

## **Oral Hearing**

**Day 31 – Wednesday, 22nd March 2023**

**Being heard before: Ms Christine Smith KC (Chair)**  
**Dr Sonia Swart (Panel Member)**  
**Mr Damian Hanbury (Assessor)**

**Held at: Bradford Court, Belfast**

Gwen Malone Stenography Services certify the following to be a verbatim transcript of their stenographic notes in the above-named action.

---

**Gwen Malone Stenography Services**

I N D E X

P A G E

Mrs. Siobhán Hynds Examined by Ms. McMahon BL	3
Lunch adjournment	86
Mrs. Siobhán Hynds Examined by Ms. McMahon BL	86
Questioned by the Inquiry Panel	138

1 CHAIR: Good morning, everyone.

2 MS. MCMAHON BL: The witness this morning is  
3 Siobhán Hynds who was the employee relations manager at  
4 the time of the MHPS investigation, and I believe she's  
5 going to affirm.

09:59

6

7 SIOBHÁN HYNDS, HAVING BEEN AFFIRMED, WAS EXAMINED BY  
8 MS. MCMAHON BL AS FOLLOWS:

9

10 CHAIR: Thank you.

09:59

11 MS. MCMAHON BL: Thank you, Mrs. Hynds. Now, you've  
12 provided the Inquiry with two Section 21 responses;  
13 well, one substantive response and an addendum. The  
14 response to notice 47 can be found at WIT-42012. If  
15 we go to 42103, we'll see your signature at the end of  
16 that. Do you recognise that statement and your  
17 signature at the end, dated 3rd August 2022?

18 A. I do.

19 1 Q. Do you wish to adopt that as your evidence for today?

20 A. I do.

10:00

21 2 Q. Recently we've received a further addendum to that  
22 statement where you want to amend some typos, some  
23 errors and some dates. That can be found at WIT-91921,  
24 and the signature is at WIT-92923. Can you see your  
25 signature at the end of the that statement and the date  
26 16 March 2023. Do you wish to adopt that as your  
27 evidence as well?

10:01

28 A. I do.

29 3 Q. If we could look at the detail of that statement at

1 this point to indicate where the errors were initially.  
2 If we go back to the first page, WIT-91921. If we just  
3 move down slightly. Thank you. You will see at  
4 paragraph 1 you've indicated that there is an error in  
5 your original witness statement at paragraph 1.5, where 10:01  
6 you have put in 3rd January and that should read 2nd  
7 January in relation to emails.

8 A. That's correct, yes.

9 4 Q. In the next paragraph you refer to paragraph 1.8 of  
10 your statement, and this is email correspondence from 10:01  
11 Ms. Haney, where you refer to it being 28th December  
12 and it is in fact 29th December.

13 A. That's correct.

14 5 Q. Again, paragraph 1.15 of your statement, there is just  
15 a simple typo where the word "aware" is absent. 10:02

16 A. Correct, yes.

17 6 Q. Go on to the next page, please. Again, just an error  
18 of grammar, paragraph 1.65, and at paragraph 24.40,  
19 another simple typo. Then at paragraph 6, you have  
20 added further information about a meeting held on the 10:02  
21 24th January 2017. We'll go into the detail of that  
22 but would it be fair to say that that's substantive  
23 addition to your original section 21?

24 A. Yes, that's the only addition. The others are  
25 amendments to errors, but that's an addition to my 10:03  
26 original statement.

27 7 Q. Okay. We'll come back to that.

28  
29 If I could just go to your employment history just to

1 set out your particular role within the Trust. If  
2 we look at WIT-42028, paragraph 4.1. Just move down to  
3 paragraph 4.3.

4  
5 You've worked in the Legacy Trust and then transferred 10:03  
6 over to the new Trust. So, you've had quite a long  
7 career in the Health Service?

8 A. Yes. Back to 1997, since I graduated.

9 8 Q. All of your involvement has been in and around  
10 personnel, human resources, employee relations? 10:03

11 A. Bar an initial three or four weeks when I started in  
12 a temporary role back in 1997, all of my experience has  
13 been in the HR Department.

14 9 Q. In and around the time of November 2015, you were the  
15 employee relations manager, grade Band 8A, I think that 10:04  
16 is referred to?

17 A. That's right.

18 10 Q. Was that up until January 2019?

19 A. That was up until the end of January 2016. Then my  
20 role -- my band didn't change but the role changed. 10:04  
21 So, I assumed the role of Head of Employee Relations on  
22 the 1st February 2016.

23 11 Q. From January 2019, is it your current role, were you  
24 Deputy Director?

25 A. That's right. Yes. 10:04

26 12 Q. If we just briefly see where you sit in the HR  
27 instructor. If we go to Vivienne Toal's statement,  
28 WIT-41185. You'll see just on the right-hand side your  
29 name as Head of Employee Relations, including

1 Litigation Services?

2 A. That's correct.

3 13 Q. Who do you report to in that particular structure?

4 A. At that particular time in 2016, the reporting  
5 arrangement there was through to ... I'm just trying 10:05  
6 to recall. Immediately it was Kieran Donaghy, who was  
7 the director of HR and OD, and very quickly after then  
8 Vivian Toal took over in that role and I reported  
9 directly to Vivian in that role.

10 14 Q. There will be some emails we see with Lynne Hainey but 10:05  
11 she's not in on this structure. Can you identify where  
12 she sits in relation to your role?

13 A. Okay. So, the structure is the Assistant Directors,  
14 who sits as part of the senior management teams within  
15 service directorates at 8B level. The tier below that 10:06  
16 are the heads of service at 8A level, in the main.  
17 There are one or two exceptions to that. The vast  
18 majorities of heads of service sat then at 8A in  
19 a tier, not reporting to the assistant directors but  
20 with a reporting line directly to the director. Lynne 10:06  
21 Hainey was a direct report of mine under that as a band  
22 7 at the time of -- when I was in the Head of Employee  
23 Relations role. She subsequently took up the head of  
24 Litigation Services, so stepped out of the Employee  
25 Relations role, but that was sometime after her time in 10:06  
26 Employee Relations.

27 15 Q. So it would be fair to say at the time that we're going  
28 to look at today, Lynne Hainey sat below you?

29 A. She did, she reported directly to me.

1 16 Q. And Vivienne Toal was your direct boss?

2 A. Yes.

3 17 Q. Now, I understand you were able to listen in to  
4 Dr. Chada's evidence yesterday?

5 A. I was.

10:07

6 18 Q. So you'll know that the focus of the questioning around  
7 this and the MHPS also involves consideration of  
8 The Trust guidelines. I want to take you to those,  
9 first of all.

10

10:07

11 If I could ask you to go to WIT-42038, paragraph 7.1.  
12 You have said about your familiarity with The Trust  
13 guidelines there. In the second line:

14

15 "I was involved in the drafting of this document in  
16 conjunction with a range of Senior Trust managers at  
17 that time, including Mr. Kieran Donaghy" - who you  
18 mentioned - "Mrs. Vivienne Toal, Ms. Anne Brennen and  
19 Mrs. Zoe Parks".

10:07

20 Now, this was done in 2010. What was your role in  
21 relation to the drafting of those guidelines?

10:08

22 A. At that time I was in the Employee Relation manager  
23 role, I wasn't in the Head of Employee Relations role.  
24 Sorry, in fact I was the Human Resources Manager Band 7  
25 in 2010 up until May of 2011. So, I was reporting to  
26 Vivienne Toal as the Head of Employee Relations at that  
27 time, and Zoe Parks was the Medical HR Manager. So, an  
28 equivalent Band 7 role with responsibility for Medical  
29 HR.

10:08

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

At the time it was a request from the then Director, Kieran Donaghy, for input into what I can recall were already drafted documents. It was, you know can you input or comment on the document that had already been drafted, I believe by Anne Brennen, and then a subsequent draft by Debbie Burns at a point. 10:09

19 Q. Obviously the MHPS came through later on, 2017, the document. What was your understanding of the way in which the Trust guidelines and the MHPS were to coexist or interact? 10:09

A. Back in 2005 when the framework was introduced, I was a medical staffing manager in the Legacy Newry and Mourne Trust. I was involved at that very early stage back in 2005 in terms of discussion at the time when the framework was originally introduced. We then, obviously, had the review of public administration in 2007 and we became the Southern Trust. There was a requirement under the framework for guidelines to exist, but it was 2010 before that original draft commenced. 10:10

My understanding of what that was to do was to really set out how the Trust would apply the MHPS Framework. So, the MHPS Framework was the document, was the guide, was the framework in terms of the process, but the guidelines were a little bit more detailed in terms of how that would be done locally within the Southern Trust. 10:10



1 20 Q. So would it be fair to say that the guidelines were  
2 anticipated to be the nuts and bolts of how MHPS would  
3 work?  
4 A. How we were going to do it locally was essentially it,  
5 yes. 10:11  
6 21 Q. Was that the reason why individuals like yourself who  
7 had experience of human resources and personnel issues  
8 were drafted in to create this, so that people with  
9 knowledge of what potential areas of concern might  
10 arise could inform that document? 10:11  
11 A. Yes, that's my understanding at the time as to why  
12 I was asked to comment. This was a framework. Yes, it  
13 was in 2005 but it was still probably even by 2010  
14 a framework which was still being worked through by  
15 organisations in terms of how it was being applied. 10:11  
16 So, the folk who were working within medical HR teams  
17 probably were the closest to understanding how this was  
18 being applied in practice at that time. I believe that  
19 because of my role within the Legacy Newry and  
20 Mourne Trust was partly why Kieran Donaghy at the time 10:12  
21 had asked me to become involved and comment on that.  
22 22 Q. Just a couple of general questions on that. If the  
23 framework, the MHPS Framework document, was what was  
24 supposed to be done and the guidelines were the way in  
25 which it was to be done, what was your experience of 10:12  
26 how that actually played out in practice?  
27 A. The framework, as you know, is quite a lengthy document  
28 but there are some elements of it that aren't described  
29 in terms of how you practically do things. The

1 guidelines were intended to try and cover some of that  
2 in terms of how it would be applied.

3  
4 Back then, you know, between 2005 and 2010, the number  
5 of MHPS cases were fairly small. There were not huge 10:12  
6 numbers. So, experience in terms of volume of cases,  
7 you know, it was a handful of cases. It wasn't really  
8 that anybody -- and I say that in terms of regionally,  
9 I mean, because we would have met back in 2005/2006.

10 At that time there were 19 separate Trusts, there were 10:13  
11 19 separate medical staffing managers meeting to  
12 discuss how is this going to work, how are we going to  
13 apply this? The numbers across the board were small in  
14 terms of cases.

15 23 Q. And you had been involved in some of those cases? 10:13

16 A. In Legacy Newry and Mourne Trust, no. I, mean we  
17 didn't actually have any cases, so when the framework  
18 came out how it was going to be applied back then, you  
19 were applying it in theory because there wasn't an  
20 actual live case. 10:13

21  
22 Now the cases, when Southern Trust became the body in  
23 2007, there were a number more small cases but quite  
24 small numbers. So, I was involved in an early case  
25 back in my early days in Southern Trust and supporting 10:14  
26 a part of a case that ran, I think the time scale was  
27 somewhere between around about 2006 into 2013. It was  
28 a very lengthy case for lots of different reasons, and  
29 I stepped in at a point and was supporting that case.

1 So, that was probably the earliest I was involved, was  
2 back in and around 2009.

3 24 Q. You set that out in your witness statement. We don't  
4 need to go to it, for the Panel's note WIT-42039, where  
5 you set out the various interactions you have had with 10:14  
6 the MHPS process, and you've attended various Oversight  
7 meetings and supporting clinical managers with  
8 investigations and providing HR advice to ensure that  
9 managers follow the MHPS process.

10  
11 Now, you listened to Dr. Chada's evidence yesterday and  
12 some of the questions I'll take you to today.

13 Obviously there are questions to be asked about the  
14 application of the framework and the application,  
15 indeed, of The Trust guidelines in the case of 10:15  
16 Mr. O'Brien. I'm just wondering, are these familiar  
17 issues that you recognise from your previous engagement  
18 with MHPS, the sort of things that are issues perhaps  
19 here as, for example, delay, the volume of workload for  
20 those involved, access to documents for both those 10:15  
21 doing the investigation and the person who is subject  
22 to that investigation. Are they themes that you recall  
23 from previous MHPS investigations?

24 A. My role across the cases that I've been involved in  
25 from an MHPS point of view has varied. So, I have 10:15  
26 stepped in at different points in different cases.  
27 Certainly it would be my experience that MHPS cases  
28 take a long time. The capacity to do cases and do them  
29 quickly has always been a challenge. I say that,

1 I suppose, I also carry responsibility -- the Employee  
2 Relations role they I have, my responsibility as the  
3 Head of Employee Relations carried the responsibility  
4 of all of the nonmedical cases. So whilst the medical  
5 MHPS cases sat under the Medical HR team, as such, all 10:16  
6 of the nonmedical cases would have been -- and the same  
7 challenges are there as well, medical and nonmedical,  
8 in terms of capacity and time scales.

9  
10 So, yes. The answer in terms of Maintaining High 10:17  
11 Professional Standards, yes, I recognise them as issues  
12 but I recognise them outside of MHPS as well.

13 25 Q. Given that history of recognition of those issues that  
14 the Panel will hear evidence in relation to, the  
15 application of this to Mr. O'Brien, was there ever any 10:17  
16 potential or awareness that perhaps people should feed  
17 back their experience of MHPS and try and develop over  
18 time, quite a considerable period of time, develop  
19 a process that was more streamlined or benefited from  
20 the collective experience of those who had gone through 10:17  
21 it, whichever side of the table they sat on?

22 A. And I suppose over time there has been progression in  
23 terms of additionality within for example, the Employee  
24 Relations team. When I talk about -- I suppose I'll  
25 refer to MHPS separately, those challenges are known 10:18  
26 and the time scales have always been a challenge. The  
27 feedback would be discussed within the team, as such,  
28 in terms of the challenge to do this. I suppose over  
29 time, that has been -- we've been working to try and

1 build capacity. That has culminated now in additional  
2 resources within the Medical HR team but that is much  
3 more recent, and I suppose it is in response to what  
4 we now recognise as being a particular issue in terms  
5 of trying to move these at pace.

10:18

6 26 Q. Just to dig a little bit deeper, because you do have  
7 experience with MHPS and not all the witnesses do, so  
8 I want to just ask you about that.

9  
10 For example, if there was an issue, arguably there's an  
11 issue here that Mr. O'Brien should have been given  
12 documents before meetings or in advance of engagement  
13 with the process, do you think that that's something  
14 that could be easily rectified by simply putting in the  
15 Trust Guidelines an addition that this is the structure  
16 to be followed before engaging with someone subjected  
17 to this framework; that they know the information that  
18 we have and they know what's being said and they have  
19 an opportunity? Do you think that remedy would be  
20 something that could be easily achieved by the Trust?

10:19

10:19

21 A. I don't think there's any -- I don't think anybody  
22 would argue with that. I suppose the practicalities  
23 around some of that, so yes, absolutely, in terms of  
24 putting that in the framework in terms of those steps  
25 that should happen is the ideal.

10:20

26  
27 In practice - and I suppose I refer to this particular  
28 case - the practicalities of a number of witnesses,  
29 witnesses with clinical responsibilities, a varying

1 degree of a range of roles that people carried, when  
2 I look back over, on reflection before obviously coming  
3 here, the witness statements being generated and sent  
4 out and then being agreed with the Case Investigator,  
5 which was Dr. Chada, subsequently sent back, sent out 10:20  
6 to the individual, chased up with the individual,  
7 amendments made with the individual. So, I don't  
8 disagree that ideally that's what you would like to see  
9 but in order to progress, sometimes that is  
10 challenging. You know, you are balancing all the time 10:21  
11 in terms of what am I best doing here? Do I continue  
12 to try and progress whilst I try and kind of get all of  
13 that?

14  
15 I suppose I would be very clear in terms of my handling 10:21  
16 with any case, and my advice in terms of any case is  
17 that no one should be asked to conclude a case without  
18 having a full opportunity to be sighted on all of the  
19 documentation and having been able to comment on that.  
20 That was the case on this case. That was always the 10:21  
21 intention and that was the reality in this case, that  
22 the sequencing of when that documentation went wasn't  
23 necessarily ideal. I would absolutely agree with that.  
24 I mean, ideally you would have a lovely bundle of  
25 witness statements which you could hand over and say 10:21  
26 here it is and now can we meet and can you give it. But  
27 in practice, that's just challenging in itself.

28 27 Q. we'll come on to the detail of that. It was really  
29 just to focus in on if there's an awareness that - and

1 I appreciate each case is different,  
2 medical/nonmedical - but if there's an awareness at the  
3 outset, or one develops during the process, that  
4 anticipated timeframes would simply not be met, do you  
5 think there's an obligation to keep the person who is 10:22  
6 subjected to this process up to date with that?

7 A. I do, of course. I absolutely accept that.

8 28 Q. Of course, that may be a rolling timeframe. But would  
9 you agree that communication with someone who finds  
10 himself under the MHPS spotlight, as it were, is really 10:22  
11 significant?

12 A. Absolutely. MHPS, non-MHPS, I mean we see it every day  
13 within HR, the impact of these processes on  
14 individuals. There's no doubt that these are very  
15 difficult processes, so I fully accept that there is 10:23  
16 a requirement in terms of time scales.

17

18 I think in this particular case, from the 24th January  
19 meeting, I think that was -- I think I gave a very  
20 clear indication that the four weeks was just not 10:23  
21 realistic. I mean, before even stepping foot into this  
22 case it was very evident that four weeks was just not  
23 practical. Having been involved in other cases that  
24 have been much less in terms of volume, you know,  
25 volume of witnesses and volume of documents, for 10:23  
26 example, my experience has been four weeks was never  
27 going to be -- is never achievable. So, that was  
28 communicated, I suppose in this particular case, at the  
29 very outset to say that four weeks just isn't

1 practicable.

2 29 Q. You say communicated -- sorry just to cut across you.  
3 So I am clear, communicated to whom?

4 A. Mr. O'Brien.

5 30 Q. When do you say he was first alerted to the fact that 10:24  
6 the four-week timeframe both recognised in the  
7 guidelines and the MHPS framework was not going to be  
8 achieved?

9 A. I advised Mr. O'Brien of that at the first meeting  
10 we had with him on the 24th January. 10:24

11 31 Q. Did you ever follow that up in writing or in an email  
12 or send around to everyone else and say, look, I know  
13 we have these deadlines or these aspirational  
14 timeframes but given the issues that are arising, can  
15 we set something that's more realistic. Was there ever 10:24  
16 a discussion around managing time in a realistic way?

17 A. With the Oversight or with the Case Manager?

18 32 Q. Yes.

19 A. No, I suppose there wasn't. There was an acceptance  
20 that four weeks was never going to be achievable and 10:25  
21 that it was a matter of trying to progress as we could  
22 progress, given the capacity and workload issues that  
23 we were facing into. So no, there wasn't that  
24 discussion in terms of what was a more realistic time  
25 scale. 10:25

26 33 Q. You mentioned just a few moments ago about the stress  
27 that this process causes for those involved but,  
28 obviously, most particularly on this occasion  
29 Mr. O'Brien. In your role with Employee Relations,



1 does it fall within your role at all to support the  
2 individual going through this process as well? I'll  
3 just give you the context of asking that question.  
4 Whenever Mr. O'Brien was informed at the end of  
5 December of the process that would be beginning in the 10:25  
6 New Year, effectively, it was clear that he was very  
7 distressed by that, and upset. On an occasion like  
8 that, where a consultant finds himself subject to  
9 a formal investigation, is it expected or do you think  
10 it would be appropriate to have provided him with 10:26  
11 Employee Relation support to facilitate him through  
12 that process as an employee?

13 A. In terms of this directly about this case, the 30th  
14 December meeting is a meeting I wasn't in attendance at  
15 but obviously Lynne Hainey from Employee Relations was. 10:26  
16 On the view of the documentation, the support that  
17 we had available were attendance at occupational health  
18 if somebody was feeling unwell, or the use of the  
19 staff's confidential counselling service, Carecall.  
20 Inspire now is the name. Those would have been things 10:27  
21 as a matter of course everyone is offered in terms of  
22 the support during the course of these processes.  
23 I know from reviewing the information that Lynne had  
24 shared, that that was offered at that 30th December  
25 meeting. I was also aware that Mr. O'Brien was already 10:27  
26 in the loop, for want of a better description, of  
27 occupational health because he was off sick at that  
28 particular point in time and they were already  
29 reviewing him as a result of that absence.

1  
2 So, that's back in 2016. From an Employee Relations  
3 point of view, we have reflected on, not specifically  
4 Mr. O'Brien's case but including Mr. O'Brien's case, on  
5 a range of feedback we've had over many cases where 10:27  
6 individuals feel that those supports are really a tick  
7 box, they're not really supports that are helpful. You  
8 know, that has been a theme of feedback that we have  
9 heard in a number of cases. As a result - and, as  
10 I say, not specifically related to Mr. O'Brien - but as 10:28  
11 a result of a number of cases, we have moved to the  
12 position of developing an Employee Relations guidance  
13 note for, primarily Employee Relations staff and  
14 Medical HR staff and, I suppose, investigators and  
15 service managers, that sets out a range of supports 10:28  
16 that need to be offered to individuals, which is much  
17 broader than here's Occupational Health or here's  
18 Inspire and Carecall.

19 34 Q. When was that guidance note issued?

20 A. That was last year. So that was 2022 that that 10:29  
21 guidance document has eventually gone through SMT and  
22 is now part of our processes. What that is is  
23 really -- we looked at that in terms of, you know, the  
24 feedback is does an individual want somebody from HR or  
25 Employee Relations as their support. Because, for 10:29  
26 example in this particular case with Mr. O'Brien,  
27 I have no relationship with Mr. O'Brien, I don't know  
28 Mr. O'Brien, so for me to try to provide support, I'm  
29 not necessarily the right person, and that's the case

1 for many of our staff. We meet them, unfortunately, in  
2 these circumstances where it's an investigation process  
3 but we don't have that natural contact or natural  
4 relationship with the individual or the practitioner.  
5 So, are we the best people to be that support? No, 10:29  
6 we probably aren't.

7  
8 we've tried to address that within this document to say  
9 that there needs to be an identified point of contact,  
10 probably from somebody in a line management role, to 10:30  
11 provide that support on an ongoing basis to ensure  
12 there are regular updates and that there are contacts  
13 made just as a check-in in terms of how are you  
14 feeling, how are things going for you, how are you  
15 feeling, and we built that into this new guidance note. 10:30

16 35 Q. So there's now recognition that there is a potential to  
17 assist them in a non-formal way that allows them to  
18 liaise with or have a support mechanism with someone  
19 they know, not necessarily someone from Employee  
20 Relations. 10:30

21 A. And, unfortunately, the someone in Employee Relations  
22 is facing them across the table generally for the first  
23 time in a difficult environment because it's as part of  
24 an investigation process, so it would never really be  
25 ideal that that would be who somebody would want to 10:30  
26 then get support from. So, yes, it was in recognition  
27 that we needed to look at who was best placed to do  
28 that and who could provide that in a better way. So,  
29 that's what that guidance was about.

1 36 Q. Perhaps the Trust could provide that guidance to us.

2 A. Yes.

3 37 Q. It would be helpful. Thank you.

4

5 Now, you did have training on the guidelines. I just 10:31

6 want to set this out very briefly because I want to ask

7 you later on some questions about your involvement.

8 The training on the guidelines is set out at WIT-42045,

9 paragraph 9.1. You said:

10

10:31

11

"In my roles as Head of Employee Regulations/Deputy

12

Director HR Services, I received the following

13

training: I attended the Trust's development programme

14

for AMDs and CDs on 7 and 8 March 2017 which covered

15

the MHPS Framework and specifically investigator 10:32

16

training by NCAS trainers. I attended and presented

17

at a training session on the 24th September 2010 which

18

was a Trust Medical Leadership forum facilitated by

19

NCAS. This session provided training to medical

20

managers on the MHPS Framework, case scenarios, and 10:32

21

The Trust guidelines, which I had been involved in

22

drafting".

23

24

Then you say:

25

10:32

26

"I have not attended any specific training on the

27

handling of performance concerns in either of these

28

roles".

29

1 Have there been any updates between 2010 and 2017; any  
2 other training?

3 A. No.

4 38 Q. Were you involved in training others after having  
5 received this training?

10:32

6 A. Training other than?

7 39 Q. Other members of Employee Relations or other staff who  
8 may be involved in MHPS?

9 A. On a train-the-trainer type arrangement? Other than  
10 informally, so there would have been occasions where  
11 I would have gone along and sat down with individuals  
12 who were taking on these roles. The training that  
13 is -- if you take, for example, the 7th and 8th March  
14 2017 training, that is training that is planned quite  
15 substantially in advance. It's a full two-day  
16 programme; we have trainers that were brought in  
17 specifically for this. So in between having those kind  
18 of formal training programmes, we would have had  
19 a requirement maybe for an individual to undertake  
20 a role, and I would have done or provided some advice  
21 and guidance around this is the process, this is how  
22 you move it forward, take it forward, or a refresher  
23 for somebody who had attended training, say, for a day  
24 for example, in 2017, but has only taken up a role of  
25 a case manager or a case investigator in, say, this  
26 year.

10:32

10:33

10:33

10:33

27  
28 So it's a much more informal basis. I don't deliver  
29 training, I don't run any of these sessions. The

1 session on 24th September 2010, the Medical Leadership  
2 Forum - it was Colin Fitzpatrick - the input that  
3 Vivienne Toal and myself I had at that stage was  
4 describe through the process of The Trust guidelines  
5 that were being developed at that particular point in  
6 time. But generally speaking, no, this is formal  
7 training that is brought into the Trust.

10:34

8 40 Q. Just in relation to training, there's an email in the  
9 documents received by the Inquiry at TRU-267437. It is  
10 an email to you from Vivienne Toal dated 25th January  
11 2017.

10:34

12  
13 You'll see she says to you:

14  
15 "Siobhan, just a couple of thoughts. Training for CM  
16 and CI" - which I presume is Case Manager and Case  
17 Investigator - "could we do something quick so that if  
18 we are ever asked we can say they are trained. John is  
19 trained".

10:35

20  
21 Then she asks:

22  
23 "Are we bringing AOB back on Friday to tell him next  
24 steps? We will need NCAS advice on Thursday/Friday  
25 first thing, as their date of review is the 27th".

10:35

26  
27 If you just go up, we can see your reply. You reply  
28 and say:

29

1 "Vivienne, I will try to get an hour in the diary next  
2 week to do a session with both".

3  
4 In relation to that, when she is asking about the CM  
5 and CI training, do you recall what that was 10:35  
6 specifically about at that point?

7 A. I don't. I'm going to speculate because I don't  
8 actually recall the follow-up to that, but that  
9 wouldn't have been unusual in terms of the Case Manager  
10 and the Case Investigator. So Dr. Chada, for example, 10:36  
11 I'm aware was at the 2017 training and was also at the  
12 2010 session, at the same sessions that I had been at.  
13 This would have been a case of, you know, go along,  
14 meet with the Case Investigator, the Case Manager, and  
15 work through just reminders of the process in terms of, 10:36  
16 you know, reminding of the Case Manager role, the Case  
17 Investigator role. That's what that -- on a very  
18 informal basis in terms of when I refer to an hour in  
19 the diary and a session, I can only assume that that's  
20 what I was referring to. I don't recall. 10:36

21 41 Q. You don't recall?

22 A. I don't.

23 42 Q. It seems we can just infer from the emails - and if you  
24 recall that I'm not correct, you can interject - but it  
25 seems that from that you are involved with, if I put it 10:37  
26 neutrally, refreshing the Case Manager and the Case  
27 Investigator as to their roles.

28 Now, is there a danger, if that's the line of structure  
29 of informing each other of roles, that

1 a misunderstanding from one person can then affect how  
2 others view their roles and responsibilities in the  
3 process?

4 A. Yes, I accept that. I mean, ideally where you want to  
5 be with this is you would like to have these people who 10:37  
6 undertake these roles trained at a very close time to  
7 the point at which they undertake the role. In  
8 practice again, that's very, very challenging because  
9 you don't know when cases are going to land. You don't  
10 know, you know -- so from 2017, and we had a fairly 10:37  
11 substantive cohort of individuals who attended that  
12 training, probably very many of them had never  
13 undertaken the role of Case Manager or Case  
14 Investigator since, so it becomes almost a bit defunct.  
15 Then it's about, right, okay, we need to identify 10:38  
16 somebody for these roles and you're going back to  
17 either people who have been trained but trained quite  
18 a period of time before that, or you're trying to get  
19 formal training in place. So it is challenging,  
20 there's no doubt about that. I fully accept what 10:38  
21 you're saying in terms of you are doing that internally  
22 and that refresher piece, there is that danger.  
23 Absolutely.

24 43 Q. The other side of that coin is the individuals who are  
25 being asked to take on the role of Case Investigator 10:38  
26 and Case Manager are full-time employees with very busy  
27 practices --

28 A. Absolutely.

29 44 Q. -- who don't have time, one would assume, to look at



1 the fine detail of the MHPS framework or the Trust  
2 guidelines, so a refresher at the point of need might  
3 be something that the Trust considers to be entirely  
4 appropriate. My question was merely aimed at if the  
5 person doing that in future --

10:39

6 A. Doing that. Yes I accept that.

7 45 Q. You've accept that point and I don't need to go any  
8 further with that.

9  
10 Now, Mr. O'Brien raises an issue that at WIT-82617,  
11 where he considers that the Trust preferred the MHPS  
12 Framework rather than The Trust guidelines. I just  
13 want to read out what he says about that at  
14 paragraph 42. 642; I think my number 6 has fallen off.  
15 I'll just read that paragraph and you can comment on it  
16 if you think appropriate. He says:

10:39

10:39

17  
18 "I wish to reiterate my concern and dissatisfaction in  
19 respect of the length of time the Trust took to conduct  
20 and complete the formal investigation using the MHPS  
21 Framework, and which was in breach of The Trust's own  
22 policy, namely the Southern Trust Guidelines for  
23 handling concerns about doctors and dentists'  
24 performance (September 2010). Under That Trust policy,  
25 the investigation regarding my practice should have  
26 been undertaken and concluded within four weeks from  
27 the date of exclusion on 30th December 2016. The Trust  
28 did not comply with that policy, and indeed during the  
29 course of the investigation, the Trust ignored it,

10:39

10:40

1 preferring MHPS Framework. On raising my concerns  
2 regarding this with the Trust, I was advised by  
3 Ms. Hynds, assistant to the Case Investigator, that the  
4 MHPS Framework was 'overarching'. It remains my view  
5 that the Trust was entitled to use the MHPS Framework 10:40  
6 in conducting such a formal investigation, and to which  
7 the Trust's guidelines referred, but it was the latter  
8 that was related to my contract of employment. I found  
9 it remarkable that the Trust could so readily fail to  
10 comply with its own guidelines while alleging that 10:41  
11 I had failed to comply with The Trust policy concerning  
12 triage of referrals, even though it did not have one".

13  
14 You can see the substance of the complaint there from  
15 Mr. O'Brien is in relation to his belief that, number 10:41  
16 1, the delay and the four-week aspect - which you have  
17 spoken to but if you want to add anything to that,  
18 please feel free to do so - and also his belief there  
19 was a hierarchy in the way the Trust relied on either  
20 the framework or the guidelines, and that operated to 10:41  
21 his disadvantage. If you want to read through it  
22 again, I'll just give you a moment and you can reply to  
23 that as you see fit, because you are specifically named  
24 in that paragraph so we wanted to bring it to your  
25 attention. 10:41

- 26 A. I'm aware that this was an issue of Mr. O'Brien so this  
27 isn't new. I suppose in reading this, I'm not fully  
28 understand the complaint Mr. O'Brien is raising in  
29 terms of the elements of which the guidelines verses

1 the MHPS Framework were used or not used. I'm not sure  
2 I understand that.

3  
4 The conversation, when this was raised with  
5 Mr. O'Brien, was just that. It was an explanation how 10:42  
6 we manage doctors and dentists in difficulty, because  
7 the framework was there, was a Northern Ireland-wide  
8 framework and that was our go-to in terms of what  
9 we needed to comply with. The Trust guidelines also  
10 sat alongside that in terms of this is how we do it 10:43  
11 locally, I suppose just what I described previously,  
12 which set out, I mean in more practical terms, the how  
13 we would do it. So for me it wasn't one or the other,  
14 it was both.

15 10:43  
16 I completely get the point in terms of what he was  
17 saying around the time scales. I suppose I've  
18 explained that to you in terms of my experience of this  
19 is that four weeks was never -- was never achievable;  
20 that I had addressed that at a very early stage with 10:43  
21 Mr. O'Brien to advise him that four weeks was really  
22 going to not be doable. So, I suppose Mr. O'Brien's  
23 issue with that was that the framework and the document  
24 said four weeks and we weren't complying with those  
25 four weeks. 10:44

26 46 Q. Now, the Inquiry has heard evidence from Martina  
27 Corrigan that she wasn't aware of the MHPS Framework  
28 document at all, the Head of Service. Do you know  
29 Ms. Corrigan?

1 A. I do.

2 47 Q. She also says that in her witness statement. We don't  
3 need to go to it but for the Panel's note at WIT-39881  
4 paragraph 4.1. She said she became aware of the  
5 framework in conversation with you.

10:44

6

7 First of all, does it surprise you that someone of  
8 Ms. Corrigan's seniority wouldn't be aware of  
9 a document like that and, secondly, would you expect  
10 someone at her level not only to be aware but to have  
11 some perhaps training in that framework document, given  
12 that she is responsible for medical -- well, nonmedical  
13 staff who may find themselves subjected to the Trust  
14 guidelines, and the medical staff to the framework?

10:44

15 A. Okay, so there's a couple of things in there.

10:45

16 48 Q. I'll try to break it down.

17 A. You're okay.

18

19 I suppose what you've asked me is am I surprised that  
20 she wasn't aware of it. Truthfully, probably not  
21 surprised.

10:45

22 49 Q. Why was that?

23 A. So MHPS, again, is one of those documents that, unless  
24 you probably have been centrally involved in it, is  
25 something that sits probably, you know, to the side and  
26 there wouldn't be necessarily in my experience a lot of  
27 organisational knowledge of the detail or perhaps even  
28 the framework by everyone who potentially touches it.  
29 So, is that right? No, it's not. We absolutely need

10:45

1 to ensure that everyone who potentially has a touch  
2 point with a doctor in terms of management should be  
3 aware and, more than that, more than aware, should  
4 understand the detail of the requirement of that.

5  
6 I suppose what you asked me is am I surprised.  
7 I suppose I'm not necessarily surprised because I know  
8 there was limited rollout and training. You can see  
9 there in terms of the training, that went from 2007 to  
10 2010 and then in 2017, aimed primarily at medical  
11 managers, and operational folk probably less so at that  
12 stage. So I don't know if I answered that for you but,  
13 you know --

14 50 Q. Just if I could ask on that point. Does the fact that  
15 the training is focused more on the medics because it  
16 applies to them, is that perhaps suggestive that it is  
17 expected that the medics will be involved in the  
18 outworkings of it than the Case Manager, Case  
19 Investigator.

20  
21 If we follow that through, obviously Mrs. Corrigan was  
22 responsible for monitoring the return-to-work plan, and  
23 she, having no knowledge or experience of MHPS. From  
24 your position in Employee Relations, do you think that  
25 that was an appropriate decision to have of someone who  
26 had neither knowledge nor experience of it to  
27 effectively bring about one aspect of it, which was  
28 a return to work?

29 A. I suppose for me those are probably two different

1 things. The management of a case through an MHPS  
2 process in terms of those clear roles under MHPS was  
3 not a requirement for Martina Corrigan.  
4 Martina Corrigan's role very much was centred on the  
5 operational running of the Urology Service. In terms 10:48  
6 of the action plan for Mr. O'Brien in terms of his  
7 return to work in the - what was it - February, it  
8 might have been into March, February of 2017, this was  
9 about individuals who understood what needed to happen  
10 by way of those very specific points. Because the 10:48  
11 action plan was centred on the issues of concern at  
12 that time, which was ensuring that triage was done and  
13 was done in a timely way; ensuring that notes were not  
14 offsite; ensuring that dictation was done, and looking  
15 at the scheduling of private patients. 10:48

16  
17 So for me, I think that was appropriate for Martina.  
18 That was part and parcel of her role. I'm not sure she  
19 required any specific knowledge of MHPS in order to  
20 monitor that action plan, because that's what was being 10:49  
21 asked of her, was that operational side of it.

22 51 Q. We'll look later on at the deviations from the action  
23 plan and the reporting and nonreporting of those, and  
24 whether the Panel can consider whether, having no  
25 knowledge of the MHPS process and yet oversight of the 10:49  
26 monitoring, led to a disjointed approach, perhaps, of  
27 the oversight of the action plan.

1 Now, I just wanted to look at your role within MHPS.  
2 We can go to the framework document, WIT-42048 at 11.1.

3  
4 "The MHPS Framework documents no specific role for HR  
5 manager. There is specific reference to the role of 10:49  
6 Director of HR only".

7  
8 We'll come to the chronology of you getting involved in  
9 this but just from the outset, given that, given the  
10 absence of any specifics in that regard, what did 10:50  
11 you see your role as being?

12 A. And the Trust Guidance, I suppose, set out to try and  
13 deal with explaining a little bit more of that. It's  
14 absent entirely from the MHPS Framework. My  
15 understanding of my role -- 10:50

16 52 Q. Just before you answer that, if we look at  
17 paragraph 11.2 where the Trust Guidance is set out:

18  
19 "Specifically refers to the role of the HR manager as  
20 part of the process. The HR manager role is included 10:50  
21 in this guidance and outlines in practice how cases are  
22 managed and supported within the Trust. In general  
23 terms, the role of the HR manager is to provide advice  
24 and administrative support to the various specified  
25 roles under the Trust Guidelines. It is not 10:50  
26 a decision-making role".

27  
28 We'll come to the last part of that sentence a couple  
29 of times throughout today, I think. Just from the

1           outset, what did you understand in practical terms your  
2           role to be?

3           A.    In terms of MHPS to this particular case, the role of  
4           the HR manager is there to provide the advice in terms  
5           of the process to ensure that -- and the role that           10:51  
6           I undertook initially in terms of this particular case  
7           was support to the Case Investigator. Now, that  
8           broadened as things progressed. But in terms of the  
9           role to the Case Investigator, it is, I suppose as  
10          I would describe it, to do a lot of the legwork in           10:51  
11          terms of, you know, ensuring that meetings are  
12          coordinated; that things are set up in line with the  
13          process in terms of making sure that when you're  
14          meeting with witnesses, that notes are gathered; that  
15          they are then provided, in terms of statements, that           10:52  
16          any relevant documentation is gathered, etcetera.  
17          I suppose I would describe it very much as both an  
18          advisory role in terms of process, but also that kind  
19          of that administrative support. That's how, in  
20          practice, it has been working.                                   10:52

21        53 Q.    And the Trust Guidance, if we go to the document,  
22            TRU-83688. If we go down to 83689. Just on the  
23            left -- sorry, if we go up just to see the title of the  
24            document. With reference to the screening process,  
25            this is an example of one of the stages, just to see           10:53  
26            where your role sits. You'll see on the left-hand  
27            side, the second box down:

28  
29            "The Clinical Manager and HR Case Manager undertake



1 preliminary enquiries to identify the nature of the  
2 concerns and assess the seriousness of the issue on the  
3 available information".

4  
5 I think that's what you described, doing the legwork, 10:53  
6 as you have referred to it.

7  
8 Then, again, the next box underneath that:

9  
10 "The Clinical Manager and HR Manager Consultants with 10:53  
11 NCAS and/or occupational health service for advice when  
12 appropriate".

13  
14 we will see that you did consult with NCAS. Did  
15 you consult with Occupational Health at all? 10:54

16 A. I suppose in respect of that particular process that  
17 we're looking at currently, that's the screening  
18 process, and in terms of this case I wasn't involved in  
19 that. I came in at a later point.

20 54 Q. Was Lynne Hainey involved in the screening process from 10:54  
21 your point of view?

22 A. Not that I'm aware of. Lynne -- I suppose this goes  
23 back to kind of the sequencing of how I became involved  
24 and Lynn's role. I was entirely unaware of any  
25 concerns in relation to this particular case until the 10:54  
26 28th December.

27 55 Q. Let me just stop you there. I am going to go over the  
28 chronology but I just want to show you this. For all  
29 intents and purposes you're the HR manager for the MHPS

1 Framework. Mr. O'Brien takes issue with the  
2 sequencing, as well as decisions that were made and who  
3 made decisions. The purposes of these questions is  
4 just really to set out where it is expected the HR  
5 Manager slots in, and one of those areas is the  
6 screening. 10:55

7 A. Yes.

8 56 Q. Okay. That's why I'm taking you to this document.  
9 We'll come to the part where you're not involved in  
10 this and why, but I just need to set - I should have  
11 explained that, perhaps it would have been easier - to  
12 set the ground rules for this aspect of the questions. 10:55

13  
14 So, the Clinical Manager and HR Case Manager notify the  
15 Oversight Group of their assessment and decision. 10:55

16 Okay? Although it says then the Trust Guidance it is  
17 not an decision-making role, it is clear, would you  
18 agree on this - at least on this particular part on the  
19 screening process - that the very first stage does  
20 involve the HR Manager in a decision-making role? 10:56

21 A. In terms of the 2010 guidelines, I would accept that.

22 57 Q. When you say that, is that with a distinction where you  
23 don't accept it in relation to the MHPS Framework?

24 A. No. I suppose what I mean by that is back again in  
25 2010, at a point in time when we are -- I'm going to  
26 use the word "grappling", but grappling with what does  
27 this mean for us, how are we going to implement this.  
28 I suspect, and I'm speculating here, but I suspect it  
29 is written in that way because of how the nonmedical 10:56

1 cases were managed in the Trust at that point in time,  
2 and still are. Down the nonmedical side in Employee  
3 Relations, it is always a dual role. It is a dual  
4 investigation role, it is a dual panel role for HR and  
5 a service manager. Clearly that was never the 10:57  
6 intention under MHPS, but I suspect that's why that is  
7 written in that way because that distinction hasn't  
8 necessarily been recognised at that early 2010. The HR  
9 Clinical Manager and the Case Manager, it is written  
10 there in a way that the HR Case Manager has 10:57  
11 a decision-making role when clearly they don't.

12 58 Q. They don't in the MHPS?  
13 A. Yes.

14 59 Q. You base that on what when you say they don't, they  
15 don't have any decision-making? 10:57  
16 A. There's no formal role identified for a HR Manager  
17 within that. There's a clear role for the HR Director  
18 but it is absent in terms of any other role.

19 60 Q. So the MHPS Framework is silent as to the extent to  
20 which the HR Manager may become involved? 10:57  
21 A. It is silent on a HR manager at all.

22 61 Q. So the screening in this, as you've indicated, the  
23 actual process happened before you became involved?  
24 A. Yes.

25 62 Q. In sequencing, in Mr. O'Brien's case, he was excluded 10:58  
26 before the screening process started; is that your  
27 understanding?  
28 A. No. My understanding is that the screening was  
29 undertaken in the very late part of 2016, and the --

1 63 Q. Under the MHPS process?

2 A. What I am aware of now - but that is subsequent  
3 obviously to my involvement when I became involved in  
4 January of '17 - is that a screening of the concerns  
5 was undertaken by Simon Gibson at a point in time. 10:58  
6 That screening was discussed with members of an  
7 Oversight Group, who were discussing the concerns and  
8 the mechanisms for managing those concerns. Then the  
9 decision was -- then the decision was taken to hold  
10 that 30th December 2016 meeting to communicate the 10:59  
11 decision to move to immediate exclusion.  
12

13 So, as I understand it - I could be wrong, I wasn't  
14 involved in that - but I understand subsequently from  
15 paperwork that I have seen in terms of the bundles, 10:59  
16 that that screening had happened in the late part of  
17 2016 and fed into the meeting of the 30th December.

18 64 Q. Well, I don't want to ask you -- the Inquiry has heard  
19 and will hear evidence around what happened before your  
20 involvement. Just so I'm clear on that, is it your 10:59  
21 understanding that when you became involved just in the  
22 turn of the new year, really, that there was no  
23 subsequent screening process or that there was  
24 a screening process under MHPS carried out?

25 A. No. My understanding and recollection is that the 10:59  
26 decision was taken by the 30th December that we were  
27 into a formal investigation process, and that the  
28 decision was to immediately exclude -- sorry, I'm  
29 actually going to reverse that. That's not my

1 understanding.

2

3 My understanding was that the 30th December decision  
4 was that there was to be an immediate exclusion, and  
5 the following four weeks provided a timeframe by which 11:00  
6 further information was to be gathered to determine the  
7 next steps, essentially. That was related to were  
8 we going into a formal exclusion and continuing with  
9 exclusion and the formal investigation process. So,  
10 the piece about -- what I do know is that there was no 11:00  
11 further screening. The screening was essentially  
12 gathering information during that initial four-week  
13 period of January in 2017, during the period of  
14 immediate exclusion, to more fully understand the  
15 extent of the concerns. 11:01

16 65 Q. Now, the information that was done on that screening  
17 that then was given to you as HR Manager to inform your  
18 understanding of what was happening, are those the  
19 early emails from Lynne Hainey that we can go to, where  
20 she sent you some documents -- 11:01

21 A. Yes.

22 66 Q. -- at the very beginning?

23 A. She does. In and around 28th December.

24 67 Q. The 28th, yes.

25

26 Just in short form, Lynne Hainey had been dealing with  
27 the immediate post-Christmas, early New Year period  
28 when you were on leave. Then there was a decision  
29 taken that you would take over that role. As 11:01

1 I understand it, Zoe Parks, who on the medical staffing  
2 side of Employee Relations - we saw her name earlier in  
3 the flowchart of the structure - she wasn't available  
4 and you then were given the task of becoming the HR  
5 Manager. That is it in shortform so I can take you to 11:02  
6 the email, but is that the sequence? Am I right in the  
7 sequence?

8 A. An element of it. Lynne Hainey's involvement was to  
9 support Richard Wright at one meeting. So the process,  
10 as I understand it, at that stage had moved quite 11:02  
11 quickly in the very end part of 2016. Over a period of  
12 leave at Christmas, there was a need to identify a HR  
13 support to Richard Wright to undertake a meeting with  
14 Mr. O'Brien to communicate the decision about immediate  
15 exclusion. That was Lynne's involvement entirely in 11:03  
16 terms of the process. So, she was the person who was  
17 covering Employee Relations at that particular point in  
18 time. Vivienne and myself were both off on leave. We  
19 had some discussion. I'm piecing this together from  
20 the email chains that I've reviewed. I don't 11:03  
21 necessarily remember the actual phone call.

22 68 Q. Well, look at your statement just to see where you  
23 reference that. WIT-42051, paragraphs 12.5. You have  
24 said you were on annual leave at 12.3. This is the  
25 Christmas period. 11:03  
26

27 Just 12.4. This sets out the period that we are  
28 referring to when Lynne Hainey was involved. You were  
29 on annual leave and you received a call from Vivienne

1 Toal who was on call over the Christmas period. You  
2 don't recall the details of the phone call. There was  
3 an urgent meeting to be held on 30th December with  
4 Mr. O'Brien regarding concerns about his practice. You  
5 understood that Ms. Toal was trying to identify 11:04  
6 appropriate HR support for Dr. Wright. You don't  
7 recall that conversation, but you see now from email  
8 correspondence you've gleaned subsequently that Lynne  
9 Hainey was covering that and she was asked to attend  
10 the meeting? 11:04

11 A. Yes, and that was essentially Lynne's involvement. She  
12 supported that meeting on the 30th December. I suppose  
13 then Lynn is copying me in, I suppose as her direct  
14 line manager at that point, with an understanding that  
15 this wasn't going to be her going forward. There are 11:05  
16 emails there - I don't specifically recall the date.  
17 I think potentially 5th January, while I'm still on  
18 leave, Vivienne emails me to say we need to have a chat  
19 about how we support this case. By that stage, there  
20 still wasn't a HR support to the formal investigation 11:05  
21 identified. That's done in the early part of  
22 January 2017 when I come back from leave.

23 69 Q. If we just look at paragraph 12.5. You have indicated  
24 that you got email correspondence on the 28th December.  
25 You had a discussion with Lynne Hainey on the 28th 11:06  
26 regarding the 30th December meeting. You don't recall  
27 that discussion. Then between the 28th and 30th, she  
28 sent you a number of emails. Those emails contain some  
29 attachments. This sets out these pieces of

1 information - I don't need to take you to them if you  
2 recall them - set out what you knew at that point. One  
3 of the attachments was the note of the Oversight  
4 Committee of 22nd December.

5 A. I suppose the thing I would say in respect of those 11:06  
6 emails between 28th December and 30th December, whilst  
7 I know I've received them and I have no doubt I have  
8 read them, I'm on a period of leave during that. So  
9 I've probably quickly scanned them and shut them again,  
10 with a view to having those conversations when I return 11:06  
11 from leave. So when you describe what I knew at that  
12 particular point in time, I'm not sure it was really  
13 until the 10th January 2017 meeting that I had a full  
14 comprehension of the issues at hand.

15 70 Q. Let's just look at what information was provided to you 11:07  
16 in advance of that. It is really just, to see what  
17 background information you had.

18  
19 You had the note from the Oversight Committee of 22nd  
20 December; you had an email from -- you had been told in 11:07  
21 an email that NCAS advice had been received and that  
22 the meeting on the 30th could be verbal rather than  
23 anything further written with Mr. O'Brien at that  
24 meeting. There's also a reference to the March 2016  
25 letter, which was attached to the email. They're the 11:07  
26 three, sort of, key pieces of information you had at  
27 that point, between 2nd January - I appreciate you are  
28 on leave - and the next meeting of the Oversight.  
29 I presume you read those attachments at some point?



1 A. I obviously read them subsequently and in advance of  
2 the meeting. Did I read them between the 28th and  
3 30th? I suspect I probably did; I probably glanced at  
4 them. Did I properly take in the issues at that stage?  
5 Probably it was much more towards 10th January or 9th 11:08  
6 January when I came back to work that I was probably  
7 more looking at the detail of those.

8 71 Q. The Panel will note the 22th December Oversight  
9 Committee note refers to an earlier meeting of the  
10 Oversight Group on 13th September 2016. I don't know 11:08  
11 if you recall that?

12 A. I know that there was a meeting. When I knew that,  
13 I suppose again I would say that was probably early  
14 January of 2017.

15 72 Q. Did you have any sense of the overall picture at that 11:08  
16 point? Did you feel at that time that this was perhaps  
17 more significant than -- potentially more significant  
18 than a single complaint or a single issue. Did it  
19 cause you any concern when you saw those documents?

20 A. There was no doubt in my mind that we were dealing with 11:09  
21 a serious matter of concern on a fairly large scale.  
22 In terms of the numbers that were being suggested at  
23 that particular time -- and they changed over a period  
24 of time. I think if you go back to the early documents  
25 that were being provided, I mean we were dealing with, 11:09  
26 for example, the triage was about 300 and something,  
27 which subsequently ended up at 783. I had no doubt  
28 that the volume of what we were dealing with was  
29 significant, and no doubt that the concerns were

1 significant at that stage, yes.

2 73 Q. Did you speak to anyone? Subsequently Colin Weir  
3 became involved as the investigator, and Dr. Chada.  
4 Did you speak to them about your knowledge of this and  
5 the previous information that had been available? Did 11:10  
6 you indicate at all that they had any awareness of it?  
7 Did you have a conversation with Colin Weir, for  
8 example?

9 A. No. The sequencing of this is that I came back to work  
10 following a period of annual leave on the 9th January. 11:10  
11 Again, I don't recall but I can only speculate that  
12 Vivienne and I have met at that stage to discuss what  
13 the support, the HR support, was going to be to the  
14 case because by 10th January, I'm nominated. So, I can  
15 only speculate that that conversation happened when 11:10  
16 I came back from leave on the 9th.

17  
18 what I am aware of is that at that stage, just as you  
19 have set out, is that Zoe Parks was on maternity leave.  
20 So, ordinarily it probably would have more naturally 11:11  
21 have fallen to Zoe to take carriage of this particular  
22 case. Zoe is absent. Her next direct report is  
23 Malcolm, and Malcolm Clegg is referenced, you'll see,  
24 in attendance at some of those Oversight meetings. But  
25 Malcolm's role within the Medical HR Team wouldn't have 11:11  
26 been in support of MHPS cases; that wasn't the role he  
27 undertook. I have no doubt that what happened at that  
28 time was the options were very limited in terms of who  
29 could support the case, and the discussion with

1 vivienne and myself was that I would be the support.

2 74 Q. I understand the sequence and the chronology. This is  
3 more about the substance of conversations and who knew  
4 what; what could have been explored; could there have  
5 been other issues looked at; what the right issues were 11:12  
6 focused on; how did you reach your decisions. So, for  
7 example, it's a pretty straightforward point, you had  
8 information that predated 30th December; you had been  
9 given a letter that was sent to Mr. O'Brien on -- 30th  
10 March he received it, it was dated the 27th. You had 11:12  
11 before you information for the very first time as the  
12 Head of Employee Relations that all of this had been  
13 going on. Did you ever go to Colin Weir or anyone else  
14 and say what's happening here? Why have we not been  
15 brought in before? Do you think you should have been 11:13  
16 brought in before?

17 A. Okay. A couple of things there as well. By the time  
18 I become involved in this, three senior members of  
19 staff within the Southern Trust have made a decision,  
20 including the Medical Director, that the requirement 11:13  
21 was for immediate exclusion. At that stage I'd been  
22 provided with what were drafted -- already pre-drafted  
23 terms of reference. Subsequently, those changed.

24 75 Q. Let's stop -- I'm sort of anxious to get to the  
25 substance of the information that I wanted to draw out 11:13  
26 that may help the Panel.

27  
28 Let's just take one example, the 27th March letter 2016  
29 to Mr. O'Brien?

1 A. Yes.

2 76 Q. That letter hadn't, as I understand it, been anywhere  
3 near Employee Relations?

4 A. No.

5 77 Q. It had never been shown to you before? 11:14

6 A. No, I had seen it -- Lynne Hainey had shown it to me in  
7 an email. She said take note there's a March 2016  
8 letter, because it was significant to Lynne at the  
9 point at which she was joining the process to say, you  
10 know, there has been a letter previously. 11:14

11 78 Q. Was that letter significant to you when you saw it?

12 A. Absolutely. She was flagging that very specifically to  
13 me.

14 79 Q. What was significant about that letter to you?

15 A. I suppose the fact that it was probably eight months 11:14  
16 previously. I'm doing the calculation in my head in  
17 terms of months. Well, nine/10 months potentially  
18 previously that the issues at hand were known and that  
19 a letter had gone to Mr. O'Brien to set out the same  
20 concerns. So I suppose in my -- in thinking about it 11:15  
21 at that stage, I'm looking at this with a view of these  
22 issues have been known for a period of time, there has  
23 been conversation or a correspondence already to date  
24 in terms of trying to address those. I suppose in  
25 a way maybe discussed the effectiveness of trying to 11:15  
26 address those, but that was that attempt at that stage.  
27 Then by the time we hit January of 2017 when I become  
28 involved, we've progressed to the stage where,  
29 actually, we're now in a formal investigation and there

1 has been a decision to immediately exclude.

2  
3 whilst, yes, it was significant the fact that it was  
4 going back and the issues were known for a period of  
5 time, I suppose for me is okay, we've now got to this 11:15  
6 point so we're now going forward. We've now got to the  
7 stage that a decision has been made to place  
8 Mr. O'Brien on immediate exclusion and we now need to  
9 undertake a formal investigation. So did I go back and  
10 have conversations about was that the right thing, were 11:16  
11 those the right decisions? No, I didn't.

12 80 Q. No. The question was did you ask anyone what had been  
13 done at that time. I ask that within the context of  
14 the requirement that informal attempts should be made  
15 to resolve issues primarily, if at all possible. Now, 11:16  
16 you may recall that the March letter did include  
17 a suggestion that Mr. O'Brien provide an action plan  
18 for how he was going to address issues that were  
19 brought to his attention. There is disputed evidence  
20 about whether he was to proactively provide something 11:16  
21 or whether that should have been followed up. But from  
22 an Employee Relations perspective, what's your view on  
23 the appropriateness of asking someone to provide their  
24 own solutions to problems that have been identified?

25 A. Clearly that would not have been how we would have 11:17  
26 advised that process to commence or that letter to be  
27 constructed. Again, I go back to what my experience is  
28 on the nonmedical side, and we do this on a very  
29 regular basis in terms of where there are deficits in

1 terms of performance, the attempts are managed  
2 through -- and the advice that we would be providing is  
3 what is the problem, understanding the extent of the  
4 problem, how have we got to this point, and what are  
5 actually the solutions you need to put in place. So, 11:17  
6 is it a case of you need to put a clear action plan in  
7 terms of how those deficits are going to be addressed.

8  
9 You've asked me the question about if HR had been  
10 involved back in March of 2016, would that have been 11:17  
11 how we would have advised that to have happened, and  
12 the answer from me is no.

13 81 Q. Do you think they should have been involved back then?  
14 A. I do. I do. I think that would have been helpful at  
15 that early stage, yes. I understand that the HR 11:18  
16 involvement came probably in and around September of  
17 2017 with the Oversight meeting. So, there was  
18 a period of time there that that letter had been  
19 constructed, it had been issued, and there was no HR  
20 sight on that. 11:18

21 82 Q. I think it was 2016, was it?

22 A. Yes, in 2016.

23 83 Q. That would have allowed then for the possibility of an  
24 informal plan to be created and followed through?

25 A. Again, I can only speculate but I suspect so. Yes. 11:18

26 MS. MCMAHON BL: Chair, I notice the time. I wonder if  
27 it might be convenient.

28 CHAIR: If we come back again, ladies and gentlemen,  
29 11.35.

1 THE INQUIRY BRIEFLY ADJOURNED AND RESUMED AT 11:39

2  
3 CHAIR: Thank you, everyone.

4 84 Q. MS. McMAHON BL: Now, Ms. Hynds, just before we had a  
5 short break we established where your role began. 11:39  
6 We just want to be clear for the transcript, you don't  
7 have any knowledge of any decision-making around the  
8 22nd December 2016, around 30th December, and you don't  
9 have knowledge of any of the decision-making leading up  
10 to the decision to exclude? 11:39

11 A. No, I wasn't party to that.

12 85 Q. I just want to move on to the Oversight meeting on 20th  
13 January. I think that was the day you returned from  
14 leave?

15 A. The 9th, I think. This was the day after. 11:39

16 86 Q. You said you had been accessing emails while on leave?

17 A. Yes.

18 87 Q. I just ask you a point on that. Some of the emails in  
19 the bundle from you and to you are late in the evening,  
20 midnight, early in the morning, after work hours. What 11:40  
21 was the workload like for you at that time?

22 A. I suppose I would describe that conversation with  
23 Vivienne in terms of the HR support and who was going  
24 to be the HR support for this case, because workloads  
25 were huge and we didn't have Zoe who was out on 11:40  
26 maternity leave. You'll know and appreciate even with  
27 a level of backfill, you don't have experience with the  
28 likes of these types of processes. Options were very  
29 limited in terms of who could support the case. So,

1 I suppose I've accepted carriage of this case, on  
2 reflection was that the right thing to have done. My  
3 caseload within Employee Relations, so I was the Head  
4 of service within Employee Relations already carrying  
5 a caseload on the nonmedical side, but carrying also 11:41  
6 the responsibility for oversight of between 50 and  
7 60 cases down the nonmedical side a range of conduct,  
8 performance, attendance, legal cases, industrial  
9 tribunal cases, cases that required joint protocol and  
10 safeguarding processes. So, there was already a very 11:41  
11 substantial caseload there. I was also -- I think  
12 you'll see in an email in early February 2017, I was  
13 also involved in another MHPS case at the same time as  
14 this one. The reality and -- I suppose, you know it is  
15 important probably to describe what a typical day was. 11:41  
16 A typical day is you spend it back to back in meetings  
17 and, actually, in pre-COVID days probably a lot of time  
18 in your car racing between meetings as well because you  
19 were covering quite a substantial geographical area and  
20 regional meetings, which required you then to come home 11:42  
21 and do what was clear in your emails from that  
22 particular day, and then trying to fit in elements of  
23 work that needed to be done. That was fairly typical.

24  
25 I suppose I'm saying was, that it is still fairly 11:42  
26 typical. I suppose what I would say is it's not just  
27 typical of my role, it's typical of many of my teams'  
28 roles, and particularly those carrying cases. The  
29 ability to cut off at your contracted hours, you know,



1 it just simply isn't there.

2

3 On reflection, in terms of taking carriage of this  
4 particular case at this particular time, it almost  
5 feels foolish now in terms of accepting the fact of 11:42  
6 taking a case when the workloads were what they were.  
7 It's evident in terms of - as you pointed out - this  
8 was being done very late at night, at weekends,  
9 substantially in my own time to try and get some of  
10 this over the line. So again, that's something I'm 11:43  
11 learning, that I have to take from this in terms of --  
12 and not just for me but for my wider team, about being  
13 realistic in terms of how much of this, how many cases,  
14 for example, you can carry at a point in time.

15

16 When I'm referring to cases from the point of view of  
17 the Employee Relations role, that was only one element  
18 of that role. I was also responsible for the pay,  
19 terms and conditions and pay processing, ensuring that  
20 payroll was undertaken for 14,000 staff, 13/14,000 11:43  
21 staff, four payrolls during every month and making sure  
22 that that was done and done properly, and pay awards  
23 were on time. So, it was a much broader role than even  
24 just case handling.

25

26 As I say, looking back and reflecting in terms of  
27 continuing to nod your head and say yes, sure give it  
28 to me and pile it on, it almost feels foolish now. But  
29 that is how many of us worked in the Health Service. 11:44

1 I suppose I'm making the point that it isn't just  
2 frontline staff, and you'll hear that kind of,  
3 I suppose, in media, in terms of the significant hours  
4 that lots of our frontline staff are working but it's  
5 also corporate services. It's staff in my teams at 11:44  
6 very administrative levels, Band 3 staff, Band 4 staff  
7 who are doing this day in and day out. It's clearly  
8 a reflection of the fact that, you know, in order to do  
9 the workloads that are required, the resources are  
10 simply not keeping up. 11:45

11 88 Q. Then we come to the 10th January. This is your first  
12 meeting. We'll find the notes of that meeting at  
13 TRU-267241. I think this meeting reflects that  
14 you have been appointed as the HR Manager.

15 A. Yes. 11:45

16 89 Q. We'll see those present: Dr. Wright, Vivienne Toal,  
17 Esther Gishkori, Simon Gibson, you, Ronan Carroll and  
18 Tracey Boyce. Were you aware at that point who else  
19 was to take up the role of Case Investigator with you?

20 A. I was aware at that meeting, I believe. There's a note 11:45  
21 within the note of that 10th January meeting confirming  
22 who the Case Investigator and the Case Manager were to  
23 be.

24 90 Q. Was it your role to let them know that they were  
25 involved, or what way does that work? 11:46

26 A. No. My understanding was that that was already in  
27 place, that those discussions had already happened and  
28 those appointments already made. So no, I wasn't  
29 involved in the conversation with Colin Weir, for

1 example, in terms of his appointment. I was notified  
2 that that's who it was, and that we -- I then think  
3 there's email correspondence somewhere a number of days  
4 later where we are arranging to try to meet up and  
5 commence the process.

11:46

6 91 Q. There actually is an email from Colin Weir. We'll just  
7 step away from that, TRU-267243. The context of  
8 bringing you to this email is to indicate that 12th  
9 January, Mr. Weir writes to you and says:

10  
11 "I am the lead investigator for an investigation.  
12 I know an Oversight Committee met this week to discuss  
13 the issues. I have not yet received any official  
14 confirmation to commence the investigation but I have  
15 been forwarded several emails explaining the issues.  
16 My understanding is the process should be completed  
17 within four weeks of suspension of the consultant  
18 concerned; from 30th December in this case.

11:46

19 I also understand I would have assistance from Employee  
20 Relations. Can you tell me who is helping me and how  
21 we can progress this".

11:47

11:47

22  
23 I suppose in the context of this being two weeks into  
24 the four-week period set down, does it surprise you to  
25 learn that Mr. Weir hasn't been informed at this stage,  
26 or in fact hadn't been at the meeting on 10th January?

11:47

27 A. I suppose I didn't really think about the requirement  
28 of either Colin Weir or Dr. Khan at that meeting.  
29 I suppose the 10th January meeting was -- and if you

1 look at the attendees, I think I was probably the only  
2 person who was newly joined to the issues at hand --  
3 92 Q. we'll just go back to that. we'll have it on the  
4 screen. TRU-267241. Sorry, I interrupted you. You  
5 were the new person, as it were? 11:48  
6 A. I was the newbie, I suppose, to the issues, I think.  
7 The Oversight had been meeting obviously previously,  
8 and I would have only been starting to become aware of  
9 the fact that there were previous meetings happening.  
10 Simon and Ronan, and I understand Tracy from the SAI 11:48  
11 point of view, had been previously involved. So in  
12 terms of joining this meeting, I joined it, I suppose  
13 probably giving little thought to should Colin Weir or  
14 Ahmed Khan be at this meeting because this is an early  
15 view of taking the case from a HR support point of 11:49  
16 view. I probably didn't think past that.  
17 93 Q. The reason for the next set of questions is to try to  
18 establish what is happening. Obviously Mr. O'Brien has  
19 concerns about the timing and were things done in  
20 a reasonable time or an appropriate time or 11:49  
21 expeditiously. That's the context of why I'm taking  
22 you to some of the documents, for the Panel to  
23 understand what was done and when.  
24  
25 Now, when Mr. Weir sends that email on 12th January, he 11:49  
26 hadn't been informed yet and wasn't aware of what his  
27 involvement was to be except that he was a Case  
28 Investigator and had been provided with some background  
29 information. Was there any concern from you around

1 we need to meet up to get this sorted, we need to sit  
2 down and work out where we're going from here because  
3 time is marching on?

4 A. Yes. I mean that would have been my next step, would  
5 have been, you know, to make that contact or to set up 11:50  
6 a meeting with Colin Weir. I actually think ultimately  
7 it ended up backwards and forwards a lot by email  
8 correspondence rather than an actual meeting. I don't  
9 believe I met with Colin Weir prior to the meeting on  
10 24th January. 11:50

11 94 Q. If I can just fill in the time span. I think you set  
12 that time up for a meeting. A meeting was arranged and  
13 then the time slot was used to meet with Mr. O'Brien.

14 A. Yes, yes.

15 95 Q. That was the first meeting then. Then at that point 11:50  
16 you were within --

17 A. That was keeping it within the four weeks for that case  
18 conference meeting to have happened then by the 27th.

19 96 Q. The 26th?

20 A. The 26th, sorry. 11:50

21 97 Q. Now, I think you've accepted that you didn't meet with  
22 them within the four-week period. Do you have any  
23 knowledge of contact by Mr. O'Brien to Colin Weir by  
24 phone on 16th January 2016 where he sought to contact  
25 him by meeting up? You don't have any information 11:51  
26 about that?

27 A. I believe there's an email where Colin Weir advises  
28 that contact had taken place, and Colin Weir was  
29 flagging the fact that that contact had taken place.

1 I suppose just off the top of my head, I don't recall  
2 the timing and the sequencing of that and whether  
3 I became aware of that ...

4 98 Q. Were you aware of that as a result of this or do  
5 you recall it at the time? 11:51

6 A. Oh, no, I recall it at the time. I recall at the time,  
7 yes.

8 99 Q. Now, the 10th January meeting was the -- the Oversight  
9 meeting was the time that you first became aware of  
10 Patient 10 referred to at that point, the SAI? 11:52

11 A. Yes.

12 100 Q. You were informed that there was a decision to exclude  
13 based on the initial findings around that?

14 A. Yes.

15 101 Q. Was it clear to you from the outset from your role that 11:52  
16 there was potential for patient harm/patient risk at  
17 this 10th January meeting?

18 A. To me, what I understood from the very outset was  
19 whilst there had been discussions during 2016 about the  
20 concerns, the actual catalyst for the decision to move 11:52  
21 to immediate exclusion was the concern that was  
22 emerging from the SAI. So, I was clear that we were  
23 dealing with matters that the impact or consequence of  
24 was patient -- or potential patient harm. Yes.

25 102 Q. Now, in relation to the allocation of a nonexecutive 11:53  
26 director to assist Mr. O'Brien, were you involved in  
27 that decision at all? Have you any knowledge around  
28 it?

29 A. Not of the decision or who made the decision to

1 appoint, or the conversations. I know at a point I was  
2 notified it was Mr. Wilkinson, but how that came about,  
3 no, I have no knowledge.

4 103 Q. There's correspondence from Mr. O'Brien. TRU-267280.  
5 You'll see there's the reference to the phone call just 11:54  
6 at the bottom of 267280 from Colin Weir to you,  
7 Dr. Khan and Ronan Carroll, where he says:

8  
9 "In the interest of openness I need to tell you that  
10 Mr. O'Brien phoned me last night. We had 11:54  
11 a conversation that he was happy for me to relay to you  
12 and that the conversation was only about process. He  
13 expressed surprise at the time scale. I too understood  
14 from MHPS that the exclusion was only to be four weeks,  
15 except in exceptional circumstance; that the doctor 11:54  
16 could return to work while investigations continue.  
17 I have never done this before and seek your advice.  
18 He also has not been told who the nonexecutive director  
19 is to whom he can make contact with the process. This  
20 exclusion has a clear end date. He was told by me that 11:55  
21 I would write this email in the interests of  
22 progressing the process under MHPS and the Trust's  
23 implementation of this. I think it is causing  
24 unnecessary stress by prolonging the time scale and  
25 a lack of communication on this. Can you help please. 11:55  
26 I have made it clear as investigator I await my  
27 instructions to investigate and report back in a timely  
28 fashion".  
29

1 On 17th January two things are clear from this: First  
2 of all, Mr. Weir is still waiting his instructions  
3 under the framework as to what he is to do, and,  
4 secondly, that Mr. O'Brien has reached out to him  
5 indicating the stress that he feels from the lack of 11:55  
6 communication. Given that the role of the nonexecutive  
7 director is directly liaison with the person subject to  
8 the investigation, might that have been something that  
9 was done much earlier in this process to allow  
10 Mr. O'Brien to have access to that support and as 11:56  
11 a conduit for information purposes?

12 A. Yes, I agree. I think, again going back to this time,  
13 I may have believed he had been advised of who the  
14 nonexecutive director was. I wasn't quite clear -- I'm  
15 not clear if he had or had not up to this point. But 11:56  
16 I entirely accept that the role of the nonexecutive  
17 director would have been helpful in terms of that  
18 notification at an earlier point.

19 104 Q. You, in fact, drafted a reply -- did a draft reply. If  
20 we go to that at TRU-267287. You advised in an earlier 11:56  
21 email that you will draft a letter to Mr. O'Brien  
22 naming the NED. In this email to Simon Gibson, you  
23 attach a letter from the Case Manager addressing the  
24 NED. Did you draft the correspondence, all  
25 correspondence from the Case Manager and the Case 11:57  
26 Investigator?

27 A. Pretty much, yes. Again I go back to that description  
28 of the legwork. Yes, and that would be our norm within  
29 HR, that we would generally set out, based on previous



1 templates that have been used in probably previous  
2 cases, the series of correspondence that need to go at  
3 particular points in time. So I draft an initial draft  
4 and send it to the owner of that role, essentially -  
5 the Case Manager, the Case Investigator, whoever that 11:58  
6 is - for them to amend or comments on as they see fit.  
7 So yes, in the main I would have drafted those  
8 correspondences.

9 105 Q. You've said that's because, obviously, you have also  
10 a memory template, I suppose, of how those sort of 11:58  
11 letters should be framed. But am I right to assume  
12 that it is also on the basis of conversations or their  
13 instructions as to what they want the reply to reflect?

14 A. There's no doubt. This is done very much in discussion  
15 with either the Case Manager or the Case Investigator. 11:58  
16 I wouldn't say on every occasion that there would be an  
17 upfront discussion but certainly I would have said,  
18 well, here's a template, is there anything you want to  
19 change or amend? There's likely to be discussions at  
20 a point in time. Is it before or during; it could be 11:59  
21 either. But ultimately I'm clear in terms of, you  
22 know, it is for that individual to be content with the  
23 correspondence and for -- it is being issued in their  
24 name and so, yes --

25 106 Q. They sign it off? 11:59

26 A. They need to be content that that's what needs to go  
27 out. Yes.

28 107 Q. Mr. O'Brien also wrote a letter on the 18th January,  
29 TRU-267302. A copy of this was forwarded to you by

1 email from Simon Gibson on the same day. For the  
2 Panel's note that email from Simon Gibson is at  
3 TRU-267300.  
4

5 If I can just summarise the main issues in the letter. 11:59  
6 Mr. O'Brien is raising concerns about the conduct of  
7 the investigation, the fact that no NED has been  
8 appointed. He has not received the minutes of the 30th  
9 December meeting.

10  
11 If I could just pause on that point. What was your  
12 understanding of whether or when he should receive  
13 those minutes? 12:00

14 A. You know, again ideally those minutes should go out  
15 fairly rapidly after the point of the meeting. I know 12:00  
16 at that point in time I was liaising backwards and  
17 forwards with Lynne Hailey in terms of questioning have  
18 these gone, have they gone out. And I know there's  
19 email correspondence on record where Lynne says no, not  
20 yet; then follows that up with Richard Wright. Then 12:00  
21 I get a confirmation email, I believe from Simon  
22 Gibson. It could have been in and around 18th January,  
23 I think from recollection, that these are going this  
24 afternoon.

25 108 Q. whose role was it to send them? Was it Lynne Hailey's 12:01  
26 having been at the meeting?

27 A. That would be my view. I mean, the responsibility was  
28 for the individuals who were at the meeting to  
29 determine the set of notes and to agree them and to

1 issue those. So, yes, I was very much leaving that  
2 with either Lynne and/or Richard Wright. Lynne would  
3 have only ever issued those on the back of -- like I've  
4 described there in terms of my role in terms of  
5 drafting correspondence. She would have drafted the 12:01  
6 notes but absolutely would have sent those for  
7 agreement and sign-off by Dr. Wright before they would  
8 have went out.

9 109 Q. So the delay might have been in receiving that  
10 agreement and sign off? 12:01

11 A. Quite possibly. That's what I can only assume. I know  
12 that early part of January when I was being asked about  
13 these notes that I had gone back to Lynne to say what's  
14 happening with these essentially. There was some  
15 correspondence between herself and Dr. Wright at that 12:02  
16 stage. Then, as I said to you, that confirmation email  
17 to say that they were being issued. I think is 18th  
18 January.

19 110 Q. Was there any understanding that Mr. O'Brien could look  
20 at the notes and sign off from his perspective as to 12:02  
21 whether they were an accurate reflection of the  
22 meeting? Do you recall that?

23 A. I don't recall that. I suppose very much I stayed out  
24 of that on the basis it was a note of a meeting that  
25 I wasn't in attendance at. So that was for -- if there 12:02  
26 were comments or amendments to be made, that was for  
27 those who were at the meeting. I don't know what their  
28 intention was in terms of issuing.

29 111 Q. So, you had no knowledge of anything after that, no?

1 A. I am aware that there was requests for an amended note  
2 at subsequent points. Again, I recall pointing that  
3 directly back to -- it would have been Richard Wright  
4 and Lynne Hainey at the time. Lynne was out of her  
5 role at that stage, even within Employee Relations, but 12:03  
6 leaving it with them to deal with. So, yes.

7 112 Q. Mr. O'Brien also raises his concerns about the slow  
8 pace of proceedings, that there's no communication at  
9 this point on 18th January from the Case Investigator.  
10 He was seeking to meeting to discuss alternatives to 12:03  
11 exclusion.

12  
13 was that something that was ever raised with you or by  
14 you, that there needed to be a discussion or should be  
15 a discussion about alternatives to being excluded from 12:03  
16 work?

17 A. That was the primary focus of the 24th January meeting.  
18 So no, I was fully aware that there needed to be  
19 a meeting with Mr. O'Brien within that initial four  
20 weeks. 12:03

21 113 Q. Were you aware if that had been discussed before,  
22 before the decision to exclude? Had anyone thought of  
23 any other alternatives to that or allowed Mr. O'Brien  
24 the opportunity to suggest alternatives?

25 A. I wasn't part of those discussions. By the time I had 12:04  
26 joined the process as such, the decision had already  
27 been made and enacted because that had happened at the  
28 30th December meeting.

29 114 Q. I suppose the question is more in line with your senior

1 role in Employee Relations, did anyone ask or was there  
2 any discussion before the quite serious decision was  
3 taken to exclude, was there any exploration of possible  
4 alternatives to that? That never crossed your mind?

5 A. It didn't. I suspect it didn't likely because there 12:04  
6 was more senior involvement from HR in those decisions  
7 in respect of Mrs. Toal's involvement. Vivienne Toal  
8 was involved in those discussions and the oversight.  
9 So no, I didn't question it.

10 115 Q. He also mentions -- if we go to TRU-267404, this is 12:05  
11 where you write to Simon Gibson on the 22nd. You  
12 advised Mr. Gibson - you copied Vivienne Toal and  
13 Richard Wright in - confirming again that Mr. Wilkinson  
14 is the name and contact details, and a note to advise  
15 that this response has been shared with Mr. Wilkinson. 12:05  
16 Is that an attempt by you to link them up, as it were,  
17 given that your evidence has been that Mr. O'Brien  
18 already knew the name of the NED at this point? You've  
19 copied it in, you sent a note to Mr. Wilkinson, "you're  
20 the NED for Mr. O'Brien" and you're confirming the same 12:06  
21 information should be sent to Mr. O'Brien.

22 A. I think in terms of that email, that's exactly what I'm  
23 doing, is saying that the name -- I suppose and more  
24 importantly, the contact in terms of how he was to be  
25 contacted. 12:06

26 116 Q. Did you ever contact Mr. Wilkinson?

27 A. About notifying Mr. O'Brien?

28 117 Q. Notifying anything.

29 A. I would have had contact with Mr. Wilkinson at various

1 points. The earliest was probably after this, I think.  
2 So at that very early stage in terms of Mr. Wilkinson  
3 being the appointed NED and how that information was  
4 being shared with Mr. O'Brien, no, I didn't. I wasn't  
5 speaking about Mr. Wilkinson about that. I think I had 12:07  
6 gone back through Simon as part of -- through the  
7 Medical Director's office to say, you know, suggest  
8 confirming that this is the detail that needs to go out  
9 to him.

10 118 Q. Just for the Panel's note, I referenced earlier, and 12:07  
11 Mrs. Hynds didn't have any knowledge of Mr. O'Brien's  
12 attempts to seek amendments to the 30th December  
13 meeting note. He writes on 14th February 2017 to  
14 Dr. Wright. That note is at TRU-267831. That's  
15 something that's parallel almost to your involvement, 12:07  
16 as you said, predates. That's for the Panel.

17 A. Yes, and I was aware of Mr. O'Brien looking for the  
18 notes initially and I was aware of Mr. O'Brien at  
19 a point seeking an amendment. But I suppose I left  
20 that with Dr. Wright and with Lynne Hailey as a meeting 12:08  
21 that I wasn't at. Yes.

22 119 Q. I want to ask you some questions about the terms of  
23 reference for the investigation. If you go to  
24 WIT-42069. Now, the background to this is there were  
25 quite a few iterations of terms of references as time 12:08  
26 went on. Just as a general question, if I can ask you  
27 this to set it in context. As regards any medical  
28 issues or clinical issues that may have informed the  
29 terms of reference, did you have any knowledge or input

1 into those?

2 A. Sorry, can I ask you to repeat that for me?

3 120 Q. For example, issues around private patients or  
4 non-dictation of actual outworkings of what the doctor  
5 does and what they do on a daily basis and why it might 12:09  
6 be an issue. Did you have any knowledge or background  
7 that would inform that?

8 A. No, in terms of -- are you asking me about how the  
9 terms of reference came to be formed, is my  
10 understanding. 12:09

11 121 Q. Ultimately I am but in relation to what you could bring  
12 to that process, I just want to know what the  
13 demarcation was for you. You said earlier about  
14 drafting letters because you had a mental template in  
15 your head. Is that the same scenario or were you more 12:09  
16 actively involved?

17 A. No. I mean, I wouldn't have been operationally aware  
18 of the requirements and what was required to make any  
19 informed advice around the terms of reference. The  
20 terms of reference -- the initial draft came as part of 12:10  
21 the original documentation that Lynne Hainey had shared  
22 with me.

23 122 Q. That's an email dated 29th December 2016. We don't  
24 need to go to it but, for the Panel's note, it's at  
25 TRU-267208. They were advised by Lynne Hainey 12:10  
26 following the NCAS advice. That was before your time.

27 A. I don't even believe they were maybe advised by Lynn.  
28 I believe what happened -- and again I apologise, it's  
29 speculation, I don't know for sure, but I believe they

1 were drafted by Mr. Gibson. The draft was then shared  
2 as part of that documentation, and there's then an  
3 email back and forward I think between Lynne and myself  
4 at a point in time where Lynne says but these  
5 ultimately are now going to change because there has 12:11  
6 been NCAS advice. So, that paused the terms of  
7 reference at that point in time.

8 123 Q. That's what I meant. There was a first formulation --

9 A. There was.

10 124 Q. Then there was advice, then they were reviewed. 12:11

11 A. Yes, that's exactly my understanding. And then that  
12 was picked up again in January in terms of what the  
13 terms of reference needed to look like once we were in  
14 a position following the case conference.

15 125 Q. I think you actually responded to that when you were on 12:11  
16 leave on 2nd January. There's an email from Lynne  
17 Hainey, TRU-267225. Sorry, 267221. This is an email  
18 from you on 2nd January where you have emailed Lynne  
19 and said:

20  
21 "I see Vivienne was going to ring you about the letter  
22 and terms of reference. Did these go yet? I have  
23 a number of comments to add if they haven't been sent.  
24 The wording in the terms of reference needs changed".

25  
26 Do you know what that was about at that point? 12:12

27 A. That at that point would have been tweaking around the  
28 edges is all I can describe it, in terms of the  
29 language and how the actual terms of reference were



1 formulated. It wouldn't have been around changing the  
2 terms of reference. Certainly not on 2nd January;  
3 I hadn't the knowledge of that case. So I can only  
4 assume that what I meant by that at that point was just  
5 how the wording of each of the terms of reference had 12:13  
6 been constructed, I think I had some comment on.

7 126 Q. Lynne Hainey's response is at TRU-267225. She replies  
8 on 3rd January, basically saying it has been agreed to  
9 hold off the terms of reference until information is  
10 gathered. This is as per guidance from NCAS; I think 12:13  
11 that's a point we were referring to earlier.

12 A. Yes.

13 127 Q. So advice has been sought and information has to be  
14 gathered, presumably to make the terms of reference as  
15 focused and appropriate as possible? 12:13

16 A. That was my understanding. It was let's deal with the  
17 initial four-week term, understand the extent of what  
18 we are dealing with, and the terms of reference will  
19 fall then out of that once you have that piece is  
20 completed. So, yes, that was my understanding of what 12:14  
21 was being said there.

22 128 Q. There's another email from you to those who were at the  
23 Oversight meeting, TRU-267333. You will see it is sent  
24 to Vivienne Toal, Richard Wright, and Esther.  
25 12:14

26 "Dear all, please find attached draft terms of  
27 reference for Mr. O'Brien's investigation for your  
28 comment/approval".  
29

1           They are the members of the Oversight Group?

2           A.    Yes.

3 129 Q.    Is it your understanding that you have to send terms of  
4           reference to the Oversight Group in advance of it being  
5           settled and to get their approval for those? 12:14

6           A.    Absolutely.

7 130 Q.    Where do you rely on for that? Do you say that's part  
8           of the framework document?

9           A.    I don't believe it is part of the framework document.  
10          I suppose the only way I can describe it in my head is 12:15  
11          that they were essentially the commissioners of the  
12          investigation. The Case Manager and the Case  
13          Investigator had had specific roles as part of the  
14          investigation. For me, in terms of the decisions  
15          around we need to go forward with an investigation, the 12:15  
16          terms of reference absolutely needed to go back to  
17          them.

18 131 Q.    If we can just take you back to the image-based  
19          document at TRU-83701. This is setting out the role  
20          definitions and responsibilities. Appendix 6. If 12:15  
21          we just scroll down to the Oversight Group. It says:  
22

23          "This group will usually comprise of the Medical  
24          Director, responsible officer, Director of Human  
25          Resources and Organisational Development and the 12:16  
26          relevant Operational Director. The Oversight Group is  
27          kept informed by the Clinical Manager and the HR Case  
28          Manager as to action to be taken in response to  
29          concerns issued following initial assessment for

1 quality assurance purposes and to ensure consistency of  
2 approach in respect of the Trust's handling of  
3 concerns".  
4

5 It is possibly unhelpfully not being too prescriptive 12:16  
6 in relation to roles and responsibilities in spite of  
7 the misleading title, but it is silent on the terms of  
8 reference?

9 A. It is.

10 132 Q. But one argument may be that the terms of reference are 12:16  
11 an issue for the Human Resource Manager and the Case  
12 Manager rather than as a collective approach by the  
13 Oversight Group. Do you have any views on that?

14 A. I suppose what I would say around even the Oversight 12:17  
15 Group and the matters of roles and responsibilities and  
16 the function and how the Oversight Group functioned,  
17 while it's documented there, there were probably  
18 varying views in terms of what actually in practice was  
19 the role of that group. So, what I understand in terms  
20 of this is that the clinical manager, in terms of the 12:17  
21 individual who ordinarily would become aware of the  
22 concerns and raise the concerns, in this instance that  
23 role essentially was a number of people, including  
24 probably the Medical Director, who was becoming aware  
25 of issues coming out of the SAI. 12:18  
26

27 So, that nice clean process of who identified the  
28 concern, who screened the concern, who then was the  
29 commissioner or the decision-maker around the need to

1 go forward with a formal investigation, in this  
2 instance that was, in my view looking back over the  
3 documents, probably more the Oversight Group at that  
4 particular point in time. Because those decisions  
5 around needing to exclude was happening with the  
6 Medical Director, I suppose taking advice of the HR  
7 Director and involving the Operational Director.

12:18

8  
9 In terms of how terms of reference, I suppose, should  
10 go forward, I'm not sure that the Case Manager in  
11 practice has done that. Should they do it? Quite  
12 possibly.

12:19

13 133 Q. Is it possible that your answer could be interpreted as  
14 saying that the collective expertise of the Oversight  
15 Group would be beneficial in informing terms of  
16 reference?

12:19

17 A. I think in practice that is how it operates. These  
18 matters are difficult, they are complex, they are  
19 challenging to start off on that track. It generally  
20 is the collective experience of a number of folk in  
21 terms of trying to get this on to the right path as  
22 such. So I think, yes, the answer to that is yes, it's  
23 generally a collective input from a number of people  
24 who have a level of expertise.

12:19

25 134 Q. So, rather than taking you to the various emails back  
26 and forth about the private patient issue and should it  
27 be on, these were decisions made by others with greater  
28 knowledge of that. Was it your role to reflect then  
29 their decision around this?

12:20

1 A. Yes. I mean, the meeting of the 10th January, I think  
2 there's a clear action for me to go away and to look  
3 and redraft the terms of reference, but that was very  
4 much on the basis of the discussion that happened on  
5 10th January. I think you'll see throughout the course 12:20  
6 of the various drafts of the terms of reference, whilst  
7 the wording changed, moved and changed and was  
8 redrafted, terms of reference 1, 2 and 3 didn't  
9 essentially change. It was the matter of triage, the  
10 matter of notes and the matter of undictated clinics. 12:21  
11 They were there from the very outset.

12  
13 The issue in terms of private patients, my  
14 understanding from the 10th January meeting was that's  
15 when that arose, and the discussion was that needed to 12:21  
16 be an additional terms of reference. If I recall  
17 correctly, Ronan Carroll was raising that at the 10th  
18 meeting for -- I know subsequently there had been  
19 obviously other things raised about private patients,  
20 but in terms of this process, it was the 10th January 12:21  
21 meeting where the private patient piece was being  
22 flagged as this needs to be part of the investigation  
23 process.

24 135 Q. Well, if we move from the emails back and forth in  
25 relation to that and just skip forward slight to the 12:22  
26 meeting with Mr. O'Brien on 24th January. Before  
27 we get to the detail of that meeting and the events  
28 leading up to it, what was the reason for you meeting  
29 him at that point? What was your expectation of that

1 meeting?

2 A. So, there had been the meeting of 30th December, which  
3 was exclusion, the immediate exclusion. That was  
4 information given essentially to Mr. O'Brien, so I had  
5 the note of that. I met with Mr. Weir in advance 12:22  
6 obviously of the time to meet with Mr. O'Brien, and  
7 we had met. The purpose, essentially, during that  
8 initial 4 weeks was to set out what our outstanding of  
9 the extent of the concerns were at that point in time.  
10 Now, that changed over quite a substantial period of 12:23  
11 time but actually the key focus was to provide an  
12 opportunity to Mr. O'Brien to discuss the alternatives  
13 to exclusion and how might he return to work rather  
14 than that continue through to formal exclusion, and  
15 what might be some of the options to be considered. 12:23  
16 So, it was an opportunity to provide Mr. O'Brien with  
17 some information about what we understood the extent of  
18 the concerns were at that point in time but also the to  
19 provide that opportunity to hear from him in respect of  
20 the alternatives to exclusion. 12:23

21 136 Q. You mentioned just briefly there the scoping between  
22 the 10th and 24th. This was something going on in  
23 parallel to providing the administrative support and  
24 input into the process?

25 A. Yes. 12:24

26 137 Q. You weren't involved in that at all. That was an  
27 operational team-led processes where information was  
28 fed back to you?

29 A. Absolutely. My contact directly was with primarily

1 Martina Corrigan and Ronan Carroll to be fed  
2 information as opposed to physically gather any of that  
3 information as an investigation process ourselves.  
4 Yes.

5 138 Q. Just on that point in relation to the information that 12:24  
6 you were fed, did you take that information just at  
7 face value? Had you any reason to seek to go behind  
8 that to look at the numbers, check the robustness of  
9 the information that you were being given?

10 A. At the time we have the meeting on the 24th during that 12:24  
11 four-week piece in January, the information on the  
12 extent of the concerns are really at a very early stage  
13 in terms of there's still a lot of work from the  
14 operational side being worked through in terms of, you  
15 know, what are we actually dealing with. So no, we 12:25  
16 were being fed information at that stage and didn't go  
17 to seek to, I suppose, validate that, if that's what  
18 you're asking me.

19 139 Q. But would you see that as your role anyway?

20 A. I may have seen that as my role had there been any 12:25  
21 substantial dispute. I suspect that, you know, when  
22 we met with Mr. O'Brien on the 24th and then kind of  
23 subsequently on 3rd August, whilst there was dispute,  
24 I can only describe it around the edges in terms of  
25 numbers, there was no substantial dispute to the fact 12:25  
26 that triage on a large scale had not been done, that  
27 there were substantial number of notes that had been  
28 kept at home for long periods of time, and there were  
29 undictated clinics. The dispute primarily was the

1 private patient one by 3rd August.

2  
3 I suppose the information that was being fed to us, as  
4 I said to you, while there may have been some level of  
5 dispute around exact numbers and that was a change in 12:26  
6 picture, there was no real substantial dispute to the  
7 fact that those were the issues of concern and that  
8 those were accepted by Mr. O'Brien.

9 140 Q. I think Mr. O'Brien does take issue with the figures --

10 A. Yes. Yes, he does. 12:26

11 141 Q. -- and certainly with some of the notes that were said  
12 to be traced out to him that actually weren't.

13 A. Oh, he does. There's no doubt about that. I mean he  
14 was providing information to say, you know, I couldn't  
15 possibly have -- the set of 13 notes, for example, that 12:27  
16 were put to him and asked for a response, and  
17 Mr. O'Brien give a fairly comprehensive response to  
18 each of those notes. That was fed back into the  
19 operational team and was essentially accepted then that  
20 this was an issue for the team to understand where they 12:27  
21 had gone to, and it wasn't -- there was nothing further  
22 that Mr. O'Brien could add to that. So, those were  
23 things that absolutely he was raising.

24 142 Q. Did you accept for Mr. O'Brien the detailed matters in  
25 relation to what exactly is alleged about him. I know 12:27  
26 you are saying the numbers in volume sizes were neither  
27 here nor there; obviously you would accept they are  
28 very significant points because they are each  
29 a separate allegation, as it were?



1 A. I'm not sure I'm saying that they were neither here nor  
2 there.

3 143 Q. Sorry, that was my phrase, just to make that clear.

4 A. I suppose what I was saying was particularly at that  
5 24th January meeting, and going through February and 12:28  
6 March and probably into even April and May, that was  
7 all still being worked through. The final number in  
8 terms of where we were eventually going to land really  
9 hadn't finalised or crystallised at that stage. The  
10 bit for me at the 24th January meeting was do we have 12:28  
11 a significant concern and are we going into a formal  
12 investigation process. The answer for me was very  
13 clearly yes.

14 144 Q. If we look at the 24th January meeting, if we start  
15 that by going to your addendum statement WIT-91921. 12:28  
16 Had you met Mr. O'Brien before this date?

17 A. No.

18 145 Q. Were you aware of knowing from seeing him about the  
19 hospital or anything like that ?

20 A. I was entirely unaware of Mr. O'Brien's name pre 20th 12:29  
21 December 2016. He is not an individual whose name I  
22 had heard or would have been aware of. I suppose his  
23 urology colleagues would have been the same.  
24 I wouldn't have been aware of any of the urology  
25 consultants. 12:29

26 146 Q. You have given us information about the lead-up to this  
27 meeting. You've made reference to this meeting in your  
28 original statement and then you've added some  
29 information that wasn't included in that statement. At

1 the end of paragraph 18.6 at WIT-42063, you want to add  
2 this paragraph:

3  
4 "Mr. O'Brien attended the meeting on 24th January 2017  
5 accompanied by his son Michael O'Brien. The meeting 12:30  
6 was held in Mrs. Vivienne Toal's office in Trust  
7 Headquarters at the Craigavon Area Hospital. Mr. Weir  
8 and I were sitting in Mrs. Toal's office waiting to  
9 begin the meeting when Mr. O'Brien and his son arrived  
10 accompanied by Mrs. Roberta Brownlee, Trust Chair. 12:30  
11 .Mrs. Brownlee came to the door of the meeting and made  
12 some introductions. Mrs. Brownlee left before the  
13 meeting commenced. At the meeting on 24th January  
14 2017, the concerns identified at the 10th January 2017  
15 Oversight meeting were put to Mr. O'Brien for 12:30  
16 response".

17  
18 And you say:

19  
20 "This statement was not included in my initial response 12:30  
21 to the initial Section 21 notice as I answered the  
22 questions asked very directly. On reflection and on  
23 foot of hearing evidence provided by other witnesses,  
24 I feel this was an important omission which should be  
25 included". 12:31

26  
27 In relation to Mrs. Brownlee, did you know  
28 Mrs. Brownlee before this date?

29 A. I knew Mrs. Brownlee was the Trust Chair. I would have

1 had little to no contact with Mrs. Brownlee in a work  
2 capacity up to that point, or subsequent to it.

3 147 Q. When she came to the door, you knew who she was?  
4 A. I knew who she was, yes.

5 148 Q. You had never met Mr. O'Brien at that point and 12:31  
6 you didn't know his son?  
7 A. No.

8 149 Q. You say you and Mr. Weir were in the room at the time.  
9 Did Mr. Weir know Mr. O'Brien?  
10 A. Yes. 12:31

11 150 Q. And did Mrs. Brownlee come into the room with  
12 Mr. O'Brien?  
13 A. She came to the door of the meeting.

14 151 Q. Do you recall what she said?  
15 A. I don't specifically recall and I wouldn't want to try 12:31  
16 and give you a version of that. My recollection of it,  
17 it was fairly innocuous in terms of it was, you know,  
18 had came to the door along with Mr. O'Brien and his  
19 son, made some comments around "this is Mr. O'Brien",  
20 I assume, some level of introduction; didn't really say 12:32  
21 a huge amount more and left the meeting before the  
22 meeting commenced.

23 152 Q. In your involvement in other Trust Guideline  
24 investigations or MHPS Framework processes, has  
25 Mrs. Brownlee ever brought a witness to a meeting? 12:32  
26 A. In MHPS cases or non-MHPS cases, no. I've been  
27 involved, I suppose, in substantial numbers of meetings  
28 on the nonmedical side; probably less so on the medical  
29 side. But no, this was -- I suppose it struck as

1 unusual.

2 153 Q. Did you and Mr. Weir discuss this at any point after  
3 the meeting?

4 A. I don't recall if we did.

5 154 Q. Were you surprised by it? 12:33

6 A. I can only assume I've made an actual connection with  
7 Mrs. Brownlee has come to the door because I believe  
8 I may have heard about a friendship or connection or  
9 whatever you want to describe that. I wouldn't have  
10 been aware of it; I wouldn't have had any knowledge of 12:33  
11 it, but I think I've probably made the connection of  
12 Mrs. Brownlee is here probably because I heard that  
13 somewhere. I can't tell you from whom or on what date,  
14 but I can only assume that that's why it struck with me  
15 in terms of, okay, that's a little strange. 12:34

16 155 Q. Did it have any effect on how you carried out your role  
17 under the framework or the guidelines?

18 A. No. I mean, Mrs. Brownlee didn't say anything. She  
19 came to the door and she made some level of  
20 introduction and she left and I had no further contact 12:34  
21 with her. No, it wouldn't. I mean, at that point, in  
22 terms of my role as Head of Employee Relations, I would  
23 have been very far removed from Mrs. Brownlee in terms  
24 of any connection with her in terms of capacity. No.

25 156 Q. Did you speak to anyone else about that? 12:34

26 A. I believe I said it to Vivienne Toal at the time.  
27 I believe I probably said it to Mrs. Toal at the time,  
28 yes.

29 157 Q. Do you recall her reaction when you told her?

1 A. I don't know what I recall a specific reaction.  
2 I don't think I was asking Mrs. Toal to do anything.  
3 I probably have had that conversation in passing with  
4 her to say this is what has happened. But no, I don't  
5 recall any specific -- any specific comment or 12:35  
6 conversation.

7 158 Q. Now, the 24th January meeting, the first meeting with  
8 Mr. O'Brien. I think as a result of information  
9 provided from the Inquiry, you have discovered that  
10 that was recorded? 12:35

11 A. I have, yes.

12 159 Q. I think that was one of six meetings involving you that  
13 were recorded. Can I just ask, you weren't aware then  
14 in advance; there was no advice or --

15 A. No, there wasn't. 12:35

16 160 Q. -- consent sought from you around that?

17 A. No.

18 161 Q. Would it be unusual for people to record meetings, in  
19 your experience, being an Employee Relations manager?

20 A. It is not unknown; it's not unheard of and I've had 12:36  
21 colleagues who have had that experience. It's not  
22 frequent but it's not -- it's not something we haven't  
23 come across, I suppose, is what I would say to you.

24 162 Q. How did you feel when you discovered that these  
25 meetings had been recorded? 12:36

26 A. I suppose it's a difficult one for me. I have to say  
27 I was absolutely appalled, I suppose to the extent that  
28 I returned them to the legal team unopened for quite  
29 a substantial period of time. I didn't wish to read

1           them, I didn't wish to look at them. I actually felt  
2           very -- it's a really odd one now again on reflection  
3           for me, but where my thought process went immediately  
4           on becoming aware of that, and I think I made it known  
5           to the legal teams, I felt particularly vulnerable           12:37  
6           around the 24th January meeting. I was a lone female  
7           in a meeting with three male colleagues, three male  
8           individuals. Bizarrely, I suppose, my thought process  
9           went to was this a video recording, what is this  
10          recording, who has this recording, where has it been           12:37  
11          kept, who has been watching it. I didn't know. So,  
12          those were all questions I had posed back through the  
13          legal team at that time. I suppose that was the impact  
14          that that had on me as a very immediate reaction. So,  
15          I suppose it just describes just how appalled I was at           12:37  
16          finding that out.

17  
18          I suppose on reflection and over what has been quite  
19          a period of time, and I ultimately did then go through  
20          the transcript obviously in preparation for coming,           12:38  
21          I think I was particularly taken aback probably given  
22          who was in the room with me and the fact that, you  
23          know, there are probably meetings where we suspect that  
24          that may be -- you know, may be a feature and we are  
25          looking out for it. This was a senior consultant,           12:38  
26          a legally qualified support family member in the room.  
27          I suppose I was just completely blind-sided by the fact  
28          that this was something that would be done.

29   163   Q.   The framework allows for the person accompanying

1 someone to a meeting - Mr. O'Brien's son on this  
2 occasion - to be legally qualified, but I think the  
3 phrase is not to act in that capacity at the meeting.

4 A. Yes.

5 164 Q. Was that your experience, that that -- just for the 12:39  
6 purpose of the transcript. I know you are shaking your  
7 head.

8 A. No, and I suppose I think I reflected that in my  
9 reflections on MHPS. I think I've described it as  
10 a distinction without a difference in practice. You 12:39  
11 have somebody who is legally qualified coming in to  
12 support an individual, in this case actually a close  
13 family member which was, again, a further kind of, you  
14 know, added complication to the process. But for me in  
15 practice and my experiences, it legalises what should 12:39  
16 be an internal employment process from the very outset,  
17 which I don't believe is helpful.

18 165 Q. As I say, the other meetings that were recorded you had  
19 with Mr. O'Brien, 9th February 2017, 30th August 2017,  
20 6th November 2017 and 1st October. You said that you 12:40  
21 couldn't look at those initially. Have you had the  
22 opportunity to read through those subsequent to that?

23 A. Very recently, in fact. It has taken quite a while for  
24 me to get to the point of opening those. I just  
25 simply didn't want to open them. I felt that for me, 12:40  
26 you know, to share them this length down the road was  
27 entirely fruitless. I had absolutely no opportunity to  
28 determine whether or not it was accurate or otherwise.  
29 I suppose I struggled with that for quite a bit of

1 time. I think the thing for me as well is that had the  
2 request been made, there were options to -- there were  
3 options that -- it would have been something that would  
4 not have been -- that would not have been dismissed.  
5 We agree this, we do this quite regularly. We don't do 12:41  
6 it all the time, again it's a capacity issue. If  
7 somebody feels they want a particular hearing or  
8 meeting recorded, we facilitate that, and that would  
9 have been facilitated that had that request had been  
10 made openly. I think it was the covertness and the 12:41  
11 underhandedness of this that was really impactful on  
12 me.

13 166 Q. If you could move on from that meeting, two days later  
14 was the case conference on the 26th. Would you like to  
15 take a break now or are you okay? 12:41

16 A. I'm okay.

17 167 Q. There was a meeting on 26th January 2017, the case  
18 conference. In proportion for that you prepared  
19 a report?

20 A. Yes. 12:42

21 168 Q. You've referred to that at WIT-42065, paragraph 18.13.  
22 18.12, sorry, my mistake. You had got feedback from  
23 Mr. O'Brien on the issues of concern at the meeting  
24 we've just referred to. You say at that paragraph:

25 12:42  
26 "It was evident that further and fuller investigation  
27 of the matter was required. The meeting did not  
28 provide sufficient assurance in respect of the  
29 concerns".



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Can you just explain a little bit more about that?

A. Yes. I suppose that 24th January meeting was the first opportunity to hear directly from Mr. O'Brien in terms of triage and notes and undictated. There was that other side of it in terms of we also need to give you an opportunity to propose alternatives to exclusion. We hadn't got all of the facts gathered. For me, coming away from that meeting on 24th January, I was fairly clear we still had significant matters of concern that needed to be investigated. I suppose had we gone into the meeting on 24th January, which was the first opportunity to hear from Mr. O'Brien, where he turned around and said actually, that didn't happen and here's why it didn't happen and that wasn't the case, and was able to discount those issues of concern very quickly, that would have been one thing. That didn't happen. I suppose that's what I mean by that, it didn't provide sufficient assurance in respect of the concerns that would have halted a formal investigation process. The requirement was still there that we needed to do continue to investigate.

12:43

12:43

12:43

12:44

169 Q. Then this led to you preparing the report based on information that had been sent from the scoping exercise. 18.13:

12:44

"On this basis and following discussion with Mr. Weir I drafted a case conference report for consideration and amendment by Mr. Weir. He responded to me by email on 26th January with some minor changes".

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

I want to pick up on your language so there's no confusion at any point. When you talk about minor changes for you to adopt, your report was reflective of the information you were provided rather than any input from you informing it? 12:44

A. Absolutely, it was based on what had been provided. It really set out the -- it really was still at that very early stage of this process on the 26th January. It was still setting out, yes, we still have a substantial concern about triage, we still have a concern about notes, we still have a concern about undictated clinics, etcetera. As I say to you, those numbers hadn't quite landed in terms of what would be that final number. 12:45

But the purpose again of the report was also to share with the case conference what Mr. O'Brien had offered by way of alternatives to formal exclusion. It was also to set out what his initial response was and what he was saying about how we could go forward. If I recall correctly at that time and at the meeting of 24th January, Mr. O'Brien was saying things - and I'm paraphrasing because I can't directly quote him - you know, I will work within whatever plan you need to put in place essentially, but his overriding priority was I want to be back at work. 12:46

Mr. O'Brien at that stage, I suppose, was providing the

1           assurances that, you know, I will work within whatever  
2           framework the Trust feels is necessary to enable me to  
3           return.

4 170 Q.   He was stating his case at that meeting as well?

5           A.   He was.

12:46

6 171 Q.   But you're saying from your perspective, or the agreed  
7           perspective, that that wasn't enough to dislodge the  
8           believe that there was a case to answer?

9           A.   No. The actual core issues of concern still remained.  
10          So, the issue for the case conference, in my mind, was,  
11          yes, we still have these concerns, we still have  
12          concerns about the practice; here's what Mr. O'Brien is  
13          offering by way of what he feels can be done as - and  
14          I'm terming it safeguards - to allow that investigation  
15          process to happen. It was really for the case  
16          conference members to determine are they content with  
17          that. Essentially the decision lay with the Case  
18          Manager. But again, there was input from Mrs. Toal,  
19          from Richard Wright and from -- I believe it was maybe  
20          Anne McVey maybe at that meeting.

12:46

12:47

12:47

21 172 Q.   Yes.

22          A.   In terms of, again, their collective expertise in terms  
23          of can this work and is there something that we can put  
24          in place that safeguards patient whilst Mr. O'Brien  
25          returns to work in a kind of more managed way.

12:47

26 173 Q.   You just mentioned Anne McVey who attended the case  
27          conference in place of Esther Gishkori. The Panel will  
28          have heard from Ms. Gishkori, be aware of an email that  
29          was sent by Vivienne Toal to Ms. Gishkori in advance of

1 this meeting. You can find that at TRU-267411.

2 Ms. Gishkori has a day's leave booked and she suggested  
3 that Ms. McVey should attend the meeting in her place.  
4 Vivienne Toal replies to say:

5  
6 "This is a very important meeting and requires senior  
7 representation from Acute Services. Given Ronan's  
8 involvement in a parallel process in relation to the  
9 scoping of the impact (actual or potential) on  
10 patients, I think it is more appropriate to keep him  
11 separate from the Oversight Committee role in relation  
12 to him deputising for you to ensure there is a clear  
13 separation in relation to these processes.

14  
15 Would you please arrange for another AD to deputise for  
16 you on Thursday to ensure Acute Services input to this  
17 process".

18  
19 It would seem clear that Mrs. Toal considers there's  
20 a need for high-level representation at this case  
21 conference meeting. Was that a view you shared as  
22 well?

23 A. Absolutely. This is something -- I mean, the exclusion  
24 of a consultant or any medic is highly unusual. It is  
25 not something that happens every day; it's very  
26 unusual. So in terms of a meeting like this, you would  
27 absolutely expect that you would have very senior  
28 representation to consider the issues at hand.

29 174 Q. Because the meeting went ahead with Mrs. McVey, does

1 that reflect that you or everyone was content that that  
2 representation was enough?

3 A. I'm not sure it was for any of us to be content or  
4 otherwise. The role on Oversight was Mrs. Gishkori's  
5 and the decision to send a deputy equally was 12:50  
6 Mrs. Gishkori's. I suppose certainly I wouldn't have  
7 raised a query in terms of is that appropriate.  
8 Vivienne, I think, attempts to do that in her email  
9 which I was copied into at the time. Vivienne, as the  
10 director at that stage, is I suppose in my view saying 12:50  
11 is this the right thing to do. But did I flag it or  
12 raise it? No. I mean, we went ahead.

13 175 Q. I think we have covered the issue about the case  
14 conference report. You accept that your job was to  
15 collate the information provided and put it in a format 12:51  
16 appropriate for that meeting. Beyond that, you didn't  
17 have any independent input, if I can put it that way.

18 A. When you say "independent"?

19 176 Q. You didn't bring any facts to it that weren't provided  
20 by others? 12:51

21 A. No.

22 177 Q. Or information that hadn't come through someone else?

23 A. No. It was essentially a report that outlined what the  
24 concerns were and what the proposed alternatives were  
25 going forward. The decision then ultimately was over 12:51  
26 to the Case Manager in terms of next steps of my  
27 thinking around what we were looking at, I suppose I go  
28 back to that kind of cause and effect bit. We knew the  
29 impact or the consequence was negative patient outcome.

1 what we were looking at from the MHPS process  
2 essentially was the how. How have we got to that  
3 point? So, it wasn't that the Patient Safety issues  
4 were unknown or not relevant, they were entirely  
5 relevant as that was the impact or the consequence of 13:06  
6 what was happening over here in terms of triage, the  
7 undictated clinics and potentially the notes at home.  
8 So, you know, the MHPS process was always going to take  
9 into account what actually happened as a consequence of  
10 these things. 13:06

11 MS. McMAHON BL: I see the time. If that's convenient.

12 CHAIR: we'll come back at 2.10, ladies and gentlemen.

13

14 THE INQUIRY THEN ADJOURNED FOR LUNCH AND RESUMED AS

15 FOLLOWS: 13:21

16 CHAIR: Good afternoon, everyone.

17 178 Q. MS. McMAHON BL: Good afternoon, Mrs. Hynds. I think  
18 where we left off was after the case conference and the  
19 report that you had prepared for that. I think we've  
20 established what you said is your involvement in the 14:10  
21 drafting. What you said you were involved in was the  
22 return-to-work monitoring plan. That was something  
23 that came out of the 26th January 2017 case conference.  
24 We can see that in your statement at WIT-42077. Sorry,  
25 my reference is incorrect. But at the case conference, 14:11  
26 one of the decisions was that there would be a return  
27 to work for Mr. O'Brien and there would be a plan put  
28 in place. You spoke to Mr. O'Brien about this plan at  
29 the meeting of ...

1 A. That was the 9th February?

2 179 Q. Sorry?

3 A. The February meeting.

4 180 Q. Yes, the February meeting. Before we get to that  
5 point, do you remember what your role was in 14:12  
6 calculating the plan? Could you just explain that for  
7 the panel?

8 A. Yes. I think that is a relevant email that's up in  
9 front of us.

10 CHAIR: Can I just pause. We have nothing on our 14:12  
11 screens other than ATEM Software Control. We've got  
12 them now.

13

14 We have them now.

15 A. Yes. Following the case conference meeting on 6th 14:12  
16 January, there were a number of actions, one of which  
17 was to determine what that action plan needed to look  
18 like. I suppose the thought behind what needed to be  
19 in place was how can we have a position where we don't  
20 have the same concerns continuing, that there is an 14:13  
21 assurance in terms of the matters around triage, notes,  
22 undictated clinics, etcetera, whilst Mr. O'Brien  
23 returned to work and was undertaking his role. So, in  
24 order to look at the systems and processes for doing  
25 that, I had to engage with the operational team within 14:13  
26 the Acute Services Directorate in order to understand  
27 what that would look like and how that could operate in  
28 practice.  
29

1           There was a meeting held, and I think it's just maybe  
2           slightly further down on that screen. Yes, a meeting  
3           on 6th February where I had met with Ronan Carroll and  
4           Esther Gishkori to discuss, essentially, what that  
5           would look like. Following those discussions, 14:14  
6           I drafted what was my understanding and takeaway from  
7           that meeting and shared it with Ronan, copied to Esther  
8           in an email on the 7th. That was then seeking their  
9           input and any amendments, adjustments or whatever other  
10          requirements needed for the plan. I think 14:14  
11          Martina Corrigan was also invited to comment or input  
12          to how that would work in practice. The plan was  
13          formulated from there, essentially.  
14 181 Q.   Mrs. Corrigan has subsequently said in her statement  
15          that Mr. O'Brien's return to work was not accompanied 14:14  
16          by, and I quote "a proper plan to manage him". That's  
17          at WIT-26315. That's an incorrect reference from me  
18          but I will correct that because I'm quoting directly  
19          from Mrs. Corrigan. She pointed out that the  
20          monitoring arrangement "focused on the gaps in his 14:16  
21          outpatient dictation and outcomes but ignored his  
22          administrative responsibilities towards patients who  
23          came in as emergencies or as a day case".  
24  
25          Now, that level of information obviously was 14:16  
26          subsequent, that wouldn't be an information that was  
27          available to you.  
28          A.   No, it wasn't at the time so the action plan was based  
29          solely on the concerns in front of us at that



1 particular point in time.

2 182 Q. Just going back on what you said, you spoke to and had  
3 a meeting with Esther Gishkori and Ronan Carroll?

4 A. Yes.

5 183 Q. Did you meet with medics involved in the provision of 14:16  
6 care?

7 A. I didn't personally meet with any medics or -- and  
8 I suppose I'm not sure how widely the action plan was  
9 circulated. My direct conversation was that meeting on  
10 6th February with Esther and Ronan, and then those 14:17  
11 drafts kind of going backwards and forwards.

12 184 Q. So your only line of communication with those who were  
13 directly involved in any sort of Oversight role or  
14 director role were through Esther Gishkori and  
15 Ronan Carroll? 14:17

16 A. And Ronan, yes. I suppose, to be clear, I'm not sure  
17 that Richard Wright or Vivienne were part of those as  
18 the other two Oversight members, just when you're  
19 saying "Oversight". It was more from the point of view  
20 of a conversation through the Acute Services 14:17  
21 operational lines, which happened to be Esther in that  
22 role as Director of Acute Services, in terms of how  
23 this could be done in practice. So it wasn't  
24 necessarily a conversation with the full Oversight.

25 185 Q. There's an email -- 14:18

26 A. I knew I shared it eventually with them.

27 186 Q. Vivienne Toal emails John Wilkinson - I hope this one  
28 is correct - TRU-267464. This is an email on 26th  
29 January 2017 at 2131. Vivienne Toal emails John

1 wilkinson. I'll read it out:

2  
3 "John, I just wanted to give you a very quick update  
4 ahead of tomorrow's Trust board meeting in relation to  
5 AOB case. 14:19

6  
7 The case conference took place today from 2 to 4pm. A  
8 preliminary report from Mr. Weir, Case Investigator,  
9 was considered by those present.

10 14:19  
11 Dr. Khan determined that there was indeed a case to  
12 answer and a formal investigation would indeed be  
13 required under MHPS. All those present were in  
14 agreement.

15 14:19  
16 In relation to the decision regarding whether there  
17 could be restrictions placed on AOB to allow his return  
18 to work or if there was a need to formally exclude him  
19 from the workplace, it was agreed by all that the case  
20 could be managed by restrictions on his practice with 14:19  
21 robust monitoring in place around the areas of concern  
22 to ensure Patient Safety. Therefore, we will be  
23 reporting tomorrow at Trust Board that exclusion has  
24 been lifted.

25 14:19  
26 Dr. Khan agreed to contact Mr. AOB immediately after  
27 the case conference by telephone to advise him of the  
28 lifting of the exclusion in an effort to alleviate his  
29 anxiety and will meet him personally next to go through

1 the restriction in more detail.

2

3

You will of course receive a copy of the correspondence to Mr AOB following the case conference for your records.

14:20

6

7

I hope this update is helpful in advance of TB tomorrow to enable you to provide the necessary assurance that we have complied with our obligations under MHPS".

10

14:20

11

That's from Vivienne Toal. Mrs. Toal refers in that email to restrictions on his practice with robust monitoring in place, so it must be that she's referring to the return-to-work plan.

15

A. That was my understanding of that. And I suppose I note from Vivienne's email, I mean she was very pointedly pointing to, you know, the issues of concern. That's my recollection of it as well, that the action plan was around what was in front of us at the time in terms of those core issues of concern.

14:20

20

14:20

21

187 Q. But you don't recall sending it to her or having a conversation with her about it?

22

23

A. I don't. I don't. I do believe they were ultimately copied in to the final version. When that was, I'm not quite sure.

14:21

26

188 Q. Now, you met with Mr. O'Brien and his son with Dr. Khan --

27

28

A. Yes.

29

189 Q. -- on 9th February 2017?

1 A. That's right.

2 190 Q. That was in relation to the action plan. That was  
3 another meeting that was recorded. Do you recall that  
4 meeting and going through the action plan?

5 A. Yes, I do. 14:21

6 191 Q. Was it the case that the action plan was presented and  
7 Mr. O'Brien was asked for comments, or do you recall if  
8 it was simply an understanding that this was what was  
9 going to happen now that he was coming back to work?

10 A. I think it was essentially more that in terms of here 14:21  
11 is what -- you know, the decision from the 26th January  
12 meeting is to return to work with this monitoring  
13 arrangement, and here's the monitoring arrangement.  
14 I couldn't be 100 percent sure as to whether he was  
15 invited for any comment on it but I'm not sure that was 14:22  
16 ever really the intention of it anyway. It was more  
17 a case of saying this is how, you know, these concerns  
18 will be monitored or your practice will be monitored to  
19 ensure we don't have those continued concerns whilst  
20 we go through the investigation process. 14:22

21 192 Q. It was after that meeting then on 17th February that  
22 you sent the plan that you had discussed with  
23 Mr. O'Brien to the Oversight Group. We don't have to  
24 go to that but it is an email from you at TRU-267739.  
25 You have sent to Vivienne Toal, Mr. Wright, 14:22  
26 Esther Gishkori and June Turkington?

27 A. Yes.

28 193 Q. Now, if we could go to WIT-42078. You've said at the  
29 top of the page, 21.3, you were aware that

1 Mrs. Corrigan was undertaking the monitoring of the  
2 plan and overseen by Mr. Carroll.

3  
4 "Mrs. Corrigan initially provided updates to Dr. Khan  
5 about compliance with the plan. At a point Dr. Khan 14:23  
6 advised that he only needed to be informed of deviation  
7 and therefore the regular updates ceased".

8  
9 Just in relation to Mrs. Corrigan doing the monitoring  
10 of the plan, was that a decision that you were involved 14:23  
11 in?

12 A. I wasn't. In terms of how this was to be done was  
13 discussed within the Acute Services Directorate, as  
14 I understand it, but it wasn't a conversation in terms  
15 of -- I had conversations with Mrs. Corrigan in terms 14:24  
16 of how she would go about this, and I had a number of  
17 conversations with her in respect of I know she was  
18 finding elements of it challenging; I think  
19 particularly around the notes, for example, and having  
20 to go in and out of Mr. O'Brien's office to do those 14:24  
21 checks.

22  
23 So yes, I had conversations like that with  
24 Mrs. Corrigan but I didn't have a conversation at the  
25 outset in terms of how she was going to do this. It 14:24  
26 was essentially left with the Acute Services  
27 Directorate to ensure that, for example, triages - and  
28 it was particularly around the week of the urologist of  
29 the week - that the triages would be back and would be

1 back within certain timeframes including, I think, red  
2 flags within the action plan were to be done on a daily  
3 basis.

4 Mrs. Corrigan also spoke to me, I know, probably at  
5 that stage to say we can't ask Mr. O'Brien to perform 14:25  
6 in a way other consultants aren't necessarily  
7 performing. So she was very conscious of that in terms  
8 of not all of the other consultants would have had  
9 triages back immediately, but it would have been back  
10 reasonably quickly after their week of on call. So 14:25  
11 I know Mrs. Corrigan was very conscious of not holding,  
12 I suppose, Mr. O'Brien to a higher standard than the  
13 other consultants but that she was ensuring that what  
14 was coming in was being triaged and was being sent back  
15 to the referral and booking centre. The notes, for 14:25  
16 example, I know she was in regular contact through  
17 Mr. O'Brien's office and his secretary in terms of  
18 understanding what notes were tracked out and how many  
19 were sitting in the office.

20  
21 Then, in terms of the dictation, that was being 14:26  
22 monitored, as I understood it, through digital  
23 dictation that had been implemented that had not  
24 previously been a feature of Mr. O'Brien's practice,  
25 but it gave a way of better sight in terms of when that 14:26  
26 dictation was happening against those clinical  
27 contacts.

28 194 Q. When you spoke to Mrs. Corrigan, were these  
29 conversations rather than email exchanges?

1 A. Yes, probably some of them were. I would have had  
2 numerous conversations with Mrs. Corrigan over the  
3 course of many months; sometimes to do with the data  
4 that was coming through, other times to do with the  
5 action plan and updates that were required, etcetera. 14:26  
6 Yes, I had numerous conversations with Mrs. Corrigan at  
7 a point.

8 195 Q. Did she ever express any difficulty in carrying out her  
9 duties to monitor the plan, or express any obstacles to  
10 doing that? 14:27

11 A. I do recall a conversation with Mrs. Corrigan. It was  
12 probably quite a while into the action plan, if my  
13 recall is correct on that, where she was describing to  
14 me difficulties in terms of -- particularly around the  
15 notes and knowing how many notes were still sitting in 14:27  
16 Mr. O'Brien's office. I think at that stage the  
17 conversation I had had with her was that this needed to  
18 be something very directly put to Mr. O'Brien for an  
19 assurance on a regular basis as opposed to trying to  
20 monitor without his input. I suppose my advice to her 14:27  
21 at that stage was this is something you need to be  
22 sitting down with Mr. O'Brien and getting an assurance  
23 around on that regular basis. I do recall one  
24 discussion of that nature with Mrs. Corrigan. I don't  
25 know when that was, though. 14:28

26 196 Q. Did you have any view about the change in reporting  
27 from routine updates to only informing Dr. Khan if  
28 there was a deviation from the plan. Did you have any  
29 knowledge in advance?

1 A. I don't know if I had a knowledge of it in advance.  
2 I'm not sure at what point -- I think I possibly was  
3 copied into an email that Dr. Khan had indicated it was  
4 more by exception that he wanted the updates.

14:28

5  
6 I suppose it didn't strike me as particularly  
7 concerning because the updates probably pretty much  
8 from February - sorry, March, when Mr. O'Brien came  
9 back to work - through to at least July, the updates  
10 were no deviation, no deviation, no deviation. There  
11 was nothing really being reported at that time. So no,  
12 it didn't really strike me to be a particular concern  
13 that it was only then by exception.

14:28

14 197 Q. You have said that when you did email Mrs. Corrigan  
15 when you were completing the report or the  
16 investigation for Dr. Chada, you asked about any  
17 deviations. This is a reply she sent you on 22nd May  
18 2018, WIT-42080. She has indicated to you that apart  
19 from one deviation on 1st February 2018, when  
20 Mr. O'Brien had to be spoken to regarding a delay in  
21 red flag triage, and he immediately addressed it,  
22 "I can confirm that he has adhered to his return to  
23 work action plan...".

14:29

14:29

24  
25 The knowledge you were given was there was only the one  
26 deviation? 14:30

27 A. I was. Again, maybe not at the point in time when  
28 I received this, more in preparation for coming here  
29 today. But I do recall in and around July 2007 when



1 I know there was an email in and around that time to  
2 say that there was a bit of a problem in relation to,  
3 I think it was triage, if I'm recalling right. I think  
4 it's in and about July of 2017. But again, that was  
5 something that was addressed there and then, 14:30  
6 immediately dealt with and moved on.  
7

8 Again, it was back to that conversation I had had with  
9 Mrs. Corrigan where she was very mindful of not holding  
10 Mr. O'Brien to a standard that others were 14:30  
11 potentially -- you know, there would have been  
12 occasions, for numerous reasons, why people didn't get  
13 everything back in on time on exactly the time scales,  
14 and that was picked up. So, I do think there was  
15 something probably in and around July of 2017. There 14:31  
16 was this issue in February but, again, what was being  
17 described was it was immediately addressed, immediately  
18 picked up and rectified. Overall, I suppose, I didn't  
19 have a concern that there was any significant deviation  
20 from the plan, as far as I was aware. 14:31

21 198 Q. It goes back to illustrate the point that you only have  
22 the information that you're given from those at source.

23 A. Yes.

24 199 Q. If I could just give the Panel and participants some  
25 references and notes to deviations. You don't have to 14:31  
26 go through these references, they are for your note.  
27 WIT-40827 on 14th April 2017 - Mr. O'Brien had gone  
28 back to work in March 2017 - there were 63 charts in  
29 his office. At TRU-268966, 21st June 2017, the number

1 had now grown to 85 charts. Martina Corrigan sends an  
2 email to Mr. O'Brien that she would be grateful if this  
3 could be resolved.

4  
5 TRU-268995, 11th July 2017, the number of charts has 14:32  
6 increased to 90. That may be the incident you are  
7 referring to in July?

8 A. Possibly.

9 200 Q. There is an escalation of that issue to Dr. Khan by  
10 Ronan Carroll and that is at TRU-851860. Those issues 14:32  
11 were resolved by 28th July 2017. The reference for  
12 that is TRU-258891 and /2.

13 23rd January 2018 at TRU-175133. Further slippage on  
14 triage, seven referrals are waiting re triage. 25th  
15 January 2018, it's up to 28 referrals awaiting triage. 14:33  
16 Martina Corrigan raised this with Mr. O'Brien on  
17 6th February 2018. That can be found at TRU-275137.  
18 There's no note of that being escalated to Dr. Khan.

19  
20 4 October 2018, TRU-251529, 74 sets of notes tracked to 14:33  
21 Mr. O'Brien's office. 91 letters undictated dating  
22 from 15th June.

23  
24 Were you aware that Mrs. Corrigan had a planned period  
25 of absence from work that eventually lasted almost 14:34  
26 three months between June and November 2018?

27 A. I wasn't aware of that. I think I became aware of it  
28 probably towards the latter end of it. There was  
29 a meeting with Ronan Carroll, myself and Dr. Khan,

1 I recall, I think in Daisy Hill, to discuss, you know,  
2 what was actually happening here. I think that was my  
3 first understanding that Mrs. Corrigan wasn't actually  
4 at work.

5 201 Q. That was towards the late end of --

14:35

6 A. I think that was towards the latter end of 2018.

7 202 Q. -- her absence?

8 A. Yes.

9 203 Q. There is an email you are copied into just to indicate  
10 that you were notified of the July 2017 apparent  
11 deviation. TRU-251860. That is the email about the  
12 variance of the charts in the office. I think that's  
13 the one you were referring to?

14:35

14 A. Yes, the one I mentioned.

15 204 Q. Apart from that and the February one that Martina  
16 Corrigan informed you about, that was your knowledge?

14:35

17 A. That was my knowledge of the variance to that action  
18 plan.

19 205 Q. If that was to happen now, are there different  
20 procedures in place if someone is getting  
21 a return-to-work action plan that requires to be  
22 monitored? Has there been learning, I suppose is the  
23 question, about how that should be carried out as  
24 regards communication and information sharing?

14:35

25 A. I haven't been involved in discussion or learning of  
26 that. I suppose what I would caveat that with is the  
27 return of a doctor on an action plan such as this,  
28 again, isn't very frequent. I'm not sure we probably  
29 have it since Mr. O'Brien. So yes, I don't believe

14:36

1 probably a similar case has arisen. But I hadn't been  
2 involved in any discussion.

3 206 Q. You're not aware of any new procedures in place for  
4 that? As you say, it's the infrequency of it, perhaps?

5 A. Yes. 14:36

6 207 Q. In relation to the investigation process with  
7 Dr. Chada, at this point Mr. Weir had been replaced by  
8 Dr. Chada?

9 A. That's right.

10 208 Q. If we go to TRU-267745. This is from Dr. Khan. 14:37  
11 There's a reference to a Job Planning Meeting being  
12 required for Mr. O'Brien. Did you have any involvement  
13 in Job Planning?

14 A. No. I was aware that that was one of the actions,  
15 again through the meeting on the 24th January with 14:37  
16 Mr. Weir, but more so the conversation with Dr. Khan at  
17 the meeting on the 9th February. That was a discussion  
18 in terms of the need to have in place an up-to-date job  
19 plan, and that those discussions needed to happen  
20 fairly quickly after that meeting, fairly quickly after 14:38  
21 Mr. O'Brien's return to work. But I wouldn't have been  
22 involved in those discussions.

23 209 Q. The second part of the email refers to:  
24  
25 "Siobhan, I'm sure you will update Neta with this case 14:38  
26 and her role as investigator. Can a short meeting be  
27 arranged in the next couple of weeks for the three of  
28 us".  
29

1 was there a meeting subsequent to that email; can you  
2 recall?

3 A. I don't recall. I'm not sure I recall a meeting at all  
4 between myself, Dr. Chada and Dr. Khan. I could be  
5 wrong on that. I know Dr. Chada and Dr. Khan would 14:38  
6 have met at work meetings outside of this case. Then  
7 I was having conversations - telephone conversations,  
8 meeting conversations and email conversations - with  
9 both of them and copying them in. I can't actually  
10 recall if there was a meeting with the three of us. 14:39

11 210 Q. One of the things you were involved with during this  
12 time with Dr. Chada was the compilation of the witness  
13 list, people who could potentially provide information  
14 that would inform the investigation. Do you recall how  
15 that process developed? 14:39

16 A. I think it actually started slightly earlier than  
17 Dr. Chada because the initial conversation was with -  
18 my recollection of it anyway - was with Colin Weir at  
19 that meeting on 24th January in terms of we were having  
20 that meeting then looking at, okay, going forward who 14:39  
21 are the people that we would need to start gather some  
22 information. I think it was actually through  
23 a discussion probably initially with Dr. Weir in terms  
24 of some names. Then, when Mr. Weir stepped down from  
25 the role of Case Investigator and Dr. Chada replaced 14:40  
26 him, again this would have been via discussions in  
27 terms of a bit of a planning approach to how we go  
28 forward. It would have been a case of probably me  
29 saying to her what about such and such, or do you think

1 we need to, and Dr. Chada suggesting. So, it was a bit  
2 of probably a dual approach to who were the core people  
3 that we needed to gather some information from.

4 211 Q. Rather than individual names, because I don't think you  
5 knew many of the urology practitioners, would it have  
6 been positions you were suggesting? For example the  
7 clinical manager, those sort of individuals, how did  
8 that come about?

14:40

9 A. I could be wrong but I believe it was a conversation  
10 with Colin Weir in terms of we will probably need to  
11 speak to his urology colleagues. I wouldn't have known  
12 who they were. It was about kind of plotting names at  
13 a point then against that. I think that was possibly  
14 even a conversation with Dr. Weir and then going off to  
15 find out who those folk were.

14:41

14:41

16 212 Q. Did you feel there was any need to speak to Mr. O'Brien  
17 about potential witnesses that he may wish to provide  
18 evidence?

19 A. I suppose not at that early stage. It was a case of  
20 looking to see what information could be gathered that  
21 would help inform the investigation process. But  
22 certainly at any point, and would be normal practice  
23 for us, is that if there is an individual who is the  
24 subject of an investigation, medical or nonmedical, and  
25 a witness is suggested as being relevant, we would  
26 certainly consider the relevance of that witness and  
27 determine whether or not that was somebody who needed  
28 to be spoken to.

14:41

14:42

1 I'm not sure at that early stage Mr. O'Brien was  
2 invited to, but certainly had he wished to put forward  
3 anyone, you know, that would have been properly  
4 considered. I think it was later, and I believe  
5 probably more towards the 6th November meeting, which 14:42  
6 was the planned last meeting as such with Mr. O'Brien,  
7 where there was probably an email from me to him at  
8 that stage to say, "and if there's anybody else you  
9 feel relevant, let us know".

10 213 Q. After you had spoken to him in the August meeting? 14:42

11 A. That was after; after we had spoken to him in August  
12 and probably just before the November meeting. I think  
13 that's where that email. It was certainly much later  
14 in the investigation process. But I suppose, again  
15 I caveat that with if Mr. O'Brien had somebody he 14:43  
16 wished at an earlier point that to put forward, it  
17 would absolutely have been considered and it is normal  
18 practice to do that.

19 214 Q. I suppose the other side of that from someone who  
20 hadn't been exposed to MHPS before, they wouldn't 14:43  
21 necessarily know that that could happen or might be  
22 expected to happen. Do you consider there's an  
23 obligation to actively inform the person subject to the  
24 investigation, look, if you have any information that  
25 you think will allow your story to come from other 14:43  
26 sources, or information that may help our  
27 investigation, please let us know who those individuals  
28 are. Do you think that would allow for a more balanced  
29 investigation?

1           A.    Well, I think certainly and I can only -- in general,  
2                    yes, it's absolutely good practice to ensure that  
3                    somebody is invited to submit any other witness names  
4                    or any other information that might be relevant.  
5                    I was, I suppose, very conscious that Mr. O'Brien had   14:44  
6                    legal -- essentially legal support. I know the term is  
7                    a support or companion who can be legally qualified but  
8                    not act in that capacity, but again as I've gone back  
9                    and said to you before my experience is that's  
10                   a distinction without a difference in practice. So   14:44  
11                   Mr. O'Brien had that level of support. So no,  
12                   I wasn't, I suppose, overly concerned. Ultimately,  
13                   Mr. O'Brien, before any conclusion of the  
14                   investigation, was given that opportunity to put  
15                   forward anything further or any other names.   14:44

16   215   Q.    Was it a conversation you ever had with the - if I can  
17                    put it this way, the Trust-appointed link,  
18                    Mr. Wilkinson - was there any information given to  
19                    Mr. Wilkinson that he should perhaps inform Mr. O'Brien  
20                    that the possibility existed for him to provide   14:45  
21                    evidence that he thought may assist his case?

22            A.    No, certainly I didn't have that conversation with  
23                    Mr. Wilkinson directly, no.

24   216   Q.    Might that be something that might usefully have been  
25                    done to allow Mr. O'Brien to engage further with the   14:45  
26                    process that was being applied to him?

27            A.    Yes. All of those things would be helpful in terms  
28                    of -- and again, that's learning that we can take from  
29                    this case, absolutely. I suppose ultimately I was



1 never really concerned that Mr. O'Brien wasn't properly  
2 supported, and I wasn't concerned that we weren't  
3 giving Mr. O'Brien the opportunity.  
4

5 The timing of those things were maybe not ideal in 14:46  
6 that, yes, it probably would have been better at an  
7 earlier stage in hindsight, but ultimately the  
8 process didn't conclude without those opportunities  
9 being afforded to Mr. O'Brien.

10 217 Q. Again, the Inquiry will have notes of different 14:46  
11 correspondence from Mr. O'Brien indicating where  
12 he didn't feel supported, he didn't feel there was  
13 communication, and I take it from your evidence that  
14 you're saying on some of those points in relation to  
15 witnesses, they're valid points? 14:46

16 A. I may be saying something slightly different.

17 218 Q. Well, you give me your answer rather than me giving it  
18 for you.

19 A. I suppose what I'm saying is my understanding of  
20 Mr. O'Brien's concerns about not feeling supported was 14:46  
21 about the organisation. In terms of the MHPS process,  
22 and certainly as we went through those meetings with  
23 Mr. O'Brien and the preparation for those meetings with  
24 Mr. O'Brien, I would suggest Mr. O'Brien was properly  
25 supported because he had the companion that he chose, 14:47  
26 and that companion happened to be legally qualified,  
27 which was probably more than lots of other individuals.  
28 So, that support was there.  
29

1 I get what he was raising in terms of, you know,  
2 he didn't feel properly supported from the point of  
3 view -- I know he had concerns about the time scales  
4 and the process and all of those things. In terms of  
5 the actually MHPS investigation, I suppose what I would 14:47  
6 say is, doing another one of these going forward, would  
7 I advise the nonexecutive director to offer those  
8 opportunities or advise Mr. O'Brien, or would I do that  
9 myself or another practitioner? Yes, I would, that  
10 those were options for them at an earlier stage. 14:48

11 219 Q. Going forward, would you also be of the view that  
12 things could have been sooner?

13 A. Absolutely. I say absolutely and I caveat that again  
14 with they should have been done -- I would say rather  
15 they should have been done sooner. Could have been 14:48  
16 done sooner was the difficulty and that was the  
17 challenge, because of capacity and workloads and other  
18 priorities and all of those other competing priorities.  
19 Should that be Mr. O'Brien's issue? No, it shouldn't,  
20 that's for the organisation to deal with. So it should 14:48  
21 have been done more timely. I suppose if you're asking  
22 me could it have been done more timely, again I go back  
23 to all of the challenges that were being faced with at  
24 that point in time in terms of workload and other  
25 priorities. 14:49

26 220 Q. It's clear from the emails and from the times of your  
27 emails that you worked on this after hours and things  
28 like that. But -- sorry, I think you were about to say  
29 something?

1 A. No. I think again, that that's -- I don't want to  
2 provide that as an excuse because that is something  
3 from the outset of an investigation process that we  
4 should be considering in terms of is there a proper  
5 time being given to these processes. So, whilst I -- 14:49  
6 you know, in terms of accepting carriage of this case  
7 and support to this case, knowing at the outset that  
8 capacity was going to be a huge issue, that's a really  
9 significant learning point for me. I believe, going  
10 forward we have to set the appropriate times aside and 14:50  
11 the resources to these things in order for them to be  
12 done in the way they need to be done. And to avoid the  
13 impact of lengthy investigations on the subject of  
14 investigations.

15 221 Q. Perhaps that's particularly the case when you have 14:50  
16 a document like the MHPS Framework, the Trust  
17 Guidelines, which are completely indifferent to the  
18 resource allocation to their application. There is an  
19 expectation things will be applied. I think you have  
20 accepted there that perhaps resource and 14:50  
21 capacity didn't meet the expectations of those  
22 documents?

23 A. I think, though, that the framework itself is  
24 unrealistic in that regard. It points to a range of  
25 very senior people who need to take decisions and who 14:50  
26 need to be involved in discussions and meetings and all  
27 of those. It's written almost with a view of all of  
28 those folk are sitting waiting on these cases  
29 happening, which clearly isn't the case. I mean, the

1 folk that need to be involved are very senior; diaries  
2 are blocked out many, many weeks in advance. Trying to  
3 just to get a slot just to have a discussion about  
4 these things is very challenging. And trying to  
5 coordinate all of those senior people to try to come 14:51  
6 together. So, I think the framework in the way it is  
7 written is entirely unrealistic as well.

8 222 Q. I think from your evidence you do consider that all  
9 your actions in relation to this have been fair?

10 A. I would suggest that I think Mr. O'Brien in terms of 14:51  
11 the investigation process was facilitated to provide  
12 anything that he wished to provide. He was given the  
13 opportunity to give information that he deemed to be  
14 relevant. He was given an opportunity to review and  
15 comment on the information that we had gathered. would 14:52  
16 I ideally have liked to have done that in a different  
17 and better sequence? Absolutely. I suppose maybe my  
18 earlier evidence this morning was would I like to be in  
19 a position to have all of those witness statements  
20 signed off and agreed and in a position to hand to 14:52  
21 Mr. O'Brien in advance of his meeting? Of course  
22 I would.

23  
24 But again, as I said earlier this morning it's that  
25 balance in terms of trying to progress and trying to 14:52  
26 get those other things agreed and signed off while  
27 you're doing that. I believe the process itself was  
28 fair. I believe that there was no opportunities missed  
29 in terms of Mr. O'Brien being able to and facilitated

1 to provide information to the investigation. Ideally  
2 was it done in the order in which you would ideally  
3 like it to be? No.

4 223 Q. I think that echoes some of the evidence from Dr. Chada  
5 yesterday, when she said that she didn't realise until 14:53  
6 she started the interview in August the extent of the  
7 documents that he didn't have. Was that a -- it  
8 indicates that simply didn't know -- was that because  
9 she expected those documents to be provided or you just  
10 hadn't had a conversation about what he had been given 14:53  
11 or not given?

12 A. I think Dr. Chada's evidence yesterday, I was here for  
13 it, she was probably more magnanimous about that than  
14 she needed to be. That was on me. The gathering and  
15 securing and making sure information was passed 14:54  
16 backwards and forward and provided to Mr. O'Brien in  
17 order to meet those meetings that we intended to have,  
18 that was my responsibility; it absolutely was.  
19 Dr. Chada was involved obviously when I would send her  
20 a witness statement confirming whether or not she was 14:54  
21 intent with that, and back was she tracking at which  
22 stage things went to her? No, she wasn't. Nor, in my  
23 view, was that her role. That was my role.

24 224 Q. She did apologise for that, for Mr. O'Brien not having  
25 the documents, and said that he'd asked for the names 14:54  
26 of nine private patients and other documentation in  
27 advancing, and he'd emailed you asking for that. Is  
28 your answer to that just that administratively it  
29 wasn't possible for you to do that?

1           A.    There was a lot of that.  In terms of the private  
2           patient piece, and, again, just in listening to the  
3           questions put to Dr. Chada yesterday but also in  
4           preparation, I've had a lookback over why those names  
5           were quite late in the process being provided.  This           14:55  
6           starts off in terms of the private patient issue about  
7           TURP patients because that's what's known at the 10th  
8           January meeting.  My only explanation that I can  
9           provide over the course of that is that  
10          January/February time, the triages were being dealt           14:55  
11          with by the operational team and we were waiting on  
12          information coming back about that.  I know you'll know  
13          from the email sequencing that it probably took right  
14          up to May, in fact -- I think it was May when I was  
15          confirmed with the last of the five patients that were           14:56  
16          going to be the subject of an SAI.  That process was  
17          going on over that period of time.  Then the  
18          operational team turned their attention at a point to  
19          the undictated clinics and the notes that had been  
20          returned, so they were working through that.           14:56  
21  
22          I suppose the only explanation I can give is that the  
23          private patient bit came at the end of all of that.  
24          There was a delay in terms of information flow back to  
25          ourselves in relation to the private patients.  But in           14:56  
26          terms of, you know, the question you asked me about  
27          getting the documents to Mr. O'Brien, was that purely  
28          down to administrative capacity, it absolutely was.  
29

1 Again, when I look back over my records at the time,  
2 the pattern that I can see is picking up a statement,  
3 getting it typed, generally quite late at night.  
4 Trying to get it out over to Dr. Chada, getting those  
5 comments back, probably getting that out to the 14:57  
6 individual and then picking the next one up, and the  
7 next one up, and the next one up. It takes many hours  
8 to sit and construct those witness statements from  
9 notes that you take at those meetings. Those meetings  
10 that take, you know, preparation in advance of that, 14:57  
11 which is a number -- you know, it can be an hour, can  
12 be two hours. The actual meeting can be a number of  
13 hours. Then, the typing up of a statement can again be  
14 another number of hours. So it is fitting all of that  
15 in in a day where you are blocked with back-to-back 14:58  
16 meetings and then emails and other priorities. So,  
17 yes, that's the only thing I can say to you, is  
18 that the administrative work.

19 225 Q. On top of the work?  
20 A. This is on top of. 14:58

21 226 Q. There was no suggestion the Trust took you out of your  
22 role and said everything else pauses, this is what you  
23 do now until this is over?

24 A. No, because I was holding a caseload -- I was also  
25 holding other cases. whilst I also had the overseeing 14:58  
26 role of all the nonmedical cases, I also was carrying  
27 a caseload as well. I didn't get taken out of my role  
28 to do cases, or to support cases, I suppose, is the bit  
29 that I'm trying to describe. This was my role or an

1 element of my role, but there was too much volume,  
2 looking back.

3 227 Q. Did you ask for help? Did Vivienne Toal say this is  
4 taking a bit longer than we would hope, maybe the  
5 administrative aspect could be offset with secretarial 14:59  
6 assistance, or someone else could type up those notes.  
7 They took from April until June 2017. By the nature of  
8 that, the sending them out to people to check was  
9 over July and August.

10 A. Yes. 14:59

11 228 Q. So by you carrying that load, invariably it meant that  
12 there was going to be a time lag. Did you ever ask for  
13 help or was it offered?

14 A. No, I didn't ask for it. Was it offered? No, because  
15 this is how we worked. I suppose that's the crux of 14:59  
16 this in terms of Mr. O'Brien's case was one case of  
17 many that we were also struggling with in terms of  
18 trying to get all of what I've described - meetings  
19 arranged, statements taken, statements typed,  
20 statements agreed, out, reports written. I was doing 15:00  
21 this for many more cases than Mr. O'Brien. It was just  
22 how we worked.

23 229 Q. You met with Dr. Chada on 30th August, as you've said,  
24 with Mr. O'Brien?

25 A. Yes. 15:00

26 230 Q. And the 6th November --

27 A. 3rd August.

28 231 Q. Let me just. I don't doubt you, it's just I've still  
29 the 30th. The reference of that for the Panel, the



1 transcript of that is at AOB-56222 to 56244, that's  
2 part 1. And part 2 of that transcript is AOB-56244 to  
3 56284. These a meeting with Mr. O'Brien and his son  
4 again?

5 A. Yes. 15:01

6 232 Q. And the following meeting then was the four of you  
7 again on 6th November?

8 A. Yes, the two meetings.

9 233 Q. Just in relation to the August meeting, that was the  
10 meeting at which Mr. O'Brien was asked to answer some 15:01  
11 of the issues that were arising. Is that a meeting at  
12 which he hadn't yet had the notes or the witness  
13 statements, and he was being asked to effectively  
14 answer some of the terms of reference?

15 A. And that's exactly what it was. The 24th of January 15:01  
16 meeting was actually Mr. O'Brien's first opportunity to  
17 give some information around the issues of concern.  
18 We already had Mr. O'Brien's position on a number of  
19 those core concerns, even from the 24th of January  
20 meeting. We then set about looking to see what other 15:02  
21 information we needed to gather from relevant  
22 individuals who could add to the picture, I suppose.  
23 Those were the witnesses that we then met with between  
24 April and June. The purpose of the meeting then with  
25 Mr. O'Brien was that opportunity to say, you know, give 15:02  
26 us your position on this. It was never intended to be  
27 the final meeting with Mr O'Brien, but it was an  
28 opportunity for Mr. O'Brien to give his account of  
29 things, I suppose.

1 234 Q. Just to go back on what you said, that Mr. O'Brien had  
2 the opportunity on 24th January meeting with the terms  
3 of reference; I think the final terms of reference were  
4 dated 16th March.

5 A. No, sorry, I meant from the point of view of the 15:03  
6 meeting on the 24th January that Colin Weir and myself  
7 had met with Mr. O'Brien.

8 235 Q. But actually what was being -- the terms of reference  
9 for the investigation had not been finalised at that  
10 point? 15:03

11 A. Absolutely, yes.

12 236 Q. So as regards the contours of what Mr. O'Brien might  
13 have been expected to address --

14 A. Yes, the full extent of it, this was the first  
15 opportunity. 15:03

16 237 Q. This was, in fact, the first opportunity then in the  
17 August?

18 A. Yes.

19 238 Q. Do you accept that, that this was --

20 A. Yes, absolutely. 15:03

21 239 Q. Now, on the 6th November meeting -- you've said  
22 Mr. O'Brien had the opportunity to provide documents or  
23 provide any information that he thought was of  
24 assistance. Do you recall if he provided any in the  
25 August, in that meeting? 15:03

26 A. Mr. O'Brien had provided a number of email  
27 correspondences. And I suppose when I say -- when I'm  
28 answering did he provide anything of any information  
29 that wasn't already known to us; no. I suppose again

1 going back, and on reflection of all of those matters,  
2 the four terms of reference, leaving aside term of  
3 reference 5, but the first four terms of reference were  
4 fairly straightforward, were fairly straightforward  
5 matters. The terms of reference for the investigation 15:04  
6 was to determine if these things occurred. For  
7 example, I'm going to take the first one, the triage.  
8 Had triage been done, had it been done timely, and was  
9 there any impact -- I'm paraphrasing the wording of the  
10 terms of reference. Mr. O'Brien, I suppose, at the 15:05  
11 30th August meeting, Mr. O'Brien accepted the --  
12 CHAIR: 3rd August.

13 A. Sorry, 3rd August. 3rd August.

14  
15 Mr. O'Brien accepted that, no, he hasn't done the 15:05  
16 triage that we were speaking to him about. I suppose  
17 what he did then was provide the context and an element  
18 of mitigation in terms of the why. That was really --  
19 but the actual substance of the concern in terms of had  
20 he undertaken triage in the way that was the agreed 15:05  
21 position at that time for the consultants in the team  
22 to do, Mr. O'Brien accepted that he hadn't. Questions  
23 posed to him, for example, were "and had you made  
24 anybody very explicitly aware that you weren't". Now,  
25 we know all the things that we know about. There was 15:06  
26 a deviation process put in place because things weren't  
27 coming back, so the issues were known to a degree.  
28 I suppose we were putting that type of information.  
29

1 Mr. O'Brien provided us with answers to that, and he  
2 provided us with context and he provided us with  
3 mitigation, but he didn't provide anything of substance  
4 in terms of documentation, I suppose is what I'm trying  
5 to get a long-winded way of saying to you. 15:06

6 240 Q. Dr. Chada, in her evidence, does mention that his  
7 response to witness statements were eventually appended  
8 to the final report?

9 A. Yes.

10 241 Q. But accepts that he was asked to comment on terms of 15:07  
11 reference 1 to 3 at that meeting without the  
12 information that he asked for. In terms, her evidence  
13 was that there wasn't any intention to blind-side him  
14 but that she felt there was a need to move things  
15 along, but she believes it was a fair process. 15:07

16  
17 Do you share that view of the fact that while he wasn't  
18 given information, a view was taken - and it is for the  
19 Panel to consider the reasonableness of that - if she  
20 was taking that matters should be moved forward at that 15:07  
21 August meeting?

22 A. I share Dr. Chada's view on that absolutely. There was  
23 no intention, of course, to blind-side. That's not  
24 what -- that's not what we're about in terms of any of  
25 those processes. This is about trying to get to the 15:07  
26 nub of the issue. But I suppose for me in any of these  
27 processes is the subject of the investigation, their  
28 evidence is their evidence. The witness statements may  
29 raise other matters they want to respond to but it

1 shouldn't fundamentally change their evidence about the  
2 core issues because... As I say, the only thing I can  
3 say to you is their evidence is their evidence. So us  
4 putting a question to Mr. O'Brien in terms of did this  
5 happen, you know, or why did this happen, a witness  
6 statement isn't relevant to that. 15:08

7  
8 Absolutely Mr. O'Brien needed the opportunity to  
9 comment in terms of what was being said about the  
10 overall picture, and he was given that opportunity, and 15:08  
11 he was given that opportunity to do that in the latter  
12 part of 2017 when he had all of the statements. So,  
13 I believe the opportunity that he required to have to  
14 see those witness statements and comment on those  
15 witness statements was facilitated for him. 15:09

16 242 Q. Just the other side of that, your answer leans slightly  
17 more towards the substance of a process where he has  
18 been asked and his evidence is his evidence. But the  
19 step before that is the process that's applied to allow  
20 that evidence to be the best evidence that can be 15:09  
21 given. The opportunity for that can only arise,  
22 arguably, if someone is fully informed of what is  
23 alleged against them. While I take your point, do  
24 you accept that the anterior step of that, the bit  
25 before you get to find out the story, is that the story 15:09  
26 is facilitated in a fair way?

27 A. I appreciate ideally it is better for you to be fully  
28 sighted on all of that. The 3rd August meeting was not  
29 the intended final -- was not the intended only one or

1 final meeting with Mr. O'Brien, so there was always to  
2 be an opportunity for Mr. O'Brien to come back. But  
3 I take your point and I accept what you are saying in  
4 terms of ideally in advance of that 3rd August meeting,  
5 in terms of giving his best evidence and being in 15:10  
6 a position to answer everything that was, I suppose,  
7 being said, yes, it would have been better for him to  
8 have those statements.

9 243 Q. Although I indicated that the final terms of reference  
10 were later in the middle of March when it was finally 15:10  
11 settled upon, the January terms of reference were  
12 broadly reflective of the areas that you were looking  
13 at, but the final detail and some further amendments  
14 just hadn't been made?

15 A. I suppose the important point I would also want to draw 15:11  
16 your attention to is the fact that the issue that  
17 Mr. O'Brien was entirely unsighted on, which was the  
18 private patients, was actually set aside at that 3rd  
19 August meeting with a view to, yes, you don't have this  
20 information, we'll come back and we'll have that. 15:11  
21 That's how that was done. You know, this wasn't about  
22 trying to - I suppose I'm using your word - blind-side  
23 Mr. O'Brien in any way shape or form. This was moving  
24 it along, trying to progress it, with all of the  
25 constraints that I've already described. Were there 15:11  
26 better and more ideal ways? Absolutely, but ultimately  
27 I still believe it was a fair process that  
28 Mr. O'Brien -- because he was facilitated during the  
29 course of the investigation before it closed to make

1 those comments and to be sighted on all of that  
2 information.

3 244 Q. From an Employee Relations perspective, when you see  
4 other aspects being added along or considered like the  
5 private patients issue, did it trigger in you any  
6 curiosity that perhaps there needed to be a bit of a  
7 deeper dive into what the potential problems were, or  
8 the problems that were in existence were at that time?  
9 Did you think let's have a proper look at this, there's  
10 other issues coming up as we go along?

15:12

15:12

11 A. Is the question pointed at broader issues than what was  
12 in the terms of reference?

13 245 Q. And also whether it triggered any curiosity in you to  
14 think maybe we need to have a look at wider issues  
15 here. There's an opportunity perhaps to not focus just  
16 on this but to look at things that are arising, that  
17 have been suggested. You've heard that through  
18 Dr. Chada's evidence?

15:12

19 A. I have. It is something, you know, even outside of  
20 here that I have reflected on in terms of was there  
21 opportunities. Obviously now what we know in 2020  
22 wasn't in front of us at the time of the MHPS  
23 investigation. I suppose it's that consideration of  
24 should we have known or could we have known?

15:13

25  
26 I suppose the only thing I can say on that - and it's  
27 probably very much mirroring Dr. Chada - it's really  
28 hard to describe. We were meeting with individuals as  
29 part of this where not only were they not telling us

15:13

1 there was a clinical performance issue, they were  
2 telling us very much the contrary. I think I'm quoting  
3 Michael Young here as the clinical lead who was  
4 describing Mr. O'Brien as a very competent clinician,  
5 who was describing him as somebody he would want his 15:14  
6 family to be treated by. That was the flavour of the  
7 witness evidence as we went through, that, you know,  
8 the problems here were about not getting things done  
9 but if you were the patient who got in front of  
10 Mr. O'Brien, I suppose the message we were getting at 15:14  
11 that time was you're going to get a very, very good  
12 clinical service from Mr. O'Brien, and he's a very good  
13 clinician.

14  
15 I suppose again on reflection, I think that's where 15:14  
16 we have looked at this and said it's all this stuff  
17 around Mr. O'Brien's clinical practice, that's the  
18 problem, and haven't probably gone and said -- and that  
19 curiosity that you're describing, we didn't go fishing.  
20 I suppose I'm very conscious that we don't do that. 15:15  
21 We don't do that in any investigation. I mean, you  
22 look at what's in front of you, you look at what's  
23 coming up in terms of where your evidence is pointing  
24 you. Witness evidence was not pointing us in that  
25 direction, and that's the only explanation I can give 15:15  
26 for why we didn't go broader and look at the broader  
27 piece.

28 MS. MCMAHON BL: I'm just going to move on to the final  
29 part. Two more areas to cover. Perhaps if we had



1 a short break.

2 CHAIR: I think we'll take a break until 3.30.

3 Probably about another hour, would you say, or less?

4 MS. MCMAHON BL: Maybe less.

5 CHAIR: Thank you.

15:15

6

7 THE INQUIRY BRIEFLY ADJOURNED AND RESUMED AS FOLLOWS:

8

9 CHAIR: Everyone.

10 246 Q. MS. MCMAHON BL: Mrs. Hynds, I just want to read out 15:29  
11 some extracts from your witness statement to you on the  
12 issue of delay and see what your views are on that and  
13 the MHPS timelines generally. WIT-42068, the paragraph  
14 beginning "In my experience". You say:

15 15:30

16 "In my experience of supporting clinical managers with  
17 MHPS cases, completion of a formal investigation within  
18 four weeks has never been achieved. The concerns  
19 relating to Mr. O'Brien were multiple, involving many  
20 hundreds of patient records/notes and many witnesses. 15:30

21 It was complex and very resource intensive. It was  
22 entirely impractical that such an investigation could  
23 be complete within a four-week period. Added to this,  
24 the four-week requirement for completion of a formal  
25 investigation is at odds with a four-week immediate 15:30  
26 exclusion time scale providing the opportunity to  
27 establish facts during that initial four-week period".

28

29 Can you just explain what you mean by that?

1 A. I suppose it just strikes me there is a four-week  
2 period to gather initial facts and a four-week period  
3 to do a full formal investigation. So, I'm not sure  
4 that that sits alongside one another if there's  
5 a recognition that gathering initial facts is going to 15:31  
6 take at least four weeks.

7  
8 I suppose I struggle with then how a full formal  
9 investigation could be turned around in four weeks in  
10 a similar time scale. 15:31

11 247 Q. We don't need to go to some of these other quotations  
12 but just so the Panel have a note of your evidence on  
13 some of the other issues that you raised that you say  
14 impacted on your ability to complete the investigation  
15 in the timeframe. WIT-42082. You say: 15:31

16  
17 "I was in my first year of taking over responsibility  
18 for the ER Service. I had staffing gaps and pressures  
19 and a significant workload requiring staff within the  
20 team and myself to work many additional hours over 15:32  
21 normal contracted hours on a very regular basis".

22  
23 I think we've gone through that. You also say at  
24 paragraph 24.10 of your statement.

25 15:32  
26 "I am of the view that this case falls into the  
27 exceptional circumstances caveat of Section 1,  
28 paragraph 37 of MHPS given the scale and complexity of  
29 the issues. That said, I accept that there are periods

1 during the course of the investigation process that  
2 could and should have been completed more swiftly".

3  
4 There's also WIT-42085, paragraph 24.19 to 21. You  
5 provide information that Mr. O'Brien was prioritising 15:33  
6 his appraisal at one point and couldn't provide  
7 comments. You have said that on reflection, you  
8 perhaps should have insisted on a commitment to  
9 prioritise comments on his statements.

10 A. There's a couple of points during the course of my 15:33  
11 reflection over the time scale that I think that  
12 evidence should have been moved more quickly.  
13 [Technical disruption].

14  
15 I suppose there are a number of points, on reflection 15:33  
16 of the overall time scale, that I would point to in  
17 terms of, I suppose, opportunities that should have  
18 been taken to move it forward in a more timely manner.  
19 The 6th November is one of those but it's not the only  
20 one. For me, yes, I think the 6th November and the 15:34  
21 position that Mr. O'Brien took at that stage to  
22 prioritise his appraisal, I suppose at the expense of  
23 the MHPS process. I was here for Dr. Chada's evidence  
24 on that and why that was facilitated for a multitude of  
25 reasons, and I completely agree with her; there's 15:34  
26 a fine balance between pressing an individual to move  
27 forward and accepting that there are other things that  
28 they need to attend to. So, I think there was a little  
29 bit of, probably, acceptance of that whenever we really

1 probably should have pressed for that to be done more  
2 timely.

3  
4 I look at that point in the early part of February that  
5 by that stage, the comments on -- I know and I heard 15:35  
6 again the evidence yesterday, the last piece of  
7 information from the 6th November wasn't with  
8 Mr. O'Brien. Mr. O'Brien had his statement from the  
9 3rd August plus another 13 witness statements that we  
10 were waiting on comments from. So, I suppose it did 15:35  
11 surprise me by the start of February to find that none  
12 of that had been attended to. And I know Mr. O'Brien  
13 pointed to "I don't have 6th November". The  
14 6th November statement for me was much less of  
15 a statement, because in that meeting Mr. O'Brien 15:36  
16 provided a written account of each of those private  
17 patients. So, what I was sending back to him was  
18 pretty much a regurgitation of what he had handed to us  
19 in that meeting, topped and tailed with some of the  
20 preamble to the meeting, etcetera. So, it was much 15:36  
21 less of an issue. It was his evidence that was already  
22 in that 6th November. The crucial point was that the  
23 13 witness statements and the meeting of 3rd August.  
24 So, that was a difficult piece. Then, obviously,  
25 we set some time scales to try and move that along, and 15:36  
26 all of those were missed.

27 248 Q. Let's just look at one of those. When you emailed  
28 Mr. O'Brien at TRU-269359 on 15th February 2018. This  
29 is from you to Mr. O'Brien, and Dr. Chada is copied in.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

You say:

"It has been some weeks now since we last engaged about the ongoing investigation process under the MHPS Framework. When we last met you, Dr. Chada and I had advised that we were at the conclusion stage of our investigations and the meeting with you in November was the last meeting we felt was required. 15:37

At that meeting we had outlined that we would require your first statement to be agreed and returned. You indicated that you had comments to make and undertook to do that before returning it to us. I am checking to see if you have this now finalised and are in a position to return this to us? 15:37

You had also indicated that you wished to make comment on the witness statements shared with you and you indicated that you would also do this and provide those comments to us. Can you advise if this is complete and if you are in a position to share with this us? 15:38

I appreciate that when we met you had indicated you had a number of priorities to deal with in December outside of the MHPS process and would not be in a position to return your comments prior to January. We would like to try to bring this process to a conclusion and I would be grateful if you would come back to me as soon as possible on these matters. 15:38

1 I have the notes of our meeting in November to share  
2 with you which will also require your agreement.  
3 We do, however, have your written statement on those  
4 issues in full so that is a smaller matter to be  
5 finalised".

15:38

6  
7 In reply to that, Mr. O'Brien asked for more time until  
8 31st March, and you asked him for comments by 9th  
9 March.

10 A. I suppose my expectation was that Mr. O'Brien was  
11 attending to that in January. Now, equally it  
12 shouldn't have taken me until 15th February before  
13 I emailed him about that. I fully accept that.

15:38

14 249 Q. Is there a reason for that delay from November?

15 A. No. Again, it was probably a bit of Mr. O'Brien is  
16 going to attend to that in January so I'll deal with  
17 that at a time when I think maybe he's at that  
18 concluding stage. So, it was probably nothing more  
19 than that. Hindsight, again, start of January, should  
20 I have emailed and said we will be looking for this and  
21 put a time scale on it? Yes, I probably should have.

15:39

15:39

22  
23 But I suppose I was surprised when I got the email back  
24 on 15th February to say that nothing had been attended  
25 to because, yes, whilst the 6th November was there --  
26 and I had deliberately set that aside on the basis of  
27 knowing he wasn't attending to anything over  
28 the November and December period, but I did expect that  
29 the rest of the comments would have been trickling in

15:39

1 or starting to flow backwards to us. By 15th January  
2 it was surprising that that hadn't commenced. It was  
3 trying to put a time scale on that at that point in  
4 terms of not letting it drift any further, and that was  
5 probably the reason for trying to pull the time scale 15:40  
6 back a little bit from 30th March.

7 250 Q. You eventually got the replies, the comments back on  
8 2nd April?

9 A. Yes, we did. We'd set a number of deadlines in between  
10 that. I suppose by this stage, Mr. O'Brien had had 15:40  
11 these documents for many months at this stage, so the  
12 time scales were shifting. Ordinarily, yes, ideally  
13 you should cut that off but it was really important  
14 we had his comments. I, in particular, and I remember  
15 a conversation with Dr. Chada to say, we need to get 15:41  
16 these and we need to try and have these. That, for me,  
17 is why that kept getting pushed out in terms of, look,  
18 we're nearly at the end but we just really need to have  
19 these comments, it's important we have them back.

20  
21 Ultimately all of those deadlines were missed and  
22 we began to commence to look at the investigation  
23 report, and they came in on 2nd April.

24 251 Q. They were appended to the final report?

25 A. They were amended to the final report. 15:41

26 252 Q. Just in relation to that final report. Again, what was  
27 your role in that report, in the drafting, collating,  
28 in contributing to the report at all?

29 A. So again, a bit like my role with all of these cases is

1 that I would have general templates of reports that  
2 I would start to construct. It is that the  
3 introduction and background to the issues, you know,  
4 who we met with, the sequencing of events, I suppose,  
5 and populating some of that general information at the 15:42  
6 outset. So, I started to pull together that as a draft  
7 with all of that more factual information. Dr. Chada  
8 and I would have had many discussions about what needed  
9 to be in in terms of her analysis and conclusions  
10 around each of the terms of reference, and then I would 15:42  
11 have reflected that back into the draft, sent that to  
12 her to ensure she was content with how I was  
13 constructing that. She would have provided comment  
14 back.

15 253 Q. But who was making the conclusions that you were 15:42  
16 putting into the report?

17 A. That was Dr. Chada in terms of looking at the evidence  
18 in front of her. I have no doubt I provided advice at  
19 certain points along the way, but ultimately that was  
20 Dr. Chada's conclusions to the investigation. 15:43

21 254 Q. Did you see a role as reflecting those conclusions  
22 accurately in her report?

23 A. Absolutely.

24 255 Q. You assisted both Dr. Khan and Dr. Chada. Is it 15:43  
25 unusual or is it expected that the same person -- I see  
26 you reacting already; probably not an unexpected  
27 question then. Is that an unusual thing that you would  
28 assist both in their investigation?

29 A. Probably then, less so now, yes. I did feel a little



1 conflicted as I went through this process when my role  
2 started to be broader than the HR support to the Case  
3 Investigator, because then I was veering into the  
4 support and advisory role to the Case Manager which,  
5 for me again, wasn't ideal. It didn't feel ideal at 15:44  
6 the time but, again, options were very limited in terms  
7 of who we would have had available to provide that  
8 support. To be fair, I'm not sure we even give it  
9 a lot of thought. It was just that kind of seamless  
10 process through, you know the case, you know the 15:44  
11 background, you know the detail, so let's support now  
12 Dr. Khan in terms of the case determination bit. I'm  
13 saying that as if there was a conscious decision;  
14 I don't believe there was a conscious decision, that's  
15 just how it panned out at the end. 15:44

16 256 Q. But there was a sense of conflict at times, I think you  
17 said?

18 A. I felt that, yes.

19 257 Q. What was that based on?

20 A. I suppose I didn't -- it just felt to me that it would 15:44  
21 have been better to have somebody separate advising the  
22 Case Manager verses the Case Investigator and to keep  
23 that line very clear. Having said that, it wasn't  
24 a decision-making role in either supporting the Case  
25 Manager or the Case Investigator. But I just felt at 15:45  
26 times that perhaps separate, different advice --  
27 a different set of HR eyes potentially would have been  
28 beneficial.

29 258 Q. You say now that the same person wouldn't do dual

1 roles?

2 A. No. We separate that now, yes.

3 259 Q. I just have a couple more general questions to ask you.  
4 I don't want to take you to your statement but I just  
5 want to refer to a couple of things you've said, 15:45  
6 because one of the things that we have discussed is  
7 your workload and that impacting then on your ability  
8 to engage and complete the investigation.

9

10 WIT-42021. We don't need to go to it. Paragraph 1.38. 15:46  
11 You make a reference to arranging legal advice for  
12 Mr. Wilkinson and for members of the Oversight Group on  
13 their respective roles. How does that fall within your  
14 role as assisting the Case Investigator in the  
15 investigation? 15:46

16 A. Again, I suppose it didn't. There was a little bit  
17 of -- I suppose I became the go-to HR person for  
18 coordinating lots of things as part of this overall  
19 process. Mr. Wilkinson, for example, wouldn't have had  
20 separate HR advice again. So if you're again trying to 15:47  
21 separate that out, that becomes even more challenging  
22 and more resource requirements. I suppose I felt less  
23 conflicted with Mr. Wilkinson because it was really  
24 about organising things for him as opposed to really  
25 doing anything else. It was about setting up a meeting 15:47  
26 with the legal advisers and ensuring that it suited  
27 him, etcetera, etcetera. I suppose it was less of an  
28 advisory role, it was more a coordinating role with  
29 that. But I fully accept that the HR role that,

1 I suppose, under the guidelines that was identified for  
2 me was support to the Case Investigator, but that  
3 became much broader.

4 260 Q. I suppose that's also reflected in the fact that you  
5 coordinated the Return to Work Plan and involved in the 15:47  
6 monitoring of that?

7 A. Yes.

8 261 Q. That would at first glance not seem to fall within the  
9 role; you accept that?

10 A. I do. I think very clear delineation of those roles is 15:48  
11 absolutely required. But again, I say that knowing  
12 that in order to do that, there is significant  
13 additional resources for advisers at each step of that  
14 process that's required. You know, so that's  
15 a challenge in itself. 15:48

16 262 Q. Also drafting some letters for Mr. wilkinson --

17 A. Yes.

18 263 Q. -- to Mr. O'Brien. Again, that's I suppose an  
19 additional administrative role that you were  
20 undertaking at the same time? 15:48

21 A. Yes.

22 264 Q. Just to ask you the question I asked earlier. Was  
23 there ever any stage that you thought you could offset  
24 some of those roles to others to do, given the heavy  
25 workload that you had? 15:48

26 A. No, by the very nature of what we were doing. I mean,  
27 HR tends to be the go-to for the drafting of  
28 corresponds and for assisting in all of that.  
29 I suppose I said to you at the outset, the options for

1 me, I took this case knowing there were very limited,  
2 in fact no other alternative options because of gaps in  
3 staffing and workloads. So again, did I give it much  
4 thought? No, I probably just kept paddling is the best  
5 description I can give in terms of just let's keep  
6 going, let's keep getting things over the line.

15:49

7  
8 Again, in reflection and hindsight, there's lots of  
9 learning in terms of the requirement to resource each  
10 aspect of that.

15:49

11 265 Q. That takes us to your reflections then on the MHPS  
12 process. Go to your witness statement at WIT-42099.  
13 You've set out paragraph 28.3:

14  
15 "The MHPS framework is the document setting out the  
16 requirements for managing concerns about performance  
17 and is the document relied on when a concern arises.  
18 The Trust Guidelines were put in place as a requirement  
19 under MHPS setting out how cases are practically  
20 managed".

15:50

15:50

21  
22 Then you go on to provide your feedback. 28.4. You  
23 say:

24  
25 "The MHPS framework is a lengthy framework, difficult  
26 to read and follow as it is not always in a logical  
27 sequence.

15:50

1 It is a mix of statement and process, which is  
2 unhelpful. I feel the document could be much better  
3 structured to give a step-by-step process for employers  
4 and employees.

5  
6 Because of the length and structure, it is complicated,  
7 and as someone with the experience in my role using the  
8 document, I find I need to read the document carefully  
9 every time, many times over, to understand each step  
10 and what needs to be actioned.

11  
12 For clinical managers who don't often use the  
13 framework, I have found they require significant  
14 support to navigate the process.

15  
16 The framework refers to 'all concerns' when it points  
17 to when it should be used to manage performance  
18 concerns and register with the Chief Executive. There  
19 was always ongoing management of performance and it is  
20 impractical to suggest that the framework will be used  
21 for every single concern.

22  
23 The intention of the framework, as it is set out, is to  
24 tackle blame culture and to ensure for swift and timely  
25 resolution of concerns. I agree with this, however in  
26 practice, it doesn't always work. The case of  
27 Mr. O'Brien had a historical 'tail' to it so when it  
28 came to being managed under the MHPS, that, along with  
29 the scale and volume of patient records involvement,

1            meant that a quick process was unrealistic.

2

3            "The time scale for completion of formal investigations

4            is entirely unrealistic. For this to be achievable in

5            any way, individuals with roles under the process would 15:52

6            require to be released from their normal day-to-day

7            roles. The coordination of diaries alone to commence

8            a process when individuals already have full diary

9            commitments is hugely problematic. The seniority of

10           those individuals with specific roles under the 15:52

11           framework makes this impractical.

12

13           The time scale for completion of the investigation is

14           the same as the time scale for completion of the fact

15           finding during a period of immediate exclusion - this 15:52

16           is a clear contradiction in time scales.

17

18           The term 'clinical performance' is broad and can be

19           interpreted differently by different users of the

20           framework. In my experience, separating conduct issues 15:53

21           from clinical impacts or decisions can be difficult I

22           feel that the clinical performance process is overly

23           cumbersome and doesn't necessarily assist employers to

24           easily deal with conduct matters.

25           15:53

26           It is challenging to navigate cases when local

27           procedures for managing absence, conduct and conflict

28           should be used in how they link with MHPS.

29

1 The role of the designated board member is unclear  
2 under the framework, specifically whether  
3 representations are made to the Board member. What is  
4 their role in dealing with the case of such  
5 representations. In the case of Mr. O'Brien this was 15:53  
6 a challenge.

7  
8 Case managers and case investigators need to build  
9 expertise in managing cases to become proficient. This  
10 is difficult as the number of formal cases is generally 15:53  
11 small and those are individuals who may only undertake  
12 the role once or a small number of times in their  
13 careers.

14  
15 The representation/accompaniment rights under the 15:54  
16 framework are wider than those for other employees.  
17 The rights of an employee to have 'a friend who is  
18 legally qualified' accompany them as part of the  
19 internal process but not act in that capacity is a  
20 distinction without a difference in practice. Legally 15:54  
21 qualified participants to the process inevitably  
22 legalise and slow the process.

23  
24 In my experience, MHPS processes right from the  
25 screening of a concern becomes adversarial. The 15:54  
26 framework, specifically the time scales, takes no  
27 account of the initial input or corresponds from  
28 a clinician. Having supported a range of different  
29 types of cases/concerns, I have experienced responses

1 from clinicians to include distraction, deflection, and  
2 nonengagement. Some clinicians become very unwell as a  
3 result of the process.

4  
5 Resources and training. MHPS processes are resource 15:55  
6 intensive and as a Trust, capacity is always  
7 challenging. There are many individuals who are  
8 required to input time to an MHPS process.

9  
10 In respect of the Trust guidelines, specifically the HR 15:55  
11 role, I feel this requires greater clarity provided  
12 within the document. My role as part of the MHPS  
13 process in the case of Mr. O'Brien commenced as support  
14 to the Case Investigator but expanded to providing  
15 support to the Case Manager and extended past the end 15:55  
16 of the investigation process mainly because of my  
17 knowledge of the case. Roles and responsibilities need  
18 to be defined under the Trust guidelines".

19  
20 Perhaps I should have started with those this morning, 15:55  
21 a shortcut. I think I have taken you through the  
22 evidence and the rationale behind what you say in your  
23 final section of your Section 21. You have provided  
24 that very helpful insider information on your  
25 experience. 15:56

26  
27 Is there anything that you would like to add to that,  
28 having gone through your evidence today?

29 A. No. I think that is probably the scale of the concerns



1 that I would have about the process. I suppose, I mean  
2 again - and I know Vivienne Toal gave some of this in  
3 her evidence - we are working to a process now, or  
4 trying to get on the path of a process in terms of  
5 restorative justice learning culture. For me going 15:56  
6 forward with any review of MHPS, I think we need to  
7 bear that in mind in terms of how do we do that,  
8 because these processes should be about getting to an  
9 understanding of what has occurred and what has  
10 happened and what has been the impact. But we need to 15:57  
11 do that in a way that doesn't make people unwell, that  
12 doesn't put barriers up, that doesn't ruin  
13 relationships, that doesn't destroy people in the  
14 process.

15 15:57  
16 My experience of all of these -- and it's a really,  
17 really difficult one because the minute somebody  
18 understands they're under investigation, I see those  
19 barriers going up. We can give all of the assurances  
20 in the world in terms of this is about just getting an 15:57  
21 understanding in terms of understanding what has  
22 happened. But how do you make an individual feel that  
23 at the end of that process? I think there is  
24 definitely work to be done in terms of how do we get...  
25 Because MHPS back in 2005 was pointing to a move away 15:57  
26 from a blame position and it was about getting to the  
27 understanding of what occurred. I suppose we're almost  
28 20 years down the line and I'm not sure that we have  
29 cracked that in any way, and I think there's a lot of

1 work that needs to be done.

2  
3 I suppose the point I make in terms of the support and  
4 accompaniment from, you know, an individual who is  
5 legally qualified, I think that only serves, again, to 15:58  
6 further legalise and put an adversarial process into  
7 play as opposed to an open, transparent, candid process  
8 about what has happened. So, I think there's  
9 challenges with all of those things as part of the  
10 MHPS. If we are trying to move in the direction of 15:58  
11 that restorative just and learning that we are in  
12 Northern Ireland, I think that's going to be  
13 a challenge alongside MHPS, but work that needs to be  
14 done.

15 MS. McMAHON BL: I have no further questions, Mrs. 15:59  
16 Hynds. I'll hand you over to the Panel who may have  
17 questions for you.

18  
19 THE WITNESS WAS QUESTIONED BY THE INQUIRY PANEL  
20 AS FOLLOWS: 15:59

21  
22 CHAIR: Thank you, Mrs. Hynds. I'm going to ask  
23 Mr. Hanbury first of all if he has any questions for  
24 you.

25 MR. HANBURY: I appreciate you are not a clinician, you 15:59  
26 were involved in interviewing a lot of the clinicians  
27 involved in this. I was impressed with your witness  
28 statement, you made quite candid remarks about some of  
29 the clinical issues. Just a few things.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Starting off on scheduling private patients. We heard yesterday about Mr. Young's analysis from Mr. Wolfe which did seem to support that term of reference. We heard from other witnesses about Mr. O'Brien's slightly unusual approach to waiting list management. Did that come out and did you have any further thoughts about that from the people you spoke to?

16:00

A. Yes. I suppose primarily from speaking with Mr. O'Brien in the interviews and getting an understanding that the way in which Mr. O'Brien was working was very much of "I know what's happening with this patient", but they weren't necessarily going on to lists for the organisation to properly understand the extent of the lists or the time at which they should be added to a list. Mr. O'Brien's view on that was very clearly "but I add them to the list at the time at which I know they should be added". For me that was -- I suppose I found that difficult because this wasn't about Mr. O'Brien and only Mr. O'Brien's patients, this is about the organisation and the service that's being provided from the full urology service. So, I suppose that was one of the issues that I found difficult to understand, that a clinician potentially would have that view about scheduling; that it was okay just to add them in. Because the waiting lists are hugely lengthy anyway, and "I'll just add them if I need to". I'm not sure if I've answered your question.

16:00

16:00

16:00

16:01

1 MR. HANBURY: The other urologists didn't do it in that  
2 way.

3 A. They didn't work in that way, no.

4 266 Q. I'll talk about outpatients. You mentioned  
5 Mr. O'Brien's habit was very thorough but very slow. 16:01  
6 You previously said if you are in front of him, you  
7 feel you got a very good service but it was perhaps to  
8 the detriment of other patients. Just expand on that a  
9 little bit.

10 A. That was what we were hearing from others in terms of 16:01  
11 the evidence that we were gathering from witnesses,  
12 that Mr. O'Brien was a very dedicated clinician, a very  
13 good, safe clinician. However, his colleagues did see  
14 many, many more patients than Mr. O'Brien because  
15 Mr. O'Brien was slow. He didn't see everybody he 16:02  
16 needed to see on all of his lists and the reviews took  
17 much longer. We were hearing very much that but it's  
18 how he worked. It wasn't his clinical skill or his  
19 clinical ability, it was more that he likes to work in  
20 a particular way, and that is having a very detrimental 16:02  
21 impact on patients getting through the service in the  
22 way they needed to be.

23 267 Q. Just going on to that, you commented that maybe  
24 you should have done more in terms of highlighting the  
25 backlog. We've heard from other witnesses that 16:03  
26 actually that had been done. Did you feel that that  
27 was something more from his practice than the other  
28 urologists?

29 A. That was certainly what we were hearing as well.

1 I understood that perhaps Mr. Young and Mr. O'Brien,  
2 because they were longer-standing consultants, had had  
3 longer review lists. I know that Mr. O'Brien was  
4 having conversations with clinical managers in relation  
5 to not seeing new patients in order to try and deal 16:03  
6 with the backlog. But from the point of view of, for  
7 example, what the terms of reference was in front of us  
8 in terms of the patients that he was to triage, for  
9 example, during the course of his week of being the  
10 urologist on call, all of the other clinicians were 16:04  
11 doing all of that on top of all the other work they  
12 needed to do, and were doing that and able to keep on  
13 top of that.

14  
15 Mr. O'Brien's view was he wanted, or preferred to do 16:04  
16 advanced triage and, really, there was no real value in  
17 doing some of what the other clinicians were doing and,  
18 as a result, didn't undertake that triage. I suppose  
19 the concern was how overtly known was that across the  
20 organisation? Because the understanding we heard from 16:04  
21 the clinicians, from Mr. Young and from -- I'm going to  
22 say Mr. Glackin, was that yes, we knew Mr. O'Brien was  
23 complaining about triage, we knew that he didn't  
24 really -- he didn't really want to do it or was  
25 struggling to do it, but did we know that he wasn't 16:05  
26 doing it? No. I think that was the distinction.  
27 That's what we were hearing as part of the evidence  
28 from the other clinicians in relation to that.

29 268 Q. Just one other thing on the same phrase used is

1 consultant comparators, which is quite nice.  
2 Dictation, did the other urologists have a difficulty  
3 there, or was there --

4 A. My understanding was they were all using digital  
5 dictation. They were using the system that was there 16:05  
6 to enable that to be done and the dictation was being  
7 done after every clinical contact. I think again some  
8 of that came as a surprise to his colleagues as part of  
9 the lookback review that was done, that there was maybe  
10 multiple contacts with a particular patient before 16:05  
11 there was an actual dictated note of what was happening  
12 with that patient. It was very clear to us that that  
13 was not the practice of the other clinicians.

14 269 Q. Just lastly, again on the subject of letters. We heard  
15 that Martina Corrigan some time off and with respect to 16:06  
16 the return-to-work there was a gap. Now, the one  
17 person who knows about your letters is your secretary?

18 A. Yes.

19 270 Q. Was there a reason why Mr. O'Brien's secretary wasn't  
20 involved in this process about monitoring? 16:06

21 A. About monitoring? Yes, Mr. O'Brien's secretary was  
22 interviewed as a witness at the early part and  
23 I believe - and, again, I could be wrong on this - but  
24 I believe it was probably down to the fact that these  
25 concerns were already previously known to his secretary 16:06  
26 and hadn't been escalated. Again, for a lot of  
27 reasons to do with that consultant/secretary  
28 relationship, etcetera, but to involve her in that  
29 monitoring when going forward when those issues would

1 have been known and not previously escalated, I don't  
2 think those things sat side by side. So there was  
3 probably never an intention to involve his secretary as  
4 a part of that.

5 MR. HANBURY: Thank you very much. 16:07

6 CHAIR: Thank you, Mr. Hanbury. Dr. Swart?

7 DR. SWART: You have seen the development of MHPS over  
8 the years, been involved in a lot of it, and you also  
9 look after the employment relations of other staff.

10 what's your view on whether MHPS or whether it's 16:07  
11 actually a good idea to manage doctors completely  
12 differently from other staff groups? Does it help or  
13 not?

14 A. I suppose organisationally in the way we were  
15 structured, particularly within the Southern Trust, 16:08  
16 having an entirely separate framework that is,  
17 I suppose, unknown widely to non-clinicians was less  
18 than helpful. I think there are -- for me, we have  
19 moved, for example, with our regional disciplinary  
20 procedure in Northern Ireland, to a position of 16:08  
21 mirroring some of what's in MHPS, like the Case Manager  
22 role and the Case Investigator role. I think there are  
23 some elements of it that are actually quite useful.

24  
25 But for me, an investigation is an investigation of 16:08  
26 a staff member, so there's something probably in terms  
27 of why would they be different? I think part of it  
28 probably has stemmed from their accompaniment, for  
29 example, is different and wider and broader than for

1 other staff members. But no, I think the process  
2 should be exactly the same. The process in terms of  
3 what is ideal should be the same for a medic and  
4 a non-medic.

5 271 Q. Another thing that comes out when you listen to the 16:09  
6 various witnesses is there was very poor knowledge  
7 about the workings of the Oversight Group amongst quite  
8 senior medical managers. It seems to me it was  
9 shrouded in secrecy which is actually the opposite of  
10 what people are aiming for these days. Is that a fair 16:09  
11 observation? was that by design or accident?

12 A. I think it was a fair observation at the time but I'm  
13 not sure it was by design. I think it was more that  
14 over the course of those years between 2010 and up to  
15 the point at which, for example, Mr. O'Brien's case 16:09  
16 commenced in 2016, there was probably a handful of  
17 cases. There wouldn't have been huge numbers. The  
18 involvement of the Oversight kind of progressed in  
19 terms of what their role was. I don't think there was  
20 any deliberate intention to keep that shrouded in 16:10  
21 secrecy, but the numbers of individuals across the  
22 organisation who would have had a touch point with an  
23 MHPS process was very limited. So, it just wasn't  
24 known.

25 272 Q. Another thing, you've referred to it in your 16:10  
26 observations at the end, is this business of what needs  
27 to be investigated under a formal MHPS process and what  
28 is just normal medical management, because we're  
29 talking about a doctor but it would be normal



1 management, really.

2  
3 what is your view on how medical managers in particular  
4 need to be upskilled to have the confidence to do this  
5 without being so fearful about sitting down and talking 16:11  
6 to colleagues about issues? what is the role of the HR  
7 Department in that, do you think?

8 A. I think we have a lot of work to do to support medical  
9 colleagues and particularly medical management  
10 colleagues. This isn't their natural go-to. They are 16:11  
11 generally undertaking medical management roles, they  
12 are very good clinicians but this is a different skill  
13 set. I suppose we provide a level of training but is  
14 it sufficient? Probably not. It's a skill that you  
15 develop over a period of time. Again, in a lot of our 16:11  
16 medical management roles, people come in for  
17 a particular period of time and then go back out again.  
18 So, developing that natural skill sometimes is  
19 challenging as well. Then some people veer towards it  
20 and others would like to stay really clear of it. 16:12

21  
22 what you have said there in terms of -- this should be  
23 par for the course. There should be no difficulty in  
24 sitting down and saying we have a problem, how are  
25 we going to solve it, how are we going to fix it, how 16:12  
26 are we going to get to the bottom of it? But for all  
27 manners of reasons that we know and we have heard here  
28 from the evidence, people shy away from that because it  
29 is difficult, it is your colleague, and in this

1 instance there was that perception of there's been  
2 complaints before so we'll not go there.  
3 Unfortunately, you know, as registrants we have to go  
4 there. There's a lot of support from HR required.  
5 273 Q. Clearly there's a big issue with HR resource if you 16:12  
6 were going to take all of this forward.

7  
8 when all of this started off and you were accepting the  
9 baton of taking on this support role, and you now look  
10 back and think maybe that wasn't that wise, were there 16:13  
11 any discussions at the time about the feasibility of  
12 getting additional an HR resource in for the duration  
13 of this investigation, because even from the start it  
14 wasn't going to be a simple one? Did anybody sit down  
15 and have that discussion? 16:13

16 A. I don't believe we did.

17 274 Q. Why do you think that was? Why do you think you  
18 accepted it and everyone else accepted it?

19 A. I think that's just what we've done. I think that's  
20 how we've worked for a period of time, is that we've 16:13  
21 just continued to accept and add to workloads that  
22 clearly are workloads that are not manageable. As  
23 I said earlier, reflecting on it and looking back on  
24 it, it feels foolish, but that is how we worked.

25 275 Q. Because we've talked about -- in several previous 16:13  
26 sessions we've talked about the need to support the  
27 subject.

28 A. Yes.

29 276 Q. Mr. O'Brien, and the fact that that needs more

1 attention going forward. You referred to that already.  
2 what you haven't mentioned is the impact that this has  
3 on the Human Resources Department itself, and the  
4 impact that the lengthy investigation would have on  
5 Urology and the rest of the Trust. Were those things 16:14  
6 considered at all, because this is very stressful for  
7 subjects and it is very stressful for everyone involved  
8 but it is all very stressful for the HR professional,  
9 in my view?

10 A. Absolutely. I suppose again I go back to the caseload 16:14  
11 that's sitting over here outside of MHPS, which is very  
12 voluminous as well. Again, all of those challenges  
13 exist.

14 277 Q. The question is did those discussions happen? Do you  
15 think there was a discussion, perhaps at board level, 16:14  
16 to say, actually, do we need to consider strategically  
17 the impact of all of this?

18 A. I don't believe that happened.

19 DR. SWART: Thank you.

20 CHAIR: Just one thing that I'm curious about. We know 16:15  
21 that the MHPS process is to be confidential, and good  
22 reasons for that, and I'm sure the same is true of most  
23 HR processes. But I just wondered about whether the  
24 requirement in this case for confidentiality, do you  
25 think that had any effect in terms of delay or in terms 16:15  
26 of who knew what, and in terms of the monitoring plan  
27 as to confining the number of people who knew about  
28 that?

29 A. I don't know that I know exactly but probably what

1 I would believe is I'm not sure it was as deliberately  
2 thought out like that in terms of we need to restrict  
3 these people. Certainly it's that difficulty - in  
4 particular if you take a case like Mr. O'Brien - so you  
5 have an individual who is being excluded, so they're 16:16  
6 going to disappear from the working environment. There  
7 is that anxiety in terms of who do we tell? what do  
8 we tell? How do we tell, and how do we balance the  
9 confidentiality of the practitioner in all of that?  
10 So, there probably was an element of that. But his 16:16  
11 colleagues knew, his colleagues were involved. The  
12 operational managers who were involved in Acute  
13 Services were aware. I don't know that it really  
14 contributed to delay that I can see.

15 278 Q. One of the things that Dr. Chada said yesterday, when 16:16  
16 she was being questioned by Mr. Wolfe in some detail  
17 about steps that were taken, and I suppose those of us  
18 who are lawyers will always look to process and ticking  
19 the boxes and making sure you go through the process  
20 one by one, but her view was MHPS was never designed to 16:17  
21 be that kind of forensic investigation. would  
22 you agree with that?

23 A. Yes, and some of the questions that Ms. McMahon had  
24 today as well in terms of the sequencing of that  
25 process as well. This is an internal employment 16:17  
26 matter; it isn't a very legal process. For me isn't  
27 designed -- it is not designed because if it is  
28 designed in that way, you'd have legally qualified  
29 people managing those processes, and you don't.

1 I don't believe it's designed in that way. Are  
2 we probably moving more towards it needing to be that?  
3 Possibly. That creates its own challenges as well  
4 because if we get to that stage of it needing to be  
5 that forensic and that process-driven type of  
6 arrangement you described there, then you're into the  
7 territory of needing legal advisers at each step of  
8 those internal employment matters.

16:18

9 CHAIR: which is likely to delay the whole process even  
10 further.

16:18

11  
12 One other sort of more general question. You talked  
13 about medical managers not being properly trained to  
14 deal with MHPS, for example. I just wondered what your  
15 view would be to a regional team of people and bringing  
16 people externally in whenever one of these issues  
17 arrive so it would take pressure off the Trust  
18 internally in terms of its resources. If you had, if  
19 I can use the term, a flying squad to come in.

16:18

20 A. Parachuted in. Yes, and I suppose we have chatted  
21 about that even in relation to the training of the Case  
22 Manager and the Case Investigator, training, and if  
23 that was regional training and if that was run more  
24 often. I think if you take investigators in who are  
25 unknown to the practitioner, it makes life a whole lot  
26 easier because you are asking people who are working  
27 alongside, in some instances, to investigate colleagues  
28 or investigate people that they know and have to work  
29 with. So, that's challenging within itself. They

16:19

16:19

1 don't build up an expertise, they do it so  
2 infrequently. So there is absolute benefit, I think,  
3 in terms of having a pool of people who build that  
4 expertise and go around and do those types of  
5 investigations.

16:19

6  
7 I can't see how else you would do it efficiently  
8 because internally within the Trust, the challenge is  
9 there's not enough of these cases for anybody to build  
10 expertise, and the capacity issues and the relationship  
11 issues and all of those things impact on that. So,  
12 taking somebody completely independently in, I think  
13 is -- yes.

16:20

14 CHAIR: Thank you very much. I'm glad to say that  
15 we've managed to get your evidence concluded in one  
16 day, which will not impact on our timetable as we head  
17 towards Easter. Thank you very much for your evidence,  
18 Mrs. Hynds.

16:20

19  
20 Tomorrow's witness is attending remotely. I understand  
21 that we may have a few technical issues to resolve in  
22 respect of that but hopefully we will get them resolved  
23 before tomorrow morning. We plan to sit at 10:00 but  
24 just in case there's any issue of it, I'm giving you  
25 fair warning.

16:20

26  
27 THE INQUIRY ADJOURNED TO 10:00 A.M. ON THURSDAY 23RD  
28 MARCH 2023

29