dr Lisik 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;
- B. further or alternatively, pursuant to the AH Overtime Protocol, Dr Lisik was required to either seek authorisation for any outpatient care overtime in advance of, or at the time of, working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of the pay fortnight in which it was worked;
- C. Dr Lisik has not provided particulars of the circumstances of each alleged occasion of outpatient care 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 him for such overtime, nor provided particulars of the claims made by him (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 76;

(b) SVH does not plead to paragraph 76 as it contains no allegation of material fact against it.

77. As to paragraph 77:

(a) AH:

(i) refers to and repeats paragraphs 73 to 76 above;

(ii) says further that:

- A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make an AH Overtime Claim in relation to the overtime purportedly worked;

B. Dr Lisik has not provided particulars of any occasions on which he allegedly:

- 1) worked outpatient care overtime;
- 2) sought and received either advance or retrospective authorisation for such overtime;
- 3) made an AH Overtime Claim for that outpatient care overtime; and
- 4) was subsequently not paid;

C. if Dr Lisik did not make an AH Overtime Claim in respect of the alleged outpatient care overtime, then it ought be concluded that either:

- 1) Dr Lisik did not work such overtime;
- 2) Dr Lisik 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
- 3) Dr Lisik was in attendance at the Alfred Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 77;

(b) SVH does not plead to paragraph 77 as it contains no allegation of material fact against it.

78. As to paragraph 78:

(a) AH:

(i) refers to and repeats paragraph 52(a)(ii)(G) above;

(ii) says further that if:

A. Dr Lisik had made an AH Overtime Claim; and

B. the AH Overtime Claim satisfied the criteria set out in the AH Overtime Protocol,

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

(iii) otherwise denies the allegations in paragraph 78;

(b) SVH does not plead to paragraph 78 as it contains no allegation of material fact against it.

79. As to paragraph 79:

(a) AH:

(i) refers to and repeats paragraphs 73 to 78 above; and

(ii) otherwise denies the allegations in paragraph 79;

(b) SVH does not plead to paragraph 79 as it contains no allegation of material fact against it.

80. As to paragraph 80:

(a) AH:

(i) refers to and repeats paragraphs 73 to 78 above; and

(ii) otherwise denies the allegations in paragraph 80;

(b) SVH does not plead to paragraph 80 as it contains no allegation of material fact against it.

#### **D4 Plastic Surgery Department at the Alfred Hospital - 2 April 2016 to 31 July 2016**

81. As to paragraph 81:

(a) AH admits paragraph 81;

(b) SVH does not plead to paragraph 81 as it contains no allegation of material fact against it.

#### Rosters

82. As to paragraph 82:

(a) AH:

(i) admits that during the Plastic Surgery Rotation, Dr Lisik was rostered to work as pleaded;

(ii) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 10 above, the Plastic Surgery Rotation rosters factored in and allowed time

for the performance of the duties and responsibilities admitted at paragraph 17(b) of the Defence;

- (b) SVH does not plead to paragraph 82 as it contains no allegation of material fact against it.

Ward rounds

83. As to paragraph 83:

- (a) AH:
- (i) admits that Dr Lisik's duties and responsibilities when providing medical services included undertaking ward rounds;
  - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Plastic Surgery Rotation roster factored in and allowed time to undertake ward rounds;
  - (iii) otherwise denies the allegations in paragraph 83;
- (b) SVH does not plead to paragraph 83 as it contains no allegation of material fact against it.

84. As to paragraph 84:

- (a) AH:
- (i) says that there were occasions where Dr Lisik was present at the Alfred Hospital during the Plastic Surgery Rotation outside of his rostered ordinary working hours;
  - (ii) refers to and repeats 58(a)(ii)A to 58(a)(ii)H above;
  - (iii) says further that during the Plastic Surgery rotation, Dr Lisik submitted AH Overtime Claims for Unrostered Overtime, which were approved and paid;

**Particulars**

The AH Overtime Claims made by Dr Lisik and approved during the Plastic Surgery rotation included those set out in the table below:

Date overtime worked	Period for which unrostered overtime paid	Total hours of overtime claimed	Date paid
21.06.2016	18:00 - 19:00	1.00	26.06.2016
27.06.2016	21:30 - 22:30	1.00	10.07.2016
28.06.2016	21:30 - 22:30	1.00	10.07.2016

29.06.2016	21:30 - 22:30	1.00	10.07.2016
02.07.2016	17:00 - 19:00	2.00	10.07.2016
03.07.2016	17:00 - 19:30	2.50	10.07.2016
04.07.2016	18:00 - 19:00	1.00	10.07.2016
11.07.2016	12:30 - 18:00	5.50	24.07.2016
19.07.2016	18:00 - 19:15	1.25	24.07.2016
26.07.2016	21:30 - 23:30	2.00	07.08.2016
27.07.2016	21:30 - 22:30	1.00	07.08.2016
29.07.2016	21:30 - 23:30	2.00	07.08.2016
30.07.2016	17:00 - 24:00	7.00	07.08.2016
31.07.2016	17:00 - 24:00	7.0	07.08.2016

(iv) says further that if Dr Lisik performed ward round overtime as pleaded, he was entitled to submit an AH Overtime Claim;

(v) otherwise denies the allegations in paragraph 84.

(b) SVH does not plead to paragraph 84 as it contains no allegation of material fact against it.

85. As to paragraph 85:

(a) AH:

(i) refers to and repeats paragraphs 83 and 84 above;

(ii) otherwise does not admit the allegations in paragraph 85;

(b) SVH does not plead to paragraph 85 as it contains no allegation of material fact against it.

86. As to paragraph 86:

(a) AH:

(i) refers to and repeats paragraphs 83, 84 and 85 above;

(ii) says that:

A. whether Dr Lisik was authorised to work any ward round overtime (including whether Dr Lisik 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;

- B. further or alternatively, pursuant to the AH Overtime Protocol, Dr Lisik was required to either seek authorisation for any ward round overtime in advance of, or at the time of, working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than after the completion of the pay fortnight in which it was worked;
- C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 86;

(b) SVH does not plead to paragraph 86 as it contains no allegation of material fact against it.

87. As to paragraph 87:

(a) AH:

(i) refers to and repeats paragraphs 83 to 86 above;

(ii) says further that:

- A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make an AH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Lisik has not provided particulars of any occasions on which he allegedly:
  - 1) worked ward round overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made an AH Overtime Claim for that ward round overtime; and
  - 4) was subsequently not paid;

C. if Dr Lisik did not make an AH Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:

- 1) Dr Lisik did not work such overtime;
- 2) Dr Lisik 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
- 3) Dr Lisik was in attendance at the Alfred Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 87;

(b) SVH does not plead to paragraph 87 as it contains no allegation of material fact against it.

88. As to paragraph 88:

(a) AH:

(i) says that if:

A. Dr Lisik had made an AH Overtime Claim; and

B. the AH Overtime Claim satisfied the criteria set out in the AH Overtime Protocol,

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

(ii) otherwise denies the allegations in paragraph 88;

(b) SVH does not plead to paragraph 88 as it contains no allegation of material fact against it.

89. As to paragraph 89:

(a) AH:

(i) refers to and repeats paragraphs 83 to 88 above; and

(ii) otherwise denies the allegations in paragraph 89;

(b) SVH does not plead to paragraph 89 as it contains no allegation of material fact against it.

90. As to paragraph 90:

(a) AH:

(i) refers to and repeats paragraphs 83 to 88 above; and

(ii) otherwise denies the allegations in paragraph 90;

(b) SVH does not plead to paragraph 90 as it contains no allegation of material fact against it.

#### **D5 Trauma Department at the Alfred Hospital - 31 October 2016 to 5 February 2017**

91. As to paragraph 91:

(a) AH admits paragraph 91;

(b) SVH does not plead to paragraph 91 as it contains no allegation of material fact against it.

#### Rosters

92. As to paragraph 92:

(a) AH:

(i) admits that during the Trauma Rotation, Dr Lisik was rostered to work as pleaded;

(ii) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 10 above, the Trauma Rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(b) of the Defence;

(b) SVH does not plead to paragraph 92 as it contains no allegation of material fact against it.

#### Medical records overtime

93. As to paragraph 93:

(a) AH:

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

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Trauma Rotation roster factored in and allowed time to complete medical records;

(iii) otherwise denies the allegations in paragraph 93;

(b) SVH does not plead to paragraph 93 as it contains no allegation of material fact against it.

94. As to paragraph 94:

(a) AH:

(i) says that there were occasions where Dr Lisik was present at the Alfred Hospital during the Trauma Rotation outside of his rostered ordinary working hours;

(ii) refers to and repeats 58(a)(ii)A to 58(a)(ii)H above;

(iii) says further that during the Trauma Rotation, Dr Lisik submitted AH Overtime Claims for Unrostered Overtime, which were approved and paid;

#### Particulars

The AH Overtime Claims made by Dr Lisik and approved during the Trauma rotation included those set out in the table below:

Date overtime worked	Period for which unrostered overtime paid	Total hours of overtime claimed	Date paid
01.11.2016	08:30 - 09:30	1.00	13.11.2016
17.11.2016	15:00 - 17:00	2.00	27.11.2016
24.11.2016	17:00 - 18:00	1.00	27.11.2016
28.11.2016	21:30 - 23:00	1.50	25.12.2016
29.11.2016	21:30 - 23:00	1.50	25.12.2016
30.11.2016	17:00 - 18:30	1.50	25.12.2016
22.12.2016	21:30 - 23:00	1.50	08.01.2017
23.12.2016	17:00 - 19:00	2.00	08.01.2017
24.12.2016	13:00 - 14:00	1.00	08.01.2017
28.12.2016	17:00 - 18:30	1.50	08.01.2017
29.12.2016	15:00 - 17:00	2.00	08.01.2017

(iv) says further that if Dr Lisik performed medical records overtime as pleaded, he was entitled to submit an AH Overtime Claim;

(v) otherwise denies the allegations in paragraph 94.

(b) SVH does not plead to paragraph 94 as it contains no allegation of material fact against it.

95. As to paragraph 95:

(a) AH:

(i) refers to and repeats paragraphs 93 and 94 above;

(ii) otherwise does not admit the allegations in paragraph 95;

(b) SVH does not plead to paragraph 95 as it contains no allegation of material fact against it.

96. As to paragraph 96:

(a) AH:

(i) refers to and repeats paragraphs 93, 94 and 95 above;

(ii) says that:

- A. whether Dr Lisik was authorised to work any medical records overtime (including whether Dr Lisik 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;
- B. further or alternatively, pursuant to the AH Overtime Protocol, Dr Lisik was required to either seek authorisation for any medical records overtime in advance of, or at the time of, working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of the pay fortnight in which it was worked;
- C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 96;

(b) SVH does not plead to paragraph 96 as it contains no allegation of material fact against it.

97. As to paragraph 97:

(a) AH:

(i) refers to and repeats paragraphs 93 to 96 above;

(ii) says further that:

A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make an AH Overtime Claim in relation to the overtime purportedly worked;

B. Dr Lisik has not provided particulars of any occasions on which he allegedly:

1) worked medical records overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made an AH Overtime Claim for that medical records overtime; and

4) was subsequently not paid;

C. if Dr Lisik did not make an AH Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

1) Dr Lisik did not work such overtime;

2) Dr Lisik 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

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

D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 97;

(b) SVH does not plead to paragraph 97 as it contains no allegation of material fact against it.

98. As to paragraph 98:

- (a) AH:
  - (i) says that if:
    - A. Dr Lisik had made an AH Overtime Claim; and
    - B. the AH Overtime Claim satisfied the criteria set out in the AH Overtime Protocol,  
  
AH would have considered and processed the AH Overtime Claim in accordance with the AH Overtime Protocol;
  - (ii) otherwise denies the allegations in paragraph 98;
- (b) SVH does not plead to paragraph 98 as it contains no allegation of material fact against it.

99. As to paragraph 99:

- (a) AH:
  - (i) refers to and repeats paragraphs 93 to 98 above; and
  - (ii) otherwise denies the allegations in paragraph 99;
- (b) SVH does not plead to paragraph 99 as it contains no allegation of material fact against it.

100. As to paragraph 100:

- (a) AH:
  - (i) refers to and repeats paragraphs 93 to 98 above; and
  - (ii) otherwise denies the allegations in paragraph 100;
- (b) SVH does not plead to paragraph 100 as it contains no allegation of material fact against it.

#### **D6 Neurosurgery Department at the Alfred Hospital - 6 November 2017 to 4 February 2018**

101. As to paragraph 101:

- (a) AH admits paragraph 101;
- (b) SVH does not plead to paragraph 101 as it contains no allegation of material fact against it.

Rosters

102. As to paragraph 102:

- (a) AH:
  - (i) admits that during the Neurosurgery Rotation, Dr Lisik was rostered to work as pleaded;
  - (ii) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 10 above, the Neurosurgery Rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(b) of the Defence;
- (b) SVH does not plead to paragraph 102 as it contains no allegation of material fact against it.

Ward round preparation overtime

103. As to paragraph 103:

- (a) AH:
  - (i) admits that Dr Lisik's duties and responsibilities when providing medical services included undertaking ward round preparation;
  - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Neurosurgery Rotation roster factored in and allowed time to undertake ward round preparation;
  - (iii) otherwise denies the allegations in paragraph 103;
- (b) SVH does not plead to paragraph 103 as it contains no allegation of material fact against it.

104. As to paragraph 104:

- (a) AH:
  - (i) says that there were occasions where Dr Lisik was present at the Alfred Hospital during the Neurosurgery Rotation outside of his rostered ordinary working hours;
  - (ii) refers to and repeats 58(a)(ii)A to 58(a)(ii)H above;
  - (iii) otherwise denies the allegations in paragraph 104.
- (b) SVH does not plead to paragraph 104 as it contains no allegation of material fact against it.

105. As to paragraph 105:

- (a) AH:
  - (i) refers to and repeats paragraphs 103 and 104 above;
  - (ii) otherwise does not admit the allegations in paragraph 105;
- (b) SVH does not plead to paragraph 105 as it contains no allegation of material fact against it.

106. As to paragraph 106:

- (a) AH:
  - (i) refers to and repeats paragraphs 103, 104 and 105 above;
  - (ii) says that:
    - A. whether Dr Lisik was authorised to work any ward round preparation overtime (including whether Dr Lisik 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;
    - B. further or alternatively, pursuant to the AH Overtime Protocol, Dr Lisik 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 possible after the overtime was worked and no later than completion of the pay fortnight;
    - C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 106;
- (b) SVH does not plead to paragraph 106 as it contains no allegation of material fact against it.

107. As to paragraph 107:

- (a) AH:
  - (i) refers to and repeats paragraphs 103 to 106 above;

- (ii) says further that:
- A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make an AH Overtime Claim in relation to the overtime purportedly worked;
  - B. Dr Lisik has not provided particulars of any occasions on which he allegedly:
    - 1) worked ward round preparation overtime;
    - 2) sought and received either advance or retrospective authorisation for such overtime;
    - 3) made an AH Overtime Claim for that ward round preparation overtime; and
    - 4) was subsequently not paid;
  - C. if Dr Lisik did not make an AH Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
    - 1) Dr Lisik did not work such overtime;
    - 2) Dr Lisik 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
    - 3) Dr Lisik was in attendance at the Alfred Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
  - D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 107;

(b) SVH does not plead to paragraph 107 as it contains no allegation of material fact against it.

108. As to paragraph 108:

(a) AH:

(i) says that if:

A. Dr Lisik had made an AH Overtime Claim; and

B. the AH Overtime Claim satisfied the criteria set out in the AH Overtime Protocol,

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

(ii) otherwise denies the allegations in paragraph 108;

(b) SVH does not plead to paragraph 108 as it contains no allegation of material fact against it.

109. As to paragraph 109:

(a) AH:

(i) refers to and repeats paragraphs 103 to 108 above; and

(ii) otherwise denies the allegations in paragraph 109;

(b) SVH does not plead to paragraph 109 as it contains no allegation of material fact against it.

110. As to paragraph 110:

(a) AH:

(i) refers to and repeats paragraphs 103 to 108 above; and

(ii) otherwise denies the allegations in paragraph 110;

(b) SVH does not plead to paragraph 110 as it contains no allegation of material fact against it.

#### Ward round overtime

111. As to paragraph 111:

(a) AH:

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

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Neurosurgery Rotation roster factored in and allowed time to undertake ward rounds;

(iii) otherwise denies the allegations in paragraph 111;

(b) SVH does not plead to paragraph 111 as it contains no allegation of material fact against it.

112. As to paragraph 112:

- (a) AH:
- (i) says that there were occasions where Dr Lisik was present at the Alfred Hospital during the Neurosurgery Rotation outside of his rostered ordinary working hours;
  - (ii) refers to and repeats **Error! Reference source not found.** to **Error! Reference source not found.** above;
  - (iii) otherwise denies the allegations in paragraph 112.
- (b) SVH does not plead to paragraph 112 as it contains no allegation of material fact against it.

113. As to paragraph 113:

- (a) AH:
- (i) refers to and repeats paragraphs 111 and 112 above;
  - (ii) otherwise does not admit the allegations in paragraph 113;
- (b) SVH does not plead to paragraph 113 as it contains no allegation of material fact against it.

114. As to paragraph 114:

- (a) AH:
- (i) refers to and repeats paragraphs 111, 112 and 113 above;
  - (ii) says that:
    - A. whether Dr Lisik was authorised to work any ward round overtime (including whether Dr Lisik 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;
    - B. further or alternatively, pursuant to the AH Overtime Protocol, Dr Lisik 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 possible after the overtime was worked and no later than completion of the pay fortnight;
    - C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved by AH) for retrospective

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

(iii) otherwise denies the allegations in paragraph 114;

(b) SVH does not plead to paragraph 114 as it contains no allegation of material fact against it.

115. As to paragraph 115:

(a) AH:

(i) refers to and repeats paragraphs 111 to 114 above;

(ii) says further that:

A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make an AH Overtime Claim in relation to the overtime purportedly worked;

B. Dr Lisik has not provided particulars of any occasions on which he allegedly:

1) worked ward round overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made an AH Overtime Claim for that ward round overtime; and

4) was subsequently not paid;

C. if Dr Lisik did not make an AH Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:

1) Dr Lisik did not work such overtime;

2) Dr Lisik 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

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

D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 115;

(b) SVH does not plead to paragraph 115 as it contains no allegation of material fact against it.

116. As to paragraph 116:

(a) AH:

(i) says that if:

A. Dr Lisik had made an AH Overtime Claim; and

B. the AH Overtime Claim satisfied the criteria set out in the AH Overtime Protocol,

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

(ii) otherwise denies the allegations in paragraph 116;

(b) SVH does not plead to paragraph 116 as it contains no allegation of material fact against it.

117. As to paragraph 117:

(a) AH:

(i) refers to and repeats paragraphs 111 to 116 above; and

(ii) otherwise denies the allegations in paragraph 117;

(b) SVH does not plead to paragraph 117 as it contains no allegation of material fact against it.

118. As to paragraph 118:

(a) AH:

(i) refers to and repeats paragraphs 111 to 116 above; and

(ii) otherwise denies the allegations in paragraph 118;

(b) SVH does not plead to paragraph 118 as it contains no allegation of material fact against it.

#### Other medical services overtime

119. As to paragraph 119:

(a) AH:

- (i) admits that Dr Lisik's duties and responsibilities when providing medical services included various tasks arising from the paper ward round;
  - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Neurosurgery Rotation roster factored in and allowed time to complete these tasks;
  - (iii) otherwise denies the allegations in paragraph 119;
- (b) SVH does not plead to paragraph 119 as it contains no allegation of material fact against it.

120. As to paragraph 120:

- (a) AH:
- (i) says that there were occasions where Dr Lisik was present at the Alfred Hospital during the Neurosurgery Rotation outside of his rostered ordinary working hours;
  - (ii) refers to and repeats **Error! Reference source not found.** to **Error! Reference source not found.** above;
  - (iii) otherwise denies the allegations in paragraph 120.
- (b) SVH does not plead to paragraph 120 as it contains no allegation of material fact against it.

121. As to paragraph 121:

- (a) AH:
- (i) refers to and repeats paragraphs 119 and 120 above;
  - (ii) otherwise does not admit the allegations in paragraph 121;
- (b) SVH does not plead to paragraph 121 as it contains no allegation of material fact against it.

122. As to paragraph 122:

- (a) AH:
- (i) refers to and repeats paragraphs 119, 120 and 121 above;
  - (ii) says that:
    - A. whether Dr Lisik was authorised to work any other medical services overtime (including whether Dr Lisik 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;

- B. further or alternatively, pursuant to the AH Overtime Protocol, Dr Lisik 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 possible after the overtime was worked and on no occasion later than completion of the pay fortnight;
- C. Dr Lisik has not provided particulars of the circumstances of each alleged occasion of other medical services 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 him for such overtime, nor provided particulars of the claims made by him (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 122;

(b) SVH does not plead to paragraph 122 as it contains no allegation of material fact against it.

123. As to paragraph 123:

(a) AH:

(i) refers to and repeats paragraphs 119 to 122 above;

(ii) says further that:

- A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make an AH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Lisik has not provided particulars of any occasions on which he allegedly:
  - 1) worked other medical services overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made an AH Overtime Claim for that other medical services overtime; and
  - 4) was subsequently not paid;
- C. if Dr Lisik did not make an AH Overtime Claim in respect of the alleged other medical services overtime, then it ought be concluded that either:

- 1) Dr Lisik did not work such overtime;
- 2) Dr Lisik 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
- 3) Dr Lisik was in attendance at the Alfred Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 123;

(b) SVH does not plead to paragraph 123 as it contains no allegation of material fact against it.

124. As to paragraph 124:

(a) AH:

(i) says that if:

A. Dr Lisik had made an AH Overtime Claim; and

B. the AH Overtime Claim satisfied the criteria set out in the AH Overtime Protocol,

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

(ii) otherwise denies the allegations in paragraph 124;

(b) SVH does not plead to paragraph 124 as it contains no allegation of material fact against it.

125. As to paragraph 125:

(a) AH:

(i) refers to and repeats paragraphs 119 to 124 above; and

(ii) otherwise denies the allegations in paragraph 125;

(b) SVH does not plead to paragraph 125 as it contains no allegation of material fact against it.

126. As to paragraph 126:

- (a) AH:
  - (i) refers to and repeats paragraphs 119 to 124 above; and
  - (ii) otherwise denies the allegations in paragraph 126;
- (b) SVH does not plead to paragraph 126 as it contains no allegation of material fact against it.

#### Medical records overtime

127. As to paragraph 127:

- (a) AH:
  - (i) admits that Dr Lisik's duties and responsibilities when providing medical services included completing medical records;
  - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Neurosurgery Rotation roster factored in and allowed time to complete these tasks;
  - (iii) otherwise denies the allegations in paragraph 127;
- (b) SVH does not plead to paragraph 127 as it contains no allegation of material fact against it.

128. As to paragraph 128:

- (a) AH:
  - (i) says that there were occasions where Dr Lisik was present at the Alfred Hospital during the Neurosurgery Rotation outside of his rostered ordinary working hours;
  - (ii) refers to and repeats **Error! Reference source not found.** to **Error! Reference source not found.** above;
  - (iii) otherwise denies the allegations in paragraph 128.
- (b) SVH does not plead to paragraph 128 as it contains no allegation of material fact against it.

129. As to paragraph 129:

- (a) AH:
  - (i) refers to and repeats paragraphs 127 and 128 above;
  - (ii) otherwise does not admit the allegations in paragraph 129;
- (b) SVH does not plead to paragraph 129 as it contains no allegation of material fact against it.

130. As to paragraph 130:

(a) AH:

(i) refers to and repeats paragraphs 127, 128 and 129 above;

(ii) says that:

A. whether Dr Lisik was authorised to work any medical records overtime (including whether Dr Lisik 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;

B. further or alternatively, pursuant to the AH Overtime Protocol, Dr Lisik 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 possible after the overtime was worked and on no occasion later than completion of the pay fortnight;

C. Dr Lisik 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 him for such overtime, nor provided particulars of the claims made by him (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 130;

(b) SVH does not plead to paragraph 130 as it contains no allegation of material fact against it.

131. As to paragraph 131:

(a) AH:

(i) refers to and repeats paragraphs 127 to 130 above;

(ii) says further that:

A. any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Lisik make an AH Overtime Claim in relation to the overtime purportedly worked;

B. Dr Lisik has not provided particulars of any occasions on which he allegedly:

- 1) worked medical records overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made an AH Overtime Claim for that medical records overtime; and
  - 4) was subsequently not paid;
- C. if Dr Lisik did not make an AH Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
- 1) Dr Lisik did not work such overtime;
  - 2) Dr Lisik 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
  - 3) Dr Lisik was in attendance at the Alfred Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Lisik is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 304 to 315 below;
- (iii) otherwise denies the allegations in paragraph 131;
- (b) SVH does not plead to paragraph 131 as it contains no allegation of material fact against it.
132. As to paragraph 132:
- (a) AH:
- (i) says that if:
    - A. Dr Lisik had made an AH Overtime Claim; and
    - B. the AH Overtime Claim satisfied the criteria set out in the AH Overtime Protocol,AH would have considered and processed the AH Overtime Claim in accordance with the AH Overtime Protocol;
  - (ii) otherwise denies the allegations in paragraph 132;

(b) SVH does not plead to paragraph 132 as it contains no allegation of material fact against it.

133. As to paragraph 133:

(a) AH:

(i) refers to and repeats paragraphs 127 to 132 above; and

(ii) otherwise denies the allegations in paragraph 133;

(b) SVH does not plead to paragraph 133 as it contains no allegation of material fact against it.

134. As to paragraph 134:

(a) AH:

(i) refers to and repeats paragraphs 127 to 132 above; and

(ii) otherwise denies the allegations in paragraph 134;

(b) SVH does not plead to paragraph 134 as it contains no allegation of material fact against it.

#### **D7 Loss**

135. As to paragraph 135, the respondents deny the allegations for the reasons pleaded above.

#### **E GROUP MEMBERS' CLAIMS AGAINST ST VINCENT'S HEALTH**

136. As to paragraph 136:

(a) SVH:

(i) admits that, in the course of their employment during the Relevant Period, Doctors in Training:

A. worked at St Vincent's Hospital; and

B. were rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks;

(ii) otherwise denies the allegations in paragraph 136;

(b) AH does not plead to paragraph 136 as it contains no allegation of material fact against it.

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

137. As to paragraph 137:

- (a) SVH:
  - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included ward round preparation;
  - (ii) 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
  - (iii) otherwise denies the allegations in paragraph 137;
- (b) AH does not plead to paragraph 137 as it contains no allegation of material fact against it.

138. As to paragraph 138:

- (a) SVH:
  - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, SVH implemented the SVH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 22(a)(ii)A to 22(a)(ii)D above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the SVH Overtime Protocol and SVH's approach to Unrostered Overtime;
    - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a SVH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 138;
- (b) AH does not plead to paragraph 138 as it contains no allegation of material fact against it.

139. As to paragraph 139:

- (a) SVH:
  - (i) refers to and repeats paragraphs 137 and 138 above;
  - (ii) otherwise denies the allegations in paragraph 139;
- (b) AH does not plead to paragraph 139 as it contains no allegation of material fact against it.

140. As to paragraph 140:

- (a) SVH:

- (i) refers to and repeats paragraph 138 above; and
  - (ii) otherwise denies the allegations in paragraph 140;
- (b) AH does not plead to paragraph 140 as it contains no allegation of material fact against it.

141. As to paragraph 141:

- (a) SVH:
- (i) refers to and repeats paragraphs 137 and 138 above;
  - (ii) says that:
    - A. 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;
    - B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any ward round preparation overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
    - C. no Doctor in Training has provided particulars of the circumstances of any 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 141;
- (b) AH does not plead to paragraph 141 as it contains no allegation of material fact against it.

142. As to paragraph 142:

- (a) SVH:
- (i) refers to and repeats paragraphs 137 to 141 above; and
  - (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a SVH Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a SVH Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
  - 1) the Group Member did not work such overtime;
  - 2) 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
  - 3) 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 B.1) and B.2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 142;

(b) AH does not plead to paragraph 142 as it contains no allegation of material fact against it.

143. As to paragraph 143:

(a) SVH:

(i) refers to and repeats paragraphs 137 to 142 above; and

(ii) otherwise denies the allegations in paragraph 143;

(b) AH does not plead to paragraph 143 as it contains no allegation of material fact against it.

144. As to paragraph 144:

(a) SVH:

(i) refers to and repeats paragraphs 137 to 142 above; and

(ii) otherwise denies the allegations in paragraph 144;

(b) AH does not plead to paragraph 144 as it contains no allegation of material fact against it.

**E2 Ward round overtime**

145. As to paragraph 145:

- (a) SVH:
  - (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included undertaking ward rounds;
  - (ii) 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
  - (iii) otherwise denies the allegations in paragraph 145;
- (b) AH does not plead to paragraph 145 as it contains no allegation of material fact against it.

146. As to paragraph 146:

- (a) SVH:
  - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, SVH implemented the SVH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 22(a)(ii)A to 22(a)(ii)D above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the SVH Overtime Protocol and SVH's approach to Unrostered Overtime;
    - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a SVH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 146;
- (b) AH does not plead to paragraph 146 as it contains no allegation of material fact against it.

147. As to paragraph 147:

- (a) SVH:
  - (i) refers to and repeats paragraphs 145 and 146 above;
  - (ii) otherwise denies the allegations in paragraph 147;
- (b) AH does not plead to paragraph 147 as it contains no allegation of material fact against it.

148. As to paragraph 148:

- (a) SVH:
  - (i) refers to and repeats paragraph 146 above; and
  - (ii) otherwise denies the allegations in paragraph 148;
- (b) AH does not plead to paragraph 148 as it contains no allegation of material fact against it.

149. As to paragraph 149:

- (a) SVH:
  - (i) refers to and repeats paragraphs 145 and 146 above;
  - (ii) says that:
    - A. 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;
    - B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any ward round overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
    - C. no Doctor in Training has provided particulars of the circumstances of any 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 149;
- (b) AH does not plead to paragraph 149 as it contains no allegation of material fact against it.

150. As to paragraph 150:

- (a) SVH:

- (i) refers to and repeats paragraphs 145 to 149 above; and
- (ii) says further that:
  - A. payment for Unrostered Overtime is subject to the condition that a Group Member make a SVH Overtime Claim in relation to the overtime purportedly worked;
  - B. if a Group Member did not make a SVH Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:
    - 1) the Group Member did not work such overtime;
    - 2) 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
    - 3) 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 B(1) and B(2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 150;

(b) AH does not plead to paragraph 150 as it contains no allegation of material fact against it.

151. As to paragraph 150:

(a) SVH:

(i) refers to and repeats paragraphs 145 to 150 above; and

(ii) otherwise denies the allegations in paragraph 151;

(b) AH does not plead to paragraph 151 as it contains no allegation of material fact against it.

152. As to paragraph 152:

(a) SVH:

(i) refers to and repeats paragraphs 145 to 150 above; and

(ii) otherwise denies the allegations in paragraph 152;

- (b) AH does not plead to paragraph 152 as it contains no allegation of material fact against it.

### **E3 Handover overtime**

153. As to paragraph 153:

- (a) SVH:
- (i) admits that a Doctors in Training's duties and responsibilities when providing medical services included conducting handover;
  - (ii) 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
  - (iii) otherwise denies the allegations in paragraph 153;
- (b) AH does not plead to paragraph 153 as it contains no allegation of material fact against it.

154. As to paragraph 154:

- (a) SVH:
- (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, SVH implemented the SVH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 22(a)(ii)A to 22(a)(ii)D above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the SVH Overtime Protocol and SVH's approach to Unrostered Overtime;
    - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a SVH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 154;
- (b) AH does not plead to paragraph 154 as it contains no allegation of material fact against it.

155. As to paragraph 155:

- (a) SVH:
- (i) refers to and repeats paragraphs 153 and 154 above;
  - (ii) otherwise denies the allegations in paragraph 155;

- (b) AH does not plead to paragraph 155 as it contains no allegation of material fact against it.

156. As to paragraph 156:

- (a) SVH:

- (i) refers to and repeats paragraph 154 above; and
- (ii) otherwise denies the allegations in paragraph 156;

- (b) AH does not plead to paragraph 156 as it contains no allegation of material fact against it.

157. As to paragraph 157:

- (a) SVH:

- (i) refers to and repeats paragraphs 153 and 154 above;
- (ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged handover 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;
- B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any handover overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
- C. no Doctor in Training has provided particulars of the circumstances of any 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 157;

- (b) AH does not plead to paragraph 157 as it contains no allegation of material fact against it.

158. As to paragraph 158:

- (a) SVH:
- (i) refers to and repeats paragraphs 153 to 157 above; and
  - (ii) says further that:
    - A. payment for Unrostered Overtime is subject to the condition that a Group Member make a SVH Overtime Claim in relation to the overtime purportedly worked;
    - B. if a Group Member did not make a SVH Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
      - 1) the Group Member did not work such overtime;
      - 2) 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
      - 3) 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 B(1) and B(2) above for the reasons in paragraphs 292 to 303 below;
  - (iii) otherwise denies the allegations in paragraph 158;
- (b) AH does not plead to paragraph 158 as it contains no allegation of material fact against it.

159. As to paragraph 159:

- (a) SVH:
- (i) refers to and repeats paragraphs 153 to 158 above; and
  - (ii) otherwise denies the allegations in paragraph 159;
- (b) AH does not plead to paragraph 159 as it contains no allegation of material fact against it.

160. As to paragraph 160:

- (a) SVH:
- (i) refers to and repeats paragraphs 153 to 158 above; and

(ii) otherwise denies the allegations in paragraph 160;

(b) AH does not plead to paragraph 160 as it contains no allegation of material fact against it.

#### **E4 Medical records overtime**

161. As to paragraph 161:

(a) SVH:

(i) admits that the duties and responsibilities of Doctors in Training when providing medical services included completing medical records;

(ii) 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

(iii) otherwise denies the allegations in paragraph 161;

(b) AH does not plead to paragraph 161 as it contains no allegation of material fact against it.

162. As to paragraph 162:

(a) SVH:

(i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, SVH implemented the SVH Overtime Protocol;

(ii) refers to and repeats sub-paragraphs 22(a)(ii)B to 22(a)(ii)D above;

(iii) says further that:

A. Doctors in Training were, or ought to have been, aware of the SVH Overtime Protocol and SVH's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit a SVH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 162;

(b) AH does not plead to paragraph 162 as it contains no allegation of material fact against it.

163. As to paragraph 163:

(a) SVH:

(i) refers to and repeats paragraphs 161 and 162 above;

(ii) otherwise denies the allegations in paragraph 163;

(b) AH does not plead to paragraph 163 as it contains no allegation of material fact against it.

164. As to paragraph 164:

(a) SVH:

(i) refers to and repeats paragraph 162 above; and

(ii) otherwise denies the allegations in paragraph 164;

(b) AH does not plead to paragraph 164 as it contains no allegation of material fact against it.

165. As to paragraph 165:

(a) SVH:

(i) refers to and repeats paragraphs 161 and 162 above;

(ii) says that:

- A. 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;
- B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any medical records overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
- C. no Doctor in Training has provided particulars of the circumstances of any 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 165;

(b) AH does not plead to paragraph 165 as it contains no allegation of material fact against it.

166. As to paragraph 166:

(a) SVH:

(i) refers to and repeats paragraphs 161 to 165 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a SVH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a SVH Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) 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

3) 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 B(1) and B(2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 166;

(b) AH does not plead to paragraph 166 as it contains no allegation of material fact against it.

167. As to paragraph 167:

(a) SVH:

(i) refers to and repeats paragraphs 161 to 166 above; and

(ii) otherwise denies the allegations in paragraph 167;

(b) AH does not plead to paragraph 167 as it contains no allegation of material fact against it.

168. As to paragraph 168:

(a) SVH:

- (i) refers to and repeats paragraphs 161 to 166 above; and
  - (ii) otherwise denies the allegations in paragraph 168;
- (b) AH does not plead to paragraph 168 as it contains no allegation of material fact against it.

## **E5 Outpatient care overtime**

169. As to paragraph 169:

- (a) SVH:
  - (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included providing medical care to patients in a clinic;
  - (ii) 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 to provide medical care to patients in a clinic; and
  - (iii) otherwise denies the allegations in paragraph 169;
- (b) AH does not plead to paragraph 169 as it contains no allegation of material fact against it.

170. As to paragraph 170:

- (a) SVH:
  - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, SVH implemented the SVH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 22(a)(ii)B to 22(a)(ii)D above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the SVH Overtime Protocol and SVH's approach to Unrostered Overtime;
    - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a SVH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 170;
- (b) AH does not plead to paragraph 170 as it contains no allegation of material fact against it.

171. As to paragraph 171:

- (a) SVH:

- (i) refers to and repeats paragraphs 169 and 170 above;
  - (ii) otherwise denies the allegations in paragraph 171;
- (b) AH does not plead to paragraph 171 as it contains no allegation of material fact against it.

172. As to paragraph 172:

- (a) SVH:
- (i) refers to and repeats paragraph 170 above; and
  - (ii) otherwise denies the allegations in paragraph 172;
- (b) AH does not plead to paragraph 172 as it contains no allegation of material fact against it.

173. As to paragraph 173:

- (a) SVH:
- (i) refers to and repeats paragraphs 169 and 170 above;
  - (ii) says that:
    - A. whether a Doctor in Training was authorised to work any alleged outpatient care 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;
    - B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any outpatient care overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
    - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of outpatient care 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 173;

(b) AH does not plead to paragraph 173 as it contains no allegation of material fact against it.

174. As to paragraph 174:

(a) SVH:

(i) refers to and repeats paragraphs 169 to 173 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a SVH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a SVH Overtime Claim in respect of the alleged outpatient care overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) 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

3) 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 B(1) and B(2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 174;

(b) AH does not plead to paragraph 174 as it contains no allegation of material fact against it.

175. As to paragraph 175:

(a) SVH:

(i) refers to and repeats paragraphs 169 to 174 above; and

(ii) otherwise denies the allegations in paragraph 175;

(b) AH does not plead to paragraph 175 as it contains no allegation of material fact against it.

176. As to paragraph 176:

- (a) SVH:
  - (i) refers to and repeats paragraphs 169 to 174 above; and
  - (ii) otherwise denies the allegations in paragraph 176;
- (b) AH does not plead to paragraph 176 as it contains no allegation of material fact against it.

## **E6 Medical emergency overtime**

177. As to paragraph 177:

- (a) SVH:
  - (i) admits that Doctors in Training duties and responsibilities when providing medical services included attending medical emergencies;
  - (ii) 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 attending medical emergencies;
  - (iii) otherwise denies the allegations in paragraph 177;
- (b) AH does not plead to paragraph 177 as it contains no allegation of material fact against it.

178. As to paragraph 178:

- (a) SVH:
  - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, SVH implemented the SVH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 22(a)(ii)A to 22(a)(ii)D above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the SVH Overtime Protocol and SVH's approach to Unrostered Overtime;
    - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a SVH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 178;
- (b) AH does not plead to paragraph 178 as it contains no allegation of material fact against it.

179. As to paragraph 179:

- (a) SVH:
  - (i) refers to and repeats paragraphs 177 and 178 above;
  - (ii) otherwise denies the allegations in paragraph 179;
- (b) AH does not plead to paragraph 179 as it contains no allegation of material fact against it.

180. As to paragraph 180:

- (a) SVH:
  - (i) refers to and repeats paragraph 178 above; and
  - (ii) otherwise denies the allegations in paragraph 180;
- (b) AH does not plead to paragraph 180 as it contains no allegation of material fact against it.

181. As to paragraph 181:

- (a) SVH:
  - (i) refers to and repeats paragraphs 177 and 178 above;
  - (ii) says that:
    - A. 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;
    - B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any medical emergency overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
    - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical emergency 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 181;

(b) AH does not plead to paragraph 181 as it contains no allegation of material fact against it.

182. As to paragraph 182:

(a) SVH:

(i) refers to and repeats paragraphs 177 to 181 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a SVH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a SVH Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) 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

3) 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 B(1) and B(2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 182;

(b) AH does not plead to paragraph 182 as it contains no allegation of material fact against it.

183. As to paragraph 183:

(a) SVH:

(i) refers to and repeats paragraphs 177 to 182 above; and

(ii) otherwise denies the allegations in paragraph 183;

(b) AH does not plead to paragraph 183 as it contains no allegation of material fact against it.

184. As to paragraph 184:

- (a) SVH:
  - (i) refers to and repeats paragraphs 177 to 182 above; and
  - (ii) otherwise denies the allegations in paragraph 176;
- (b) AH does not plead to paragraph 184 as it contains no allegation of material fact against it.

#### **E7 Medical procedures preparation overtime**

185. As to paragraph 185:

- (a) SVH:
  - (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included medical procedures preparation;
  - (ii) 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
  - (iii) otherwise denies the allegations in paragraph 185;
- (b) AH does not plead to paragraph 185 as it contains no allegation of material fact against it.

186. As to paragraph 186:

- (a) SVH:
  - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, SVH implemented the SVH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 22(a)(ii)A to 22(a)(ii)D above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the SVH Overtime Protocol and SVH's approach to Unrostered Overtime;
    - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a SVH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 186;
- (b) AH does not plead to paragraph 186 as it contains no allegation of material fact against it.

187. As to paragraph 187:

- (a) SVH:
  - (i) refers to and repeats paragraphs 185 and 186 above;
  - (ii) otherwise denies the allegations in paragraph 187;
- (b) AH does not plead to paragraph 187 as it contains no allegation of material fact against it.

188. As to paragraph 188:

- (a) SVH:
  - (i) refers to and repeats paragraph 186 above; and
  - (ii) otherwise denies the allegations in paragraph 188;
- (b) AH does not plead to paragraph 188 as it contains no allegation of material fact against it.

189. As to paragraph 189:

- (a) SVH:
  - (i) refers to and repeats paragraphs 186 and 187 above;
  - (ii) says that:
    - A. 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
    - B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any medical procedures preparation overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
    - C. no Doctor in Training has provided particulars of the circumstances of any 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved

by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 189;

(b) AH does not plead to paragraph 189 as it contains no allegation of material fact against it.

190. As to paragraph 190:

(a) SVH:

(i) refers to and repeats paragraphs 185 to 189 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a SVH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a SVH Overtime Claim in respect of the alleged medical procedures preparation overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) 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

3) 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 B(1) and B(2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 190;

(b) AH does not plead to paragraph 190 as it contains no allegation of material fact against it.

191. As to paragraph 191:

(a) SVH:

(i) refers to and repeats paragraphs 185 to 190 above; and

(ii) otherwise denies the allegations in paragraph 191;

(b) AH does not plead to paragraph 191 as it contains no allegation of material fact against it.

192. As to paragraph 192:

(a) SVH:

(i) refers to and repeats paragraphs 185 to 190 above; and

(ii) otherwise denies the allegations in paragraph 192;

(b) AH does not plead to paragraph 192 as it contains no allegation of material fact against it.

### **E8 Surgical procedures overtime**

193. As to paragraph 193:

(a) SVH:

(i) admits that the duties and responsibilities of Doctors in Training when providing medical services included undertaking surgical procedures;

(ii) 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 to undertake surgical procedures; and

(iii) otherwise denies the allegations in paragraph 193;

(b) AH does not plead to paragraph 193 as it contains no allegation of material fact against it.

194. As to paragraph 194:

(a) SVH:

(i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, SVH implemented the SVH Overtime Protocol;

(ii) refers to and repeats sub-paragraphs 22(a)(ii)B to 22(a)(ii)D above;

(iii) says further that:

A. Doctors in Training were, or ought to have been, aware of the SVH Overtime Protocol and SVH's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit an SVH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 194;

(b) AH does not plead to paragraph 194 as it contains no allegation of material fact against it.

195. As to paragraph 195:

(a) SVH:

(i) refers to and repeats paragraphs 193 and 194 above;

(ii) otherwise denies the allegations in paragraph 195;

(b) AH does not plead to paragraph 195 as it contains no allegation of material fact against it.

196. As to paragraph 196:

(a) SVH:

(i) refers to and repeats paragraph 194 above; and

(ii) otherwise denies the allegations in paragraph 196;

(b) AH does not plead to paragraph 196 as it contains no allegation of material fact against it.

197. As to paragraph 197:

(a) SVH:

(i) refers to and repeats paragraphs 193 and 194 above;

(ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged surgical procedures 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;
- B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any surgical procedures overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of surgical procedures 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 196;

(b) AH does not plead to paragraph 196 as it contains no allegation of material fact against it.

198. As to paragraph 198:

(a) SVH:

(i) refers to and repeats paragraphs 193 to 197 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a SVH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a SVH Overtime Claim in respect of the alleged surgical procedures overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) 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

3) 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 B(1) and B(2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 198;

(b) AH does not plead to paragraph 198 as it contains no allegation of material fact against it.

199. As to paragraph 199:

(a) SVH:

- (i) refers to and repeats paragraphs 193 to 198 above; and
  - (ii) otherwise denies the allegations in paragraph 199;
- (b) AH does not plead to paragraph 199 as it contains no allegation of material fact against it.

200. As to paragraph 200:

- (a) SVH:
  - (i) refers to and repeats paragraphs 193 to 198 above; and
  - (ii) otherwise denies the allegations in paragraph 200;
- (b) AH does not plead to paragraph 200 as it contains no allegation of material fact against it.

#### **E10 Other medical services overtime**

201. As to paragraph 201:

- (a) SVH:
  - (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included carrying out such other duties necessary for the provision of medical services by the Doctor in Training;
  - (ii) 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 to carry out such other duties necessary for the provision of medical services by the Doctor in Training; and
  - (iii) otherwise denies the allegations in paragraph 201;
- (b) AH does not plead to paragraph 201 as it contains no allegation of material fact against it.

202. As to paragraph 202:

- (a) SVH:
  - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, SVH implemented the SVH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 22(a)(ii)B to 22(a)(ii)D above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the SVH Overtime Protocol and SVH's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit a SVH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 202;

(b) AH does not plead to paragraph 202 as it contains no allegation of material fact against it.

203. As to paragraph 203:

(a) SVH:

(i) refers to and repeats paragraphs 201 and 202 above;

(ii) otherwise denies the allegations in paragraph 203;

(b) AH does not plead to paragraph 203 as it contains no allegation of material fact against it.

204. As to paragraph 204:

(a) SVH:

(i) refers to and repeats paragraph 202 above; and

(ii) otherwise denies the allegations in paragraph 204;

(b) AH does not plead to paragraph 204 as it contains no allegation of material fact against it.

205. As to paragraph 205:

(a) SVH:

(i) refers to and repeats paragraphs 201 and 202 above;

(ii) says that:

A. 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;

B. further or alternatively, pursuant to the SVH Overtime Protocol, Dr Lisik was required to either seek authorisation for any medical services overtime prior to or at the time of, or (between 27 November and July 2019) within two working days of, or (from July 2019 onwards) within the pay period in which the Doctor in Training worked, the overtime, and to submit a SVH Overtime Claim on the Monday following the pay period in which the overtime hours were worked;

C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of other medical services 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by SVH) for retrospective authorisation of such overtime, and SVH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 205;

(b) AH does not plead to paragraph 205 as it contains no allegation of material fact against it.

206. As to paragraph 206:

(a) SVH:

(i) refers to and repeats paragraphs 201 to 205 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a SVH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a SVH Overtime Claim in respect of the alleged medical services overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) 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

3) 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 B(1) and B(2) above for the reasons in paragraphs 292 to 303 below;

(iii) otherwise denies the allegations in paragraph 206;

(b) AH does not plead to paragraph 206 as it contains no allegation of material fact against it.

207. As to paragraph 207:

- (a) SVH:
  - (i) refers to and repeats paragraphs 201 to 206 above; and
  - (ii) otherwise denies the allegations in paragraph 207;
- (b) AH does not plead to paragraph 207 as it contains no allegation of material fact against it.

208. As to paragraph 208:

- (a) SVH:
  - (i) refers to and repeats paragraphs 201 to 206 above; and
  - (ii) otherwise denies the allegations in paragraph 208;
- (b) AH does not plead to paragraph 208 as it contains no allegation of material fact against it.

#### **E11 Loss and damage**

209. As to paragraph 209:

- (a) SVH denies the allegations in paragraph 209 for the reasons pleaded herein;
- (b) AH does not plead to paragraph 209 as it contains no allegation of material fact against it.

#### **F GROUP MEMBERS' CLAIMS AGAINST ALFRED HEALTH**

210. As to paragraph 210:

- (a) AH:
  - (i) admits that, in the course of their employment during the Relevant Period, Doctors in Training:
    - A. worked in one or more of the services operated by AH as set out in paragraph 1(d) of the Statement of Claim; and
    - B. were rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks;
  - (ii) otherwise denies the allegations in paragraph 210;
- (b) SVH does not plead to paragraph 210 as it contains no allegation of material fact against it.

#### **F1 Ward round preparation overtime**

211. As to paragraph 211:

- (a) AH:
- (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included ward round preparation;
  - (ii) 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
  - (iii) otherwise denies the allegations in paragraph 211;
- (b) SVH does not plead to paragraph 211 as it contains no allegation of material fact against it.

212. As to paragraph 212:

- (a) AH:
- (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, AH implemented the AH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 58(a)(ii)B to 58(a)(ii)D and **Error! Reference source not found.** to **Error! Reference source not found.** above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;
    - B. if Doctors in Training performed Unrostered Overtime, they were able to submit an AH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 212;
- (b) SVH does not plead to paragraph 212 as it contains no allegation of material fact against it.

213. As to paragraph 213:

- (a) AH:
- (i) refers to and repeats paragraphs 211 and 212 above;
  - (ii) otherwise denies the allegations in paragraph 213;
- (b) SVH does not plead to paragraph 213 as it contains no allegation of material fact against it.

214. As to paragraph 214:

- (a) AH:
  - (i) refers to and repeats paragraph 212 above; and
  - (ii) otherwise denies the allegations in paragraph 214;
- (b) SVH does not plead to paragraph 214 as it contains no allegation of material fact against it.

215. As to paragraph 215:

- (a) AH:
  - (i) refers to and repeats paragraphs 211 and 212 above;
  - (ii) says that:
    - A. 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;
    - B. further or alternatively, pursuant to the AH Overtime Protocol, Doctors in Training were 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 possible after the overtime was worked and on no occasion later than completion of the pay fortnight;
    - C. no Doctor in Training has provided particulars of the circumstances of any 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 215;
- (b) SVH does not plead to paragraph 215 as it contains no allegation of material fact against it.

216. As to paragraph 216:

- (a) AH:
  - (i) refers to and repeats paragraphs 211 to 215 above; and

- (ii) says further that:
  - A. payment for Unrostered Overtime is subject to the condition that a Group Member make an AH Overtime Claim in relation to the overtime purportedly worked;
  - B. if a Group Member did not make an AH Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
    - 1) the Group Member did not work such overtime;
    - 2) 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
    - 3) 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 B(1) and B(2) above for the reasons in paragraphs 304 to 315 below;
- (iii) otherwise denies the allegations in paragraph 216;

(b) SVH does not plead to paragraph 216 as it contains no allegation of material fact against it.

217. As to paragraph 217:

- (a) AH:
  - (i) refers to and repeats paragraphs 211 to 215 above; and
  - (ii) otherwise denies the allegations in paragraph 217;

(b) SVH does not plead to paragraph 217 as it contains no allegation of material fact against it.

218. As to paragraph 218:

- (a) AH:
  - (i) refers to and repeats paragraphs 211 to 215 above; and
  - (ii) otherwise denies the allegations in paragraph 218;

(b) SVH does not plead to paragraph 218 as it contains no allegation of material fact against it.

**F2 Ward round overtime**

219. As to paragraph 219:

- (a) AH:
  - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included undertaking ward rounds;
  - (ii) 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 undertaking ward rounds; and
  - (iii) otherwise denies the allegations in paragraph 219;
- (b) SVH does not plead to paragraph 219 as it contains no allegation of material fact against it.

220. As to paragraph 220:

- (a) AH:
  - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, AH implemented the AH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 58(a)(ii)B to 58(a)(ii)D and **Error! Reference source not found.** to **Error! Reference source not found.** above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;
    - B. if Doctors in Training performed Unrostered Overtime, they were able to submit an AH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 220;
- (b) SVH does not plead to paragraph 220 as it contains no allegation of material fact against it.

221. As to paragraph 221:

- (a) AH:
  - (i) refers to and repeats paragraphs 219 and 220 above;
  - (ii) otherwise denies the allegations in paragraph 221;

- (b) SVH does not plead to paragraph 221 as it contains no allegation of material fact against it.

222. As to paragraph 222:

- (a) AH:

- (i) refers to and repeats paragraph 220 above; and
- (ii) otherwise denies the allegations in paragraph 222;

- (b) SVH does not plead to paragraph 222 as it contains no allegation of material fact against it.

223. As to paragraph 223:

- (a) AH:

- (i) refers to and repeats paragraphs 219 and 220 above;
- (ii) says that:

- A. 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;
- B. further or alternatively, pursuant to the AH Overtime Protocol, Doctors in Training were required to either seek authorisation for any ward preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than completion of the pay fortnight;
- C. no Doctor in Training has provided particulars of the circumstances of any 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 223;

- (b) SVH does not plead to paragraph 223 as it contains no allegation of material fact against it.

224. As to paragraph 224:

- (a) AH:
- (i) refers to and repeats paragraphs 219 to 223 above; and
  - (ii) says further that:
    - A. payment for Unrostered Overtime is subject to the condition that a Group Member make an AH Overtime Claim in relation to the overtime purportedly worked;
    - B. if a Group Member did not make an AH Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:
      - 1) the Group Member did not work such overtime;
      - 2) 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
      - 3) 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 B(1) and B(2) above for the reasons in paragraphs 304 to 315 below;
  - (iii) otherwise denies the allegations in paragraph 224;
- (b) SVH does not plead to paragraph 224 as it contains no allegation of material fact against it.

225. As to paragraph 225:

- (a) AH:
- (i) refers to and repeats paragraphs 219 to 224 above; and
  - (ii) otherwise denies the allegations in paragraph 225;
- (b) SVH does not plead to paragraph 225 as it contains no allegation of material fact against it.

226. As to paragraph 226:

- (a) AH:
- (i) refers to and repeats paragraphs 219 to 224 above; and

(ii) otherwise denies the allegations in paragraph 226;

(b) SVH does not plead to paragraph 226 as it contains no allegation of material fact against it.

### F3 Handover overtime

227. As to paragraph 227:

(a) AH:

(i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included conducting handover of patient information;

(ii) 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 conducting the handover of patient information; and

(iii) otherwise denies the allegations in paragraph 227;

(b) SVH does not plead to paragraph 227 as it contains no allegation of material fact against it.

228. As to paragraph 228:

(a) AH:

(i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, AH implemented the AH Overtime Protocol;

(ii) refers to and repeats sub-paragraphs 58(a)(ii)B to 58(a)(ii)D and **Error! Reference source not found.** to **Error! Reference source not found.** above;

(iii) says further that:

A. Doctors in Training were, or ought to have been, aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit an AH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 228;

(b) SVH does not plead to paragraph 228 as it contains no allegation of material fact against it.

229. As to paragraph 229:

(a) AH:

- (i) refers to and repeats paragraphs 227 and 228 above;
  - (ii) otherwise denies the allegations in paragraph 229;
- (b) SVH does not plead to paragraph 229 as it contains no allegation of material fact against it.

230. As to paragraph 230:

- (a) AH:
- (i) refers to and repeats paragraph 228 above; and
  - (ii) otherwise denies the allegations in paragraph 230;
- (b) SVH does not plead to paragraph 230 as it contains no allegation of material fact against it.

231. As to paragraph 231:

- (a) AH:
- (i) refers to and repeats paragraphs 227 and 228 above;
  - (ii) says that:
    - A. whether a Doctor in Training was authorised to work any alleged handover 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;
    - B. further or alternatively, pursuant to the AH Overtime Protocol, Doctors in Training were 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 possible after the overtime was worked and on no occasion later than completion of the pay fortnight;
    - C. no Doctor in Training has provided particulars of the circumstances of any 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 231;

(b) SVH does not plead to paragraph 231 as it contains no allegation of material fact against it.

232. As to paragraph 232:

(a) AH:

(i) refers to and repeats paragraphs 228 to 231 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make an AH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make an AH Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) 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

3) 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 B(1) and B(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 232;

(b) SVH does not plead to paragraph 232 as it contains no allegation of material fact against it.

233. As to paragraph 233:

(a) AH:

(i) refers to and repeats paragraphs 227 to 232 above; and

(ii) otherwise denies the allegations in paragraph 233;

(b) SVH does not plead to paragraph 233 as it contains no allegation of material fact against it.

234. As to paragraph 234:

- (a) AH:
  - (i) refers to and repeats paragraphs 227 to 232 above; and
  - (ii) otherwise denies the allegations in paragraph 234;
- (b) SVH does not plead to paragraph 234 as it contains no allegation of material fact against it.

#### **F4 Medical records overtime**

235. As to paragraph 235:

- (a) AH:
  - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included completion of medical records in a timely manner;
  - (ii) 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 in a timely manner; and
  - (iii) otherwise denies the allegations in paragraph 235;
- (b) SVH does not plead to paragraph 235 as it contains no allegation of material fact against it.

236. As to paragraph 236:

- (a) AH:
  - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, AH implemented the AH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 58(a)(ii)B to 58(a)(ii)D and **Error! Reference source not found.** to **Error! Reference source not found.** above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;
    - B. if Doctors in Training performed Unrostered Overtime, they were able to submit an AH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 236;
- (b) SVH does not plead to paragraph 236 as it contains no allegation of material fact against it.

237. As to paragraph 237:

- (a) AH:
  - (i) refers to and repeats paragraphs 235 and 236 above;
  - (ii) otherwise denies the allegations in paragraph 237;
- (b) SVH does not plead to paragraph 237 as it contains no allegation of material fact against it.

238. As to paragraph 238:

- (a) AH:
  - (i) refers to and repeats paragraph 236 above; and
  - (ii) otherwise denies the allegations in paragraph 238;
- (b) SVH does not plead to paragraph 238 as it contains no allegation of material fact against it.

239. As to paragraph 239:

- (a) AH:
  - (i) refers to and repeats paragraphs 235 and 236 above;
  - (ii) says that:
    - A. 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;
    - B. further or alternatively, pursuant to the AH Overtime Protocol, Doctors in Training were 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 possible after the overtime was worked and on no occasion later than completion of the pay fortnight;
    - C. no Doctor in Training has provided particulars of the circumstances of any 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by AH) for

retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 239;

(b) SVH does not plead to paragraph 239 as it contains no allegation of material fact against it.

240. As to paragraph 240:

(a) AH:

(i) refers to and repeats paragraphs 236 to 239 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make an AH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make an AH Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) 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

3) 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 B(1) and B(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 240;

(b) SVH does not plead to paragraph 240 as it contains no allegation of material fact against it.

241. As to paragraph 241:

(a) AH:

(i) refers to and repeats paragraphs 235 to 240 above; and

(ii) otherwise denies the allegations in paragraph 241;

(b) SVH does not plead to paragraph 241 as it contains no allegation of material fact against it.

242. As to paragraph 242:

(a) AH:

(i) refers to and repeats paragraphs 235 to 240 above; and

(ii) otherwise denies the allegations in paragraph 242;

(b) SVH does not plead to paragraph 242 as it contains no allegation of material fact against it.

## **F5 Outpatient care overtime**

243. As to paragraph 243:

(a) AH:

(i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included providing medical care to patients in a clinic;

(ii) 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 providing care to patients in a clinic; and

(iii) otherwise denies the allegations in paragraph 243;

(b) SVH does not plead to paragraph 243 as it contains no allegation of material fact against it.

244. As to paragraph 244:

(a) AH:

(i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, AH implemented the AH Overtime Protocol;

(ii) refers to and repeats sub-paragraphs 58(a)(ii)B to 58(a)(ii)D and **Error! Reference source not found.** to **Error! Reference source not found.** above;

(iii) says further that:

A. Doctors in Training were, or ought to have been, aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit an AH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 244;

(b) SVH does not plead to paragraph 244 as it contains no allegation of material fact against it.

245. As to paragraph 245:

(a) AH:

(i) refers to and repeats paragraphs 243 and 244 above;

(ii) otherwise denies the allegations in paragraph 245;

(b) SVH does not plead to paragraph 245 as it contains no allegation of material fact against it.

246. As to paragraph 246:

(a) AH:

(i) refers to and repeats paragraph 244 above; and

(ii) otherwise denies the allegations in paragraph 246;

(b) SVH does not plead to paragraph 246 as it contains no allegation of material fact against it.

247. As to paragraph 247:

(a) AH:

(i) refers to and repeats paragraphs 243 and 244 above;

(ii) says that:

A. whether a Doctor in Training was authorised to work any alleged outpatient care 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;

B. further or alternatively, pursuant to the AH Overtime Protocol, Doctors in Training were required to either seek authorisation for any outpatient care overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than completion of the pay fortnight;

C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of outpatient care 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 247;

(b) SVH does not plead to paragraph 247 as it contains no allegation of material fact against it.

248. As to paragraph 248:

(a) AH:

(i) refers to and repeats paragraphs 244 to 247 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make an AH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make an AH Overtime Claim in respect of the alleged outpatient care overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) 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

3) 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 (B)(1) and (B)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 248;

(b) SVH does not plead to paragraph 248 as it contains no allegation of material fact against it.

249. As to paragraph 249:

- (a) AH:
  - (i) refers to and repeats paragraphs 243 to 248 above; and
  - (ii) otherwise denies the allegations in paragraph 249;
- (b) SVH does not plead to paragraph 249 as it contains no allegation of material fact against it.

250. As to paragraph 250:

- (a) AH:
  - (i) refers to and repeats paragraphs 243 to 248 above; and
  - (ii) otherwise denies the allegations in paragraph 250;
- (b) SVH does not plead to paragraph 250 as it contains no allegation of material fact against it.

#### **F6 Medical emergency overtime**

251. As to paragraph 251:

- (a) AH:
  - (i) admits that Doctors in Training duties and responsibilities when providing medical services included attending medical emergencies;
  - (ii) 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 attending medical emergencies;
  - (iii) otherwise denies the allegations in paragraph 251;
- (b) SVH does not plead to paragraph 251 as it contains no allegation of material fact against it.

252. As to paragraph 252:

- (a) AH:
  - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, AH implemented the AH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 58(a)(ii)B to 58(a)(ii)D and **Error! Reference source not found.** to **Error! Reference source not found.** above;
  - (iii) says further that:

- A. Doctors in Training were, or ought to have been, aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;
- B. if Doctors in Training performed Unrostered Overtime, they were able to submit an AH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 252;

(b) SVH does not plead to paragraph 252 as it contains no allegation of material fact against it.

253. As to paragraph 253:

(a) AH:

(i) refers to and repeats paragraphs 251 and 252 above;

(ii) otherwise denies the allegations in paragraph 253;

(b) SVH does not plead to paragraph 253 as it contains no allegation of material fact against it.

254. As to paragraph 254:

(a) AH:

(i) refers to and repeats paragraph 252 above; and

(ii) otherwise denies the allegations in paragraph 254;

(b) SVH does not plead to paragraph 254 as it contains no allegation of material fact against it.

255. As to paragraph 255:

(a) AH:

(i) refers to and repeats paragraphs 251 and 252 above;

(ii) says that:

- A. 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;
- B. further or alternatively, pursuant to the AH Overtime Protocol, Doctors in Training were 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 possible after

the overtime was worked and on no occasion later than completion of the pay fortnight;

- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical emergency 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 255;

(b) SVH does not plead to paragraph 255 as it contains no allegation of material fact against it.

256. As to paragraph 256:

(a) AH:

(i) refers to and repeats paragraphs 252 to 255 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make an AH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make an AH Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) 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

3) 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 (B)(1) and (B)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 256;

- (b) SVH does not plead to paragraph 256 as it contains no allegation of material fact against it.

257. As to paragraph 257:

- (a) AH:

- (i) refers to and repeats paragraphs 251 to 256 above; and
- (ii) otherwise denies the allegations in paragraph 257;

- (b) SVH does not plead to paragraph 257 as it contains no allegation of material fact against it.

258. As to paragraph 258:

- (a) AH:

- (i) refers to and repeats paragraphs 251 to 256 above; and
- (ii) otherwise denies the allegations in paragraph 258;

- (b) SVH does not plead to paragraph 258 as it contains no allegation of material fact against it.

#### **F7 Medical procedures preparation overtime**

259. As to paragraph 259:

- (a) AH:

- (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included preparing for medical procedures;
- (ii) 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 preparing for medical procedures; and
- (iii) otherwise denies the allegations in paragraph 259;

- (b) SVH does not plead to paragraph 259 as it contains no allegation of material fact against it.

260. As to paragraph 260:

- (a) AH:

- (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, AH implemented the AH Overtime Protocol;

- (ii) refers to and repeats sub-paragraphs 58(a)(ii)B to 58(a)(ii)D and **Error! Reference source not found.** to **Error! Reference source not found.** above;
- (iii) says further that:
  - A. Doctors in Training were, or ought to have been, aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;
  - B. if Doctors in Training performed Unrostered Overtime, they were able to submit an AH Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 260;

(b) SVH does not plead to paragraph 260 as it contains no allegation of material fact against it.

261. As to paragraph 261:

- (a) AH:
  - (i) refers to and repeats paragraphs 259 and 260 above;
  - (ii) otherwise denies the allegations in paragraph 261;
- (b) SVH does not plead to paragraph 261 as it contains no allegation of material fact against it.

262. As to paragraph 262:

- (a) AH:
  - (i) refers to and repeats paragraph 260 above; and
  - (ii) otherwise denies the allegations in paragraph 262;
- (b) SVH does not plead to paragraph 262 as it contains no allegation of material fact against it.

263. As to paragraph 263:

- (a) AH:
  - (i) refers to and repeats paragraphs 259 and 260 above;
  - (ii) says that:
    - A. 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;

- B. further or alternatively, pursuant to the AH Overtime Protocol, Doctors in Training were 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 possible after the overtime was worked and on no occasion later than completion of the pay fortnight;
- C. no Doctor in Training has provided particulars of the circumstances of any 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 263;

(b) SVH does not plead to paragraph 263 as it contains no allegation of material fact against it.

264. As to paragraph 264:

(a) AH:

(i) refers to and repeats paragraphs 260 to 263 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make an AH Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make an AH Overtime Claim in respect of the alleged medical procedures preparation overtime, then it ought be concluded that either:
  - 1) the Group Member did not work such overtime;
  - 2) 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

- 3) 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 (B)(1) and (B)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 264;

(b) SVH does not plead to paragraph 264 as it contains no allegation of material fact against it.

265. As to paragraph 265:

(a) AH:

(i) refers to and repeats paragraphs 259 to 264 above; and

(ii) otherwise denies the allegations in paragraph 265;

(b) SVH does not plead to paragraph 265 as it contains no allegation of material fact against it.

266. As to paragraph 266:

(a) AH:

(i) refers to and repeats paragraphs 259 to 264 above; and

(ii) otherwise denies the allegations in paragraph 266;

(b) SVH does not plead to paragraph 266 as it contains no allegation of material fact against it.

## **F8 Surgical procedures overtime**

267. As to paragraph 267:

(a) AH:

(i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included performing surgical procedures;

(ii) 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 performing surgical procedures; and

(iii) otherwise denies the allegations in paragraph 267;

- (b) SVH does not plead to paragraph 267 as it contains no allegation of material fact against it.

268. As to paragraph 268:

- (a) AH:

- (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, AH implemented the AH Overtime Protocol;
- (ii) refers to and repeats sub-paragraphs 58(a)(ii)B to 58(a)(ii)D and **Error! Reference source not found.** to **Error! Reference source not found.** above;
- (iii) says further that:
- A. Doctors in Training were, or ought to have been, aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;
- B. if Doctors in Training performed Unrostered Overtime, they were able to submit an AH Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 268;

- (b) SVH does not plead to paragraph 268 as it contains no allegation of material fact against it.

269. As to paragraph 269:

- (a) AH:

- (i) refers to and repeats paragraphs 267 and 268 above;
- (ii) otherwise denies the allegations in paragraph 269;

- (b) SVH does not plead to paragraph 269 as it contains no allegation of material fact against it.

270. As to paragraph 270:

- (a) AH:

- (i) refers to and repeats paragraph 268 above; and
- (ii) otherwise denies the allegations in paragraph 270;

- (b) SVH does not plead to paragraph 270 as it contains no allegation of material fact against it.

271. As to paragraph 271:

- (a) AH:

- (i) refers to and repeats paragraphs 267 and 268 above;
- (ii) says that:
  - A. whether a Doctor in Training was authorised to work any alleged surgical procedures 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;
  - B. further or alternatively, pursuant to the AH Overtime Protocol, Doctors in Training were required to either seek authorisation for any surgical procedures overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than completion of the pay fortnight;
  - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of surgical procedures 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;
- (iii) otherwise denies the allegations in paragraph 271;

(b) SVH does not plead to paragraph 271 as it contains no allegation of material fact against it.

272. As to paragraph 272:

- (a) AH:
  - (i) refers to and repeats paragraphs 268 to 271 above; and
  - (ii) says further that:
    - A. payment for Unrostered Overtime is subject to the condition that a Group Member make an AH Overtime Claim in relation to the overtime purportedly worked;
    - B. if a Group Member did not make an AH Overtime Claim in respect of the alleged surgical procedures overtime, then it ought be concluded that either:
      - 1) the Group member did not work such overtime;

- 2) 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
- 3) 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 (B)(1) and (B)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 272;

(b) SVH does not plead to paragraph 272 as it contains no allegation of material fact against it.

273. As to paragraph 273:

(a) AH:

(i) refers to and repeats paragraphs 267 to 272 above; and

(ii) otherwise denies the allegations in paragraph 273;

(b) SVH does not plead to paragraph 273 as it contains no allegation of material fact against it.

274. As to paragraph 274:

(a) AH:

(i) refers to and repeats paragraphs 267 to 272 above; and

(ii) otherwise denies the allegations in paragraph 274;

(b) SVH does not plead to paragraph 274 as it contains no allegation of material fact against it.

## **F9 Admissions overtime**

275. As to paragraph 275:

(a) AH:

(i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included admitting patients into a particular ward or department;

(ii) 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 admission of patients into a particular ward or department; and

(iii) otherwise denies the allegations in paragraph 275;

(b) SVH does not plead to paragraph 275 as it contains no allegation of material fact against it.

276. As to paragraph 276:

(a) AH:

(i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, AH implemented the AH Overtime Protocol;

(ii) refers to and repeats sub-paragraphs 58(a)(ii)B to 58(a)(ii)D and **Error! Reference source not found.** to **Error! Reference source not found.** above;

(iii) says further that:

A. Doctors in Training were, or ought to have been, aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit an AH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 276;

(b) SVH does not plead to paragraph 276 as it contains no allegation of material fact against it.

277. As to paragraph 277:

(a) AH:

(i) refers to and repeats paragraphs 275 and 276 above;

(ii) otherwise denies the allegations in paragraph 277;

(b) SVH does not plead to paragraph 277 as it contains no allegation of material fact against it.

278. As to paragraph 278:

(a) AH:

(i) refers to and repeats paragraph 276 above; and

(ii) otherwise denies the allegations in paragraph 278;

- (b) SVH does not plead to paragraph 278 as it contains no allegation of material fact against it.

279. As to paragraph 279:

- (a) AH:

(i) refers to and repeats paragraphs 275 and 276 above;

(ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged admissions 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;
- B. further or alternatively, pursuant to the AH Overtime Protocol, Doctors in Training were required to either seek authorisation for any admissions overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than completion of the pay fortnight;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of admissions 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 279;

- (b) AH does not plead to paragraph 279 as it contains no allegation of material fact against it.

280. As to paragraph 280:

- (a) AH:

(i) refers to and repeats paragraphs 276 to 277 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make an AH Overtime Claim in relation to the overtime purportedly worked;

- B. if a Group Member did not make an AH Overtime Claim in respect of the alleged admissions overtime, then it ought be concluded that either:
- 1) the Group Member did not work such overtime;
  - 2) 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
  - 3) 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 B(1) and B(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 280;

(b) SVH does not plead to paragraph 280 as it contains no allegation of material fact against it.

281. As to paragraph 281:

(a) AH:

(i) refers to and repeats paragraphs 275 to 280 above; and

(ii) otherwise denies the allegations in paragraph 281;

(b) SVH does not plead to paragraph 281 as it contains no allegation of material fact against it.

282. As to paragraph 282:

(a) AH:

(i) refers to and repeats paragraphs 275 to 280 above; and

(ii) otherwise denies the allegations in paragraph 282;

(b) SVH does not plead to paragraph 282 as it contains no allegation of material fact against it.

#### **F10 Other medical services overtime**

283. As to paragraph 283:

(a) AH:

- (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included carrying out such other duties necessary for the provision of medical services by the Doctor in Training;
  - (ii) 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 carrying out such other duties necessary for the provision of medical services by the Doctor in Training; and
  - (iii) otherwise denies the allegations in paragraph 283;
- (b) SVH does not plead to paragraph 283 as it contains no allegation of material fact against it.

284. As to paragraph 284:

- (a) AH:
- (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, AH implemented the AH Overtime Protocol;
  - (ii) refers to and repeats sub-paragraphs 58(a)(ii)B to 58(a)(ii)D and **Error! Reference source not found.** to **Error! Reference source not found.** above;
  - (iii) says further that:
    - A. Doctors in Training were, or ought to have been, aware of the AH Overtime Protocol and AH's approach to Unrostered Overtime;
    - B. if Doctors in Training performed Unrostered Overtime, they were able to submit an AH Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 284;
- (b) SVH does not plead to paragraph 284 as it contains no allegation of material fact against it.

285. As to paragraph 285:

- (a) AH:
- (i) refers to and repeats paragraphs 283 and 284 above;
  - (ii) otherwise denies the allegations in paragraph 285;
- (b) SVH does not plead to paragraph 285 as it contains no allegation of material fact against it.

286. As to paragraph 286:

- (a) AH:

- (i) refers to and repeats paragraph 284 above; and
  - (ii) otherwise denies the allegations in paragraph 286;
- (b) SVH does not plead to paragraph 286 as it contains no allegation of material fact against it.

287. As to paragraph 287:

- (a) AH:
  - (i) refers to and repeats paragraphs 283 and 284 above;
  - (ii) says that:
    - A. 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;
    - B. further or alternatively, pursuant to the AH Overtime Protocol, Doctors in Training were 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 possible after the overtime was worked and on no occasion later than completion of the pay fortnight;
    - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of other medical services 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 him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by AH) for retrospective authorisation of such overtime, and AH cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 287;
- (b) SVH does not plead to paragraph 287 as it contains no allegation of material fact against it.

288. As to paragraph 288:

- (a) AH:
  - (i) refers to and repeats paragraphs 284 to 287 above; and
  - (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make an AH Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make an AH Overtime Claim in respect of the alleged other medical services overtime, then it ought be concluded that either:
  - 1) the Group Member did not work such overtime;
  - 2) 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
  - 3) 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 (B)(1) and (B)(2) above for the reasons in paragraphs 304 to 315 below;

(iii) otherwise denies the allegations in paragraph 288;

(b) SVH does not plead to paragraph 288 as it contains no allegation of material fact against it.

289. As to paragraph 289:

(a) AH:

(i) refers to and repeats paragraphs 283 to 288 above; and

(ii) otherwise denies the allegations in paragraph 289;

(b) SVH does not plead to paragraph 289 as it contains no allegation of material fact against it.

290. As to paragraph 290:

(a) AH:

(i) refers to and repeats paragraphs 283 to 288 above; and

(ii) otherwise denies the allegations in paragraph 290;

(b) SVH does not plead to paragraph 290 as it contains no allegation of material fact against it.

## **F11 Loss and damage**

291. As to paragraph 291:

- (a) AH denies the allegations in paragraph 291 for the reasons pleaded herein;
- (b) SVH does not plead to paragraph 291 as it contains no allegation of material fact against it.

## **G ESTOPPEL BY CONDUCT**

### **G1 Claim against St Vincent's Health**

#### Background to the estoppel

292. Pursuant to the terms of their employment contracts, Dr Lisik and the Group Members:

- (a) were informed that their conditions of employment were governed by:
  - (i) the 2013 Agreement or the 2018 Agreement;
  - (ii) their individual contracts of employment;
- (b) agreed to observe policies and practices in place across SVH.

293. Pursuant to the SVH Overtime Protocol, Dr Lisik and Group Members were required to:

- (a) complete the SVH Overtime Claim form and state:
  - (i) the circumstances necessitating the Unrostered Overtime;
  - (ii) the date the Unrostered Overtime was worked;
  - (iii) the patient details;
  - (iv) the rostered finish time;
  - (v) the time the Unrostered Overtime commenced; and
  - (vi) the time the Unrostered Overtime was completed; and
- (b) claim retrospective authorisation of the Unrostered Overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- (c) have the claim for Unrostered Overtime authorised by the Clinical Director (between 27 November 2015 and February 2017) or the Head of Unit or another Senior Medical Staff (from March 2017 onwards).

294. Dr Lisik and Group Members were aware of the procedure employed at SVH to claim payment for Unrostered Overtime.

**Particulars**

Information about the SVH Overtime Protocol was available from Dr Lisik's roster coordinator.

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

**Particulars**

Further particulars will be provided after discovery and prior to trial.

296. By reason of paragraphs 292 to 295 above, Dr Lisik and Group Members were:
- (a) aware of their ordinary hours of work;
  - (b) aware of the requirement to either seek authorisation for any Unrostered Overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
  - (c) aware or ought to have been aware of the requirement to submit a SVH Overtime Claim and the process for doing so; and
  - (d) capable of complying with those requirements.

Operation of the estoppel

297. In the circumstances set out in paragraphs 292 to 296 above, to the extent that Dr Lisik 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 SVH Overtime Protocol; or
  - (b) did not submit a SVH Overtime Claim in accordance with the SVH Overtime Protocol;
- then, by that conduct, Dr Lisik and the Group Members induced SVH to assume, and SVH 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 SVH during any such time;

- (d) further or alternatively, that any attendance at a SVH facility during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntarily.
298. Dr Lisik and the Group Members did not correct any mistake in the assumptions set out in sub-paragraph 297(c) and, further or alternatively, sub-paragraph 297(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 292 above;
- (b) further or alternatively, because, by reason of the matters in paragraphs 292 to 296 above:
- (i) Dr Lisik and Group Members knew, or should reasonably have known, that SVH would be induced by the acts or omissions referred to in sub-paragraphs 297(a) or 297(b) above to make the unapproved or unclaimed overtime assumptions; and
- (ii) a reasonable person would have expected Dr Lisik and Group Members to correct any mistake in those assumptions by submitting a SVH Overtime Claim in accordance with the SVH Overtime Protocol.
299. In the circumstances set out in paragraph 298 above, to the extent that Dr Lisik or Group Members engaged in the conduct in sub-paragraphs 297(a) or 297(b) above, it amounted to a representation by Dr Lisik and Group Members as to the matters in sub-paragraph 297(c) and, further or alternatively, sub-paragraph 297(d) above (**unapproved or unclaimed overtime representations**).
300. SVH acted in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions, in that SVH, 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 Lisik 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 Lisik 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 SVH to reduce any such time being worked by Dr Lisik and Group Members.

#### Particulars

The steps that would have been available to SVH included:

- 1) changing roster arrangements to reduce the possibility of Unrostered Overtime arising;
- 2) 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 Lisik and Group Members;
- 3) employing or rostering more doctors;
- 4) reallocating responsibility for some activities or functions to more senior doctors or other personnel;
- 5) issuing directions in relation to working or not working Unrostered Overtime or performing or not performing particular activities;
- 6) identify cultural barriers to claiming overtime and educate staff at all levels (administrative and medical) about the expectation of claiming overtime;
- 7) planning, forecasting or budgeting for the Unrostered Overtime to ensure that SVH could meet any liability for Unrostered Overtime.

301. To the extent that Dr Lisik or Group Members engaged in the conduct in sub-paragraphs 297(a) and 297(b) above, it was reasonable for SVH to regard that conduct as amounting to the unapproved and unclaimed overtime representations, to make the unapproved or unclaimed overtime assumptions, and to rely on those assumptions as set out in paragraph 300 above, in circumstances in which Dr Lisik and Group Members:

- (a) were obliged to comply with the SVH Overtime Protocol in relation to obtaining authorisation for Unrostered Overtime and submitting claims for Unrostered Overtime, as set out in paragraphs 292 to 293(a) above;
- (b) were informed of those obligations by SVH as set out in paragraph 292 and 294 above;
- (c) were capable of complying with those obligations as set out in paragraphs 294 and 295 above; and
- (d) were on notice that SVH's reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

#### **Particulars**

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

- 1) 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;
- 2) 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 SVH to have known they were working outside their ordinary hours unless they submitted a claim or otherwise brought that work to SVH's attention.

302. SVH would suffer detriment if Dr Lisik 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) SVH would be required to make further payments to Dr Lisik and Group Members in relation to Unrostered Overtime;
- (b) further or alternatively, SVH has lost the opportunity to avoid all or some of the Unrostered Overtime by taking the steps referred to in sub-paragraph 300(c) above,

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

303. By reason of paragraphs 297 to 302 above, Dr Lisik and Group Members are estopped from asserting:

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

## **G2 Claim against Alfred Health**

### Background to the estoppel

304. Pursuant to the terms of their employment contracts, Dr Lisik and the Group Members:

- (a) were informed that their conditions of employment were governed by:
  - (i) the 2013 Agreement or the 2018 Agreement;
  - (ii) their individual contracts of employment;
- (b) obliged to adhere to AH policies and guidelines;

- (c) required to comply with the AH Overtime Protocol.

305. Pursuant to the AH Overtime Protocol:

- (a) Dr Lisik and Group Members were required to ensure any Unrostered Overtime was authorised prior to its commencement by the unit head or their nominated delegate;
- (b) where approval in advance or at the time was not able to be obtained, Dr Lisik and Group Members were required to demonstrate that:
  - (i) they had performed Unrostered Overtime due to a demonstrable clinical need requiring their ongoing presence and that need could not have been met by some other means;
  - (ii) authorisation of the Unrostered Overtime could not have been made in advance of them performing the work;
  - (iii) they had claimed for retrospective authorisation of the Unrostered Overtime on the first occasion possible after the overtime was worked and on no occasion later than after the completion of the pay fortnight in which it was worked;
- (c) Dr Lisik and the Group Members must clearly describe the requirement for the Unrostered Overtime on the AH Overtime Claim form including the clinical reason, patient identifier and details of duties for each occasion of Unrostered Overtime.

306. Dr Lisik and Group Members were aware of the procedure employed at AH to claim payment for Unrostered Overtime.

#### **Particulars**

The AH Overtime Protocol were available on the AH intranet.

At least annually, representatives of the AH Medical Workforce Unit send emails to staff, including Doctors in Training, regarding how to claim for Unrostered overtime.

During the orientation process, from 2019 onwards, a presentation was given to Doctors in Training which included information on how to claim for Unrostered Overtime.

307. From time to time throughout the Relevant Period, Dr Lisik 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 Lisik, see the particulars of sub-paragraphs 58(a)(ii)l, 84(a)(iii) and 94(a)(iii) above.

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

308. By reason of paragraphs 304 to 307 above, Dr Lisik 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 unit head or their nominated delegate; or
  - (ii) obtain retrospective authorisation for Unrostered Overtime in accordance with the requirements set out in 305(b) above;
- (c) aware of the requirement to submit an AH Overtime Claim and the process for doing so; and
- (d) capable of complying those requirements.

Operation of the estoppel

309. In the circumstances set out in paragraphs 304 to 308 above, to the extent that Dr Lisik 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 AH Overtime Protocol; or
- (b) did not submit an AH Overtime Claim in accordance with the AH Overtime Protocol;

then, by that conduct, Dr Lisik and the Group Members induced AH to assume, and AH 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 AH during any such time;
- (d) further or alternatively, that any attendance at an AH Hospital during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntarily.

310. Dr Lisik and the Group Members did not correct any mistake in the assumptions set out in sub-paragraph 309(c) and, further or alternatively, sub-paragraph 309(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 paragraphs 304 above;
- (b) further or alternatively, because, by reason of the matters in paragraphs 304 to 308 above:
  - (i) Dr Lisik 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 297(a) or 297(b) above to make the unapproved or unclaimed overtime assumptions; and
  - (ii) a reasonable person would have expected Dr Lisik and Group Members to correct any mistake in those assumptions by submitting an AH Overtime Claim in accordance with the AH Overtime Protocol.

311. In the circumstances set out in paragraph 310 above, to the extent that Dr Lisik or Group Members engaged in the conduct in sub-paragraphs 309(a) or 309(b) above, it amounted to a representation by Dr Lisik and Group Members as to the matters in sub-paragraph 309(c) and, further or alternatively, sub-paragraph 309(d) above (**unapproved or unclaimed overtime representations**).

312. AH acted in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions, in that AH, 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 Lisik 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 Lisik 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 AH to reduce any such time being worked by Dr Lisik and Group Members.

### Particulars

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

- 1) changing roster arrangements to reduce the possibility of Unrostered Overtime arising;
- 2) 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 Lisik and Group Members;

- 3) employing or rostering more doctors;
- 4) offering additional training to Doctors in Training;
- 5) reallocating responsibility for some activities or functions to more senior doctors or other personnel;
- 6) issuing directions in relation to working or not working Unrostered Overtime or performing or not performing particular activities;
- 7) planning, forecasting or budgeting for the Unrostered Overtime to ensure that the respondent could meet any liability for Unrostered Overtime.

313. To the extent that Dr Lisik or Group Members engaged in the conduct in sub-paragraphs 309(a) and 309(b) above, it was reasonable for AH 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 312 above, in circumstances in which Dr Lisik and Group Members:

- (a) were obliged to comply with the AH Overtime Protocol in relation to obtaining authorisation for Unrostered Overtime and submitting claims for Unrostered Overtime, as set out in paragraphs 304 to 305(a) above;
- (b) were informed of those obligations by AH as set out in paragraph 304 and 305 above;
- (c) were capable of complying with those obligations as set out in paragraphs 306 and 307 above; and
- (d) were on notice of AH's reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

#### **Particulars**

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

- 1) 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;
- 2) 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 AH to have known they were working outside their ordinary hours unless they submitted a claim or otherwise brought that work to AH's attention.

314. AH would suffer detriment if Dr Lisik 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) AH would be required to make further payments to Dr Lisik and Group Members in relation to Unrostered Overtime;
- (b) further or alternatively, AH has lost the opportunity to avoid all or some of the Unrostered Overtime by taking the steps referred to in sub-paragraph 312(c) above,

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

315. By reason of paragraphs 309 to 314 above, Dr Lisik and Group Members are estopped from asserting:

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

Date: 10 March 2022



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

This pleading was prepared by Emma Mawson, Lawyer for the respondents 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 respondents, the factual and legal material available to me at present provides a proper basis for:

1. each allegation in the pleading; and
2. each denial in the pleading; and
3. each non admission in the pleading.

Date: 10 March 2022



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

## Schedule of Parties

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

No. VID700/2021

### Applicants

First Applicant: The Australian Salaried Medical Officers' Federation  
Second Applicant: James Lisik

### Respondents

First Respondent: Alfred Health  
Second Respondent: St Vincent's Hospital (Melbourne) Limited (ACN 052 110 755)