Urology Services Inquiry

Oral Hearing

Day 34 – Wednesday, 29th 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

INDEX

THE INQUIRY RESUMED ON WEDNESDAY, 29TH DAY OF MARCH, 2023 AS FOLLOWS:

Dr. Neta Chada continued to be examined by Mr. Wolfe as follows: 09:52

CHAIR: Morning, everyone. I see my colleagues on the screen. I feel a little less lonely today.

Welcome back, Dr. Chada. Mr. Wolfe.

MR. WOLFE KC: 10:02

1 Q. Good morning, Dr. Chada. This is a continuation of Dr. Chada's evidence from the 21st March 2023. Just a piece of housekeeping before we start into the substance, Dr. Chada. You have kindly, since your last visit, provided a further addendum statement to clarify 10:02 a number of matters. If we just have that up on the screen in the usual fashion. WIT-91939, the two-page addendum. Nothing terribly controversial about its content, I wouldn't have thought, clarifying a point about Mr. Young's position. He was Clinical Lead, not 10:03 Clinical Director.

Paragraph 3, you are clarifying, with greater precision perhaps, your knowledge of the circumstances in which Mr. O'Brien returned to work. Scrolling down to your 10:03 signature at the bottom of that page. Do you wish to adopt that addendum as part of your evidence?

A. Yes, I do.

2 Q. Thank you. Now, we finished on the last occasion by

looking at the circumstances leading up to the writing of your investigation report and we looked in particular at the circumstances that led to some delay, particularly in the period between your November interview of Mr. O'Brien and the April period when he wrote to you. Can we get up on the screen, please, Mr. O'Brien's e-mail to you of the 2nd April. It's TRU-284061. Thank you. 10:04

Now, you'll recall that, as I have said earlier, Mr. O'Brien was interviewed in November and he was provided with a draft statement for his comments by you or Mrs. Hynds at the start of March. This is him coming back to you with what he wished to put into the mix, if you like, for consideration by your investigation. So he is telling you that -- he is thanking you for the draft respondent statement, that's his statement; he has attached comments concerning both of his statements, the August statement and the November statement. He's also attaching comments relating to the statements of witnesses, and he is reminding you about various requests for notes that he has raised with you previously. 10:05 10:06

Now, I just want to take a look at what he's sending you with this e-mail. If we scroll down to the next page, please. These are his comments concerning the statement which had been prepared for him arising out of the 6th November interview. Do you remember 10:06

receiving this?

A. Yes.

3 Q. It goes on for a couple of pages providing comments on what should be included in his statement, and he is providing clarification. If we just scroll down through that, please, and go to the next document at 284065, three pages further down. This is his comments regarding his August statement. Again, a similar format, he is working through the draft August statement and providing clarification on a number of issues. Take, for example, if we go down the page to page 66 in this series. Just to the bottom of that page. If you hold it there. He is providing clarification, you can see in these bullet points, in relation to the precise numbers of undictated clinics which were outstanding, and we will come back to that point in a few minutes. Again, you can see the format. This is him clarifying what is his view of his statements and he is suggesting amendments. Is that how you interpreted this? 10:07 10:07 10:08 10:08

A. Yes.

4 Q. The third document that he sent through to you on the 2nd April - if we can go down a page to the next page - is his comments concerning witness statements. TRU-284067 runs through for another several pages. 10:09

Now, amongst that series of documents, I am going to ask you whether you included all of them as appendices to your report?

A. I believe they were included as appendices.

Q. And that was your intention?

A. Yes.

Q. If we just go to the report, TRU-00663. If we scroll down, Appendix 10 is Mr. O'Brien's comments on witness statements. If we could go to that, TRU-00738, what we find appended is the third in the series of documents which I have just taken you through of the 2nd April, and if we just scroll through that just to the end of it. Perhaps take it from me that the other two documents don't sit behind that on any version which the Inquiry is aware of, nor can we find among any of the other appendices relevant to Mr. O'Brien the other two documents to which I refer. 10:09 10:10

If we just go back to TRU-00663. At Appendix 10, just scrolling down, we have seen what lies at Appendix 10. Appendix 25 is Mr. O'Brien's statement of the 3rd August. Again, there was a document to clarify that statement; it doesn't sit behind that statement. Appendix 26 is his November statement; he provided his, as we have seen, clarification on that statement but that document isn't behind it. Then at Appendix 35, we can see that you've included Mr. O'Brien's response to the private patients concerned. 10:10 10:11 10:12

Could I ask you to help us with this: Can you say why the two documents I have referred to concerning the August and November statements weren't appended to this

report, so far as we can see?
A. Yes, I believed it was. Can you scroll up, please? Appendix 26, Respondent Statement Mr. O'Brien and Comments, I believed that that included Mr. O'Brien's comments in relation to those. I believed that. I mean, I saw his comments. I suppose one of the difficulties with this is that I saw his comments, I had asked them for them to be appended and I assumed that they were. I thought they were appended -- I thought they were added under Appendix 26, and then I knew there was a later one which included his response in relation to private patients, which he was particularly exercised about, but I believed that they were appended. 10:12 10:13
7 Q. Perhaps it's our fault and we have missed it. We will go back and check that. You certainly believe that they ought to have been appended and were appended? 10:13
A. It was certainly intended that they would be appended. In fact, I believe I wrote to Mr. O'Brien and said they would be appended. I said his comments would be included. 10:13
8 Q. I suppose one of the administrative or clerical issues around this report is that it doesn't write the appendix numbers on the report for whatever reason, so it's a little difficult to trace it through. But he will check that. 10:13
A. We didn't have any clerical support. I think I mentioned that to the Inquiry the last time.
9 Q. Yes. It's not too difficult to write Appendix 1 on the

top of a page.

Other matters, other materials that were sent to you by Mr. O'Brien, I think you would accept weren't included. If we go to TRU-00826, he explains that he provided 10:14
a folder in terms of the additionality of his work in terms of clinics that were over and above his requirements. We can find that additionality document at AOB-10653. If we just scroll down. So, Mr. O'Brien
obviously - if we can see the first page please - he 10:15
has set out in this document the additional work he was performing for elective surgery. You can see his job plan, 70 sections in 2013, and he actually performed 113. We can see the additionality with each of those years. 10:15

Also within this document he is explaining his commitments to the Urology MDT and MDM. He is putting this to you as a context for the work which he is doing and by way of explaining how there weren't enough hours 10:16
in the day to do the work, all of the work that was expected of him. Do you accept that this wasn't appended to your report?

A. Yes, it wasn't appended.

10 Q. And it wasn't otherwise referred to in your report? 10:16

A. Well, the document isn't referred to but the additionality of his work is referred to in the report.

11 Q. In what way?

A. In his respondent statement that I think we just

referred to there, Mr. O'Brien indicated that he was doing significant additionality in relation to his work, and was doing extra clinic -- extra theatre sessions.

12 Q. Yes. That was his statement where it's referred to? 10:16

A. Yes.

13 Q. Why didn't you append the evidence, this example of evidence provided by Mr. O'Brien to your report?

A. Because I think -- I felt that including it in the statement, that this was the mitigation that he was 10:17 putting forward, was sufficient. I didn't feel that it was -- I felt the point of mitigation that he was making was something that can be made to the Case Manager, it wasn't one of the Terms of Reference. Therefore, my view was it wasn't necessary for that to 10:17 be appended. There were, as far as I knew, lots of appendices as it was already, so I didn't feel that it was necessary.

14 Q. You are describing a conscious thought process to deliberately leave this out of -- 10:17

A. Yes. I didn't include it. I didn't feel it was necessary to include it.

15 Q. So, Mr. O'Brien is setting out mitigation for the alleged shortcomings in which he is working, and of all of the evidential pieces that you are provided and you 10:18 append to your report, you decide to leave this one out of account?

A. I think there were other pieces of evidence that Mr. O'Brien provided in relation to some of his private

patients, for example, that I just felt it wasn't necessary. It was included in his statement that he was doing a lot of additionality. I felt that doing additionality, whilst I understand why he did it, it was still my view that he had a responsibility to do the job that he was asked to do.

16 Q. Is there anything in your report that suggests that you took into account the content of this document?

A. I considered Mr. O'Brien was a very busy man who opted to do surgery rather than do his administration. The issue in relation to most of the Terms of Reference were in relation to the administration of his -- in relation to his work.

10:18

10:19

17 Q. You didn't consider it to be unfair not to include this evidence?

A. I did not.

10:19

18 Q. Appendix 12 was a paper he provided you with in November, I understand. If I can bring it up on the screen, AOB-01890. Scroll back up to the top of the document, please. It's an 11-page document. If we go to AOB-10671, apologies for that. AOB-10671. Scroll down through this document. He is providing here his account of the clinics for the patients that were left undictated. Again, you received this document?

A. Yes.

10:20

10:21

19 Q. And you didn't append it to your report?

A. The information in it was included in Mr. O'Brien's statement.

20 Q. Why didn't you provide this as an appendix to your

report?

A. Because I felt the information in it was included in Mr. O'Brien's appendix. Sorry, his statement; apologies.

21 Q. Did you, within your report, analyse the content of this document? 10:21

A. I considered the content of the document, yes.

22 Q. You don't think it fair to leave it out of account when attaching the evidence for consideration by the Case Manager? 10:22

A. No. I think the evidence that I gave to the Panel on the last occasion that I was here was that, to my mind, whether it was 41 undictated clinics or 26 undictated clinics really didn't matter. Whilst I appreciate that's an issue for Mr. O'Brien, we had already spent 10:22 a lot of time gathering information, we had employed a lot of resources in terms of administration staff and managers and doctors, and I really felt that given Mr. O'Brien was conceding that there were undictated clinics, the exact figures to my mind weren't the 10:22 issue.

23 Q. Would it not have been appropriate to draw out the fact that there was controversy around the precise number rather than, as we will see later this morning, making a finding in favour of the higher figure as opposed to 10:23 the lower figure?

A. There were 41 undictated clinics reported by Mr. O'Brien. The review found 66. To my mind, it didn't matter if there was 41 or 66 -- it wouldn't have

mattered if it was 41 patients or 66, anything more than a handful is unacceptable. Therefore, to my mind, the figures, I'm afraid, weren't that important.

24 Q. Now, in terms of the 2nd April e-mail that was sent in by Mr. O'Brien, it was the subject of a response from Mrs. Hynds on the 10th June. We will just look at her response, it's at AOB-03961. Just scroll down, please. Thank you. He is writing again to her because he hasn't had a response to the 2nd April e-mail. If we scroll up to see her response, she apologises for not responding and she says: 10:23 10:24

"Your e-mail is a response to a number of e-mails that" she had sent requesting his comments.

10:25

She makes the point that despite a number of e-mails to him which notified him of the fact that the report was being finalised, he hadn't responded to her requests within any of the time scales. She says as a result the case investigator proceeded to write the investigation report 10:25

"... as I received your comments after I had notified you of the drafting report. Rather than delay any further, your comments have been appended in full to the final report for the Case Manager to consider. This was done in the interests of moving the matter forward as I have been requesting your comments as far back as November. The Case Investigator report is 10:25

completed and a meeting is being held with the Case Manager this week. It will be for the Case Manager to share the report with you for comments and factual accuracy once he has time to consider it".

Does that e-mail reflect the position that, although these documents came in to you on 2nd April, they were simply appended or you intended to have them appended, and they weren't taken into account?

A. Well, I read them but I didn't include them in the report. I appended them as I felt -- well, I had thought they were appended, and that's what was certainly intended. My view was the Case Manager would then have the opportunity to read my report and read Mr. O'Brien's comments as well. 10:26

25 Q. He put his comments in on the 2nd April.

A. Mm-hmm.

26 Q. It says here that the report is completed; it's the 10th June. In fact, it wasn't completed, as we can see, until the 12th June, which is more than two months after Mr. O'Brien had put all of this information on paper for you, which was three weeks after he had received his receipt from you, his draft November statement. So, in the ten or so weeks that followed prior to the completion of the report, why couldn't you have taken into account more fully, rather than simply read, his submissions? 10:27

A. I had indicated that the information that was being gathered for the investigation would be closed at

a certain point. That point was moved for a variety of reasons. I really felt that anything that was provided beyond a certain date would not be included.
Mr. O'Brien was told that. I did, however, say that anything that was sent beyond that time would be appended, and that was my intention. I read the comments that Mr. O'Brien had and, as I say, I felt that -- I felt the Case Manager could consider all of the information in the manner that applied. I didn't feel that we could continue just shifting timeframes. 10:28
As I think I mentioned to the Panel the last time, we had very busy jobs. This was an Inquiry, not an adversarial process or a cross-examination; we were trying to gather information. Mr. O'Brien was anxious about the time it was taking and I really felt I'm going to have a draw a line under it somewhere, so I did. 10:28

27 Q. You realise he did reply to this on the 2nd April, which was three, perhaps three-and-a-half/four weeks after you had sent him his November statement? 10:29

A. Yes.

28 Q. Which was more than three months after you had interviewed him?

A. Yes.

29 Q. You do realise that you allowed some witnesses up to six months before they signed off on their statements? 10:29

A. Time was passing by. As it turns out, Mr. O'Brien in fact had that on transcript, so I really felt we had to push on.

30 Q. Yes. In terms of the drafting of the report, was it Mrs. Hynds who did the drafting primarily and forwarded it to you for approval?

A. Oh no. Mrs. Hynds and I would have had meetings and lengthy conversations; she would have taken notes about what we wanted to put in and how I wanted it set out. Mrs. Hynds used a sort of format that she had used formal previously so we used sort of a template, if you like, and the information was set into that. 10:30

Mrs. Hynds certainly would have set in the information and would have put together, for example, the list of appendices and would have put in the order. The information that went into the report would have been from me apart from, as I say, the information gathered from audit or... the numbers of notes and things like that, that information that Mrs. Hynds had received, she would have said, look, I've got this information and I would have said yes, will you set that in and we'll put that through Terms of Reference 3 or whatever. So, in fact -- 10:30 10:30 10:31

31 Q. Just so we can understand how that worked, if we could go to TRU-20474. She's writing to you on the 23rd May and she is saying:

"I am unfortunately still not complete with this. There is some investigation findings and conclusions which need to be finished. However, could you make a start with this version and let me know what you're happy with and not happy with. Anything you want to 10:31

change or amend, please feel free", and you can see the rest of that.

Am I right in saying that she drafts and over a period of time brings versions of it to you for your approval? 10:32

A. Yes. So we would have a meeting either face-to-face or by phone and we would discuss what I would like in the report. She will do, as I have indicated and I am sorry to harp on about this, but Mrs. Hynds was typing this; I didn't have secretarial support to assist with 10:32 this. So Mrs. Hynds would take notes and then she would type it up. We sort of -- once I felt that we got a certain amount that could be set into a report, I said look, go ahead with that. So she sent it to me and said this is as far as I got, if you want to make 10:32 further changes or whatever, go on ahead. Then it went back and forth a bit probably beyond that.

This is probably the original sort of version after the discussion that we'd had about how things needed to be 10:33 set into it.

32 Q. Yes, and the Inquiry has within its bundle various iterations of it.

A. Different versions, I am sure.

33 Q. Leading up to the 12th June when you draft -- I think 10:33 your final act was to draft a piece in relation to Mr. O'Brien's insight, or lack of insight as you have it in the report, and we will maybe look at that later this morning.

Let's turn to the report proper. We can see it at TRU-00661. Obviously it runs to 43 pages with 36 appendices. I suppose in the interests of time and hopefully not creating any unfairness, I am going to assume the report is as read. If we need to go back to any of your findings as I ask questions, we can do so. Hopefully that is an approach you are comfortable with.

On the triage issue, if we can think about that, I suppose the headlines, Dr. Chada, are that you found that Mr. O'Brien only triaged red flag referrals, he didn't triage urgent or routine referrals. Isn't that right? 10:33 10:34

A. That's what Mr. O'Brien told me. 10:34

34 Q. Yes. You noted that a number of personnel within the Trust were aware of the triage failures over a number of years, and a default process had been introduced?

A. Yes.

35 Q. In statistical terms, again the information provided to you was that there were 783 un-triaged referrals which were discovered upon investigation; isn't that right? 10:35

A. I don't know the exact figure off the top of my head, I apologise. Whatever was in the report is what I was told. 10:35

36 Q. That is information that was provided for you and I think, as we established the last time, you were dependent on what was provided to you, you didn't have opportunity or resource to confirm one way or the other

the veracity of that?

A. Well, I would like to have had the opportunity. I certainly didn't have the resource, so I didn't.

37 Q. You have said in your report - if you can bring up TRU-00693 - that Mr. O'Brien didn't actually make it clear that he wasn't doing triage but you make the point that as an experienced consultant, it was his responsibility to make it clear to his managers that he wasn't doing it and that assistance was required. Now, isn't it the case that management, although they were telling you they weren't aware of the extent of the problem and although Mr. O'Brien hadn't made it clear that he wasn't doing it, that the reality was management ought to have known the extent of it and had opportunity to grasp the extent of it had they asked the appropriate questions? 10:36 10:37 10:37

A. It was my impression that once the default system kicked in, that actually made it very difficult to know, because the default system automatically put things onto the waiting list at the time that the GP had -- at the level that the GP had indicated in terms of whether it was routine or whether it was not routine, and then the red flags were being triaged. So, my impression of what I was being told was that there wasn't then a clear way of knowing the extent of the problem beyond that because of the default system that had been set into place. 10:38 10:38

38 Q. Just help us with that. As the Inquiry understands the system, in the main, referral letters come through the

centre and go out to the Consultant of the Week. There is opportunity, is there not, to count them in and count them out? In other words, if 100 triage go out from the centre and only 50 come back, then they should? 10:39

A. Yeah. Well, I don't -- I really can't understand -- I really can't answer that because I'm not sure. I mean, I suppose Mr. O'Brien indicated, and I think some of the other consultants indicated, that occasionally there would have been referrals directly to 10:39 a consultant. Certainly that would have happened with Mr. O'Brien, he was a well-known consultant in the area and a very senior consultant, so he would have received some referrals directly that had his name on them. The rest of them went through booking and triage. I'm not 10:40 quite sure of the system, about whether they scan them on and send on paper copies or whatever, so I'm not sure. I imagine that you're going to speak to people who do this and they will probably be in a better position to answer that question. As I say, my 10:40 understanding from the people I spoke to was that once the default system kicked into place, these triage -- these referrals were all coming back through the default system and therefore they were receiving them all again, if you see what I mean? That's what 10:40 I understood was happening.

39 Q. Yes. If we go to this. Just scroll down, if I can find the quote. Scroll down further. Yes, you say at the top of the page that:

"It would appear..."

Into the second paragraph:

"It would appear that when this letter was issued" – this is the March letter of 2016 – "the extent of the issues of concern had not been assessed. Most witnesses described an awareness of the concern, described shock at the actual extent of un-triaged referrals discovered in December '16." 10:41 10:41

You describe this as a missed opportunity by managers to fully review and understand the extent of the issues. So that was, I assume, a critical noise directed towards management? 10:42

A. Yes.

40 Q. What would you have expected of them at that time?

A. I would have expected that once they realised the extent of the issue, once they realised that it was a significant issue, that they should have done more to go and trace these and to find out what they were and what was happening to them. 10:42

41 Q. Did you get any sense from the witnesses you spoke to – you spoke to, for example, Anita Carroll, Catherine Robinson, about the triage problem. They were obviously operational management. Did you get a sense that they appreciated the jeopardy patients were being placed in by the failure to triage? 10:42

A. I did not get a sense that they were aware of the potential implications. As I have indicated, red flags were being triaged, but I think they felt that it was an administrative process that Mr. O'Brien didn't engage in.

42 Q. Did you get a sense that anyone on the medical side fully appreciated the potential harm that derives from a failure to triage?

A. A number of the doctors that I spoke to agreed with Mr. O'Brien that triage is not something that should be carried out by a consultant. Nonetheless, I think certainly -- certainly I think two of them said if it's supposed to be done by us and people expect it's to be done by us, then that raises concerns and issues if it's then not completed.

43 Q. Two of the operational managers, as I say, Robinson and Carroll, drew your attention to the introduction of the default system at some date. It doesn't appear to have been very clearly specified but some date in 2015. Did you get a sense that the introduction of the default arrangement by which the referral, if left un-triaged, went on the waiting list in accordance with the general practitioner or the referrer's designation, did you get a sense that they thought or they considered that this was a cure for the failure to triage or that this took care of the problem?

A. I think it was described to me as a safety net. I thought from the information they were telling me, that was probably an apt description, that it was done

quite quickly. If the triage wasn't completed within a certain number of - I think it was only two weeks or something - then it automatically went on at the point where the referral was received and at the GP's level of urgency, so they called it a safety net.

44 Q. So they recognised that it was a plaster rather than a fix?

A. Yes.

45 Q. The cases that were identified for you as being of particular concern because in circumstances where there had been a failure to triage, the patients were subsequently to be diagnosed with cancer, can we just look at those? TRU-00677, just four pages down and at the bottom of the page, please. We can see that the first patient is what the Inquiry knows to be the index case. I think it's Patient 10 on the designation list. The point that I suppose I wish to make to you is if you look at the column second from left, we can see that the letter of referral received into the Trust was various dates after the March '16 letter. So, the March '16 letter to Mr. O'Brien, as you know, highlighted a problem with his triage, amongst other things, and invited him to provide a plan to address this. As you know, that went unheeded and there was no management intervention during the remainder of that year.

As we considered the last time, your report, notwithstanding your term of reference 5, didn't look

at the failures of management to grapple with these issues in late 2016, and you have explained that your thinking was that was already the start of the MHPS process; isn't that right?

A. Yes.

46 Q. Did it dawn on you as you analysed this that these cases of non-triage leading to patients who were to suffer cancer, did it dawn on you that management, if they had more forcefully grappled with the triage issue, might have prevented this? 10:49

A. I indicated in my -- I think the findings of the report were that management knew about this at an earlier stage and should have done something about it, that they missed opportunities. So, yes.

47 Q. The second issue that you dealt with in your terms of reference was the storage of notes by Mr. O'Brien at his home. Again, I am going to assume that we are all familiar with your conclusions around that. You found that it was well-known that he often retained patient notes at home, and you pointed out in your findings that the Trust had not developed a system for tracking patient notes to practitioners so that, unless they interrogated the system in a manual way, perhaps, they weren't readily able to appreciate that a particular practitioner had gathered so many notes. Is that what emerged before you? 10:50 10:51

A. Yes. I think I was told that notes are tracked to a particular consultant but that doesn't mean that they are in a consultant's house; that means that they are

tracked to that consultant and the assumption is that they are in that consultant's office or his secretary's office; in his possession in the hospital, I suppose, or at a clinic. I think the issue about the numbers -- I think I was told that there might have been a programme that could have been run that could have given you the numbers that were tracked to one particular consultant but they didn't have access to that. I think the Medical Records Manager told me that, so that they had no way of knowing that there was, for example, 700 or 400 or 300, whatever the number Mr. O'Brien has, were tracked to a specific individual. That was my understanding. 10:51 10:52

48 Q. Again, this was an issue that was raised with him in March and you are concerned in your report that they - that is management - didn't appear to take any steps to assess the scale of the problem? 10:52

A. Yes.

49 Q. Around these issues, and it's a bit of a theme through aspects of Mr. O'Brien's shortcoming, there's an appreciation from management that there's something of a problem, but I suppose the refrain that you pick up on and is punctuated through your report is a limited appreciation of the extent of the issue. It's almost we knew there was an issue but, shock, horror, was it really that bad? 10:53 10:53

While we talk about missed opportunities in your report, what were you thinking - even if it's not in

your report - what were you thinking about the state of management in terms of the regulation of Mr. O'Brien's practice? Be in a position to know the extent of it?

A. I thought that the management struggled to manage Mr. O'Brien. I thought a lot of that had to do with the type of person that Mr. O'Brien was, his seniority; there were a number of factors. But I thought managers struggle to manage him and I formed the impression that they were afraid of him.

10:54

50 Q. That is perhaps an odd thing to say for us looking into this. Did you get any sense of why they were afraid of him?

10:54

A. Well, I think some of this information, I'm sure, is in the report but the impression that I got was that they had attempted to -- they had attempted to manage Mr. O'Brien in the past, had not been successful in doing so. Rightly or wrongly or whether it's urban myth, I'm not sure, but the information that I was being given was that they felt that Mr. O'Brien would complain or would go down a legal route or wouldn't pay a blind bit of attention anyway. So, I got the impression that -- that was my impression, and certainly I appreciate you are going to speak to these witnesses, but my impression was that they felt unable to manage him and they felt restricted in their attempts to manage him because of how he might react to that.

10:55

10:55

10:55

51 Q. Had you concerns about the quality of management and the systems at the disposal of managers to enable them

to effectively manage?

A. I think the systems were definitely deficient. The fact that you couldn't interrogate a system or that we didn't have the software, whatever it was, to interrogate the system and get correct numbers or accurate numbers, I think, says there's something wrong with the system. I think over time other systems had developed. I think, for example, I mentioned last time to the Panel that Mr. O'Brien's secretary said look, I knew he wasn't doing the dictation but I thought everybody knew, so I think part of the issue was what people knew. 10:56 10:56

I felt some of the change in management that happened, there was a sort of restructuring of the Trust in 2014, I'm going to say, something like that, so people moved, and I think part of that probably didn't help because I think having that sort of corporate memory, if you like, is probably helpful. I think the systems certainly didn't help. I think the managers didn't manage the situation well, but it was my impression that they didn't manage it well because they felt restricted or -- restricted in doing so. 10:57 10:57

52 Q. I suppose one micro aspect of the system relating to patient notes is a cause for scrutiny in the sense that the information that came out at the start of this process was that Mr. O'Brien was responsible for all of these notes, and then he challenged that in respect of 13 sets of notes; the system was saying you have them, 10:57

he was saying I don't.

A. Mm-hmm.

53 Q. Ultimately, as we can see at TRU-00704 - if we just have that up, please - you have said, middle paragraph, you've said there were 13 case notes missing but the Review Team is satisfied with Mr. O'Brien's account that he doesn't have these. 10:58

A small point, perhaps, but this was never bottomed out, to the best of your knowledge; is that right? In other words, no one was able to provide you with an account of where these notes have gone to, save to say there was satisfaction that Mr. O'Brien, to whom fingers had been pointed, did not have them? 10:59

A. Yes. No. 10:59

54 Q. The disappearance of notes in the grand scheme of things is maybe not the most important aspect of this whole saga but important, nevertheless, that patient notes have been lost. That wasn't the subject of any adverse comment from you in your report, but do you agree with me that it is a matter of significance that a Trust has apparently mislaid 13 sets of notes? 10:59

A. I think it's significant and I think the Trust deals with tens of thousands of sets of notes every year. I wasn't advised -- I mean, I was told that they were satisfied that Mr. O'Brien didn't have this 13-set, at least 13 notes. I mean, I didn't get feedback on whether the sets of notes had been tracked down elsewhere; they were tracked out to Mr. O'Brien and he 11:00

didn't have them and they accepted that. So I don't know if these notes are still missing, I didn't inquire about that.

55 Q. We have looked, at various points, at the issue of undictated clinics and we don't need to go over old ground. The information put into the mix by Mr. O'Brien challenged what you were being told about the extent of his shortcoming around dictation; do you agree with that? 11:01

A. Yes. 11:01

56 Q. Your view, as articulated several times before the Inquiry, is it doesn't matter whether it's a hundred or 500, for the purposes of your report you were focused on identifying the problem and not necessarily a scale or not necessarily its precise scale? 11:02

A. Yes.

57 Q. Your terms of reference in respect of undictated notes asked you for a finding on whether there was unreasonable delay in dictation and, secondly, whether clinical management plans were delayed. You've described the impact as affecting communication with general practitioners and that the waiting list for the Trust was not an accurate reflection of the true waits. Was there a difficulty in obtaining evidence in respect of whether clinical management plans were adversely affected? 11:02 11:03

A. Mr. O'Brien advised me that they weren't affected because he would have arranged investigations. So, even if he didn't dictate on a letter, he would have

had the investigation arranged; the person would have been added to the waiting list at the time that they would have been added to the waiting list. And the waiting list -- I mean, a number of people, I think everybody, indicated the waiting list was so lengthy that, you know, by the time that process went past people waiting on the waiting list, that that had an impact as well. So, I felt it was difficult to draw a firm conclusion on that because I accepted Mr. O'Brien's account that the investigations had been carried out even if the letter hadn't been dictated. 11:03 11:03

58 Q. The issue of private patients is one which, in terms of your dealings with Mr. O'Brien, you would have appreciated was causing him great upset; is that fair?

A. Yes. 11:04

59 Q. And he didn't for one minute accept the proposition that he was giving unfair advantage to patients who he had seen privately; isn't that right?

A. Yes.

60 Q. He made the point to you that, in terms of how this issue arose, it started for him with an allegation conveyed to him when he met Mr. Weir on the 24th January 2017, it started with an allegation that it was nine TURP patients who had been unfairly advantaged. I just want, for the Inquiry's purposes, to trace that through for a moment and seek your comments. If we go to the record for the Oversight Group meeting that took place on the 10th January 2017. If we pull up TRU-257703 and just scrolling down. We have on this 11:04 11:05

list, I count eight, eight patients - or eight clinical episodes because I think there might be a duplication or a double encounter, if you like, with a particular patient - but there's eight episodes described here. The patient care number has been redacted but we understand that they are all TURP patients. The information supplied to you then, and which Mr. O'Brien was invited to address, is set out in a list within your report. It's at TRU-00680. If we go to the bottom of the page, please. You set out in a table, here the patient numbers aren't redacted. If you go over the page, please. So, 11 patients set out there. On the Inquiry's analysis, only one of the patients who was initially the subject of concern back in 2017, in that earlier table, forms part of this list of formerly private patients which is causing the Trust concern. Do you understand or do you have an appreciation of how the attention on private patients moved from TURP patients, eight TURP patients, to a set of different patients, with the exception of one, and amongst those eleven different patients, a different raft of treatments, not just TURP. How did that develop, do you know?

11:06 11:07 11:07 11:08 11:08

A. I don't know. The term of reference that I was provided with as a case investigator was to investigate whether private patients had been advantaged. There was no mention of TURP patients specifically, it was private patients generally. So, I understood from Mr. O'Brien, because he was very exercised about this,

that it had moved from consideration of TURP patients to a wider review of private patients. I don't know who made that decision or why it was made.

61 Q. Who did you understand was, if you like, leading the charge in carrying out background research into the private patient issue and bringing up to the surface cases which were thought to be of concern? 11:09

A. I don't have a clear answer to that. I thought the screening that had been carried out, and the Oversight Committee were the people who had set the terms of reference, that having done the screening, the Oversight Committee, I believed that they were the people that were initiating what information would be required by the Case Investigator to assess this, or to assess those terms of reference against. 11:10 11:10

62 Q. We have looked obviously at the witness statements that you gathered. I think you would accept that none of the witness statements provide any commentary on the 11 patients set out here; isn't that right?

A. Yes. 11:10

63 Q. We derive from that that although - and we know it to be Mr. Young because we looked at this on the last occasion - Mr. Young was asked by the Head of Service, that is Martina Corrigan, to provide comments around these 11 patients, and we have this as the product of that work, but at no point did you speak to Mr. Young or Mrs. Corrigan about the analysis that was produced? 11:11

A. No.

64 Q. You were dependent upon what they provided you with and

you didn't have the qualification or the expertise to second-guess what Mr. Young was producing for you?

A. Yes.

65 Q. As I have said, you didn't speak to him to challenge or query in any way what had been produced? 11:12

A. No.

66 Q. We can see that Mr. O'Brien provided a number of pieces of analyses. Let me take you to some of that. If we go to TRU-01090. He takes TURP patients because that's where the problem, as reported to him, was said to have 11:13 started, and he works through, as appears from this document, the patients he saw for TURP purposes during 2016. As you can see in brackets, for example with the first patient, he annotates his document with the legend that that patient attended privately. This ends 11:13 up -- if we just scroll down through it, it sets out the waiting times, et cetera. Just on this page, if we can have the page up in full. So, he performs a comparative analysis, comparing those who have been treated at one time privately and comparing them with 11:14 the full list of patients who he had never seen privately. You can see the resulting figures, that for private patients the mean time on the waiting list was 202 days, and across a bigger list of patients, 37, the mean time on the waiting list is 219 days. Did you 11:15 consider this analysis?

A. I believe so. I'm sorry, I can't recall but I believe so.

67 Q. He provided, in addition to this, a patient narrative.

If we just glance at that, TRU-01093. We don't need to scroll down through it, but you may be familiar with this document, that he provides his own account of not only differing timeframes compared to what Mr. Young assessed but he also provided clinical justification for why he saw patients, these patients, at the time he did.

A very straightforward question: Given the sensitivity with which Mr. O'Brien self-evidently regarded this allegation - he saw it as an attack on his reputation - why did you not take the step of asking Mr. Young to confront this information, and why did you not provide any challenge to what Mr. Young had reported through Mrs. Corrigan to you? 11:16 11:17

A. I am not sure I understand the first part of the question. Mr. Young --

68 Q. The first part of the question is that this was an extremely sensitive area for Mr. O'Brien. If I can boil the question down: You have evidence challenging Mr. Young's analysis; you have never spoken to Mr. Young about this issue; you had interviewed him previously and there's a statement saying he knew nothing about there being a private patient issue and subsequently he does this analysis for Mrs. Corrigan. 11:17 11:18 You have been provided with this analysis, you have been provided with a challenge to that. The next step should have been to speak to Mr. Young to query or challenge him in respect of his analysis to see

whether, in fact, it was a fair analysis?

A. I think one of the issues that Mr. Young raised in his analysis was there was at times difficulty knowing when patients were being added to the waiting list. You know, I think Mr. Young accepted that. I think that was an issue with the way Mr. O'Brien did things. Mr. Young was asked to comment, as far as I'm aware, on the information that he had from the notes and records, and from when somebody was added to a waiting list and when they had surgery. I didn't ask Mr. Young anything further about that. In the report, I included Mr. O'Brien's explanation for why he did things at various times. I read the explanation. It was my view, having read some of Mr. O'Brien's explanations, that that they didn't fully -- from a non-urology point of view, I found it difficult to accept some of his explanations. 11:19 11:19 11:19

69 Q. But isn't that the very point, you are not a urologist. I suppose the key witness for the prosecution in this is Mr. Young. He is providing an account, albeit, if you forgive the impression, on the back of a postage stamp. He is providing you with a series of post-its and then we understand Mrs. Corrigan reduces that to a table, a very simple table. Is it not incumbent upon you, in the interests of fairness, to draw the competing analysis provided by Mr. O'Brien to Mr. Young to enable you to better understand where the truth lies? 11:20 11:20

A. I put both into the Case Investigator report and

provided it to the Case Manager. I would say that whilst I'm not a urologist, some of the explanations were definitely in my field. Some of the explanations were psychological reasons or psychosocial reasons. So, I did review this, I did look at it, and -- 11:21

70 Q. Your conclusion, just to assist you, is set out at the top of TRU-00702. You have explained:

"I am not persuaded by justifications provided by Mr. O'Brien for why the nine private patients 11:21 highlighted above were seen in the timeframes outlined. Having concluded these patients seen privately by Mr. O'Brien were scheduled for surgeries earlier than their clinical need dictated, these patients were advantaged over HSC patients with the same clinical 11:21 priority."

And I would underscore you have used the words "clinical" and "clinical priority". As appears from this, you have accepted Mr. Young's evidence over 11:22 Mr. O'Brien's in circumstances where you don't even have so much as a statement from Mr. Young, all you have is the quite bare analysis. Is that not fair?

A. I accepted Mr. Young's analysis, yes.

71 Q. Upon reflection, do you think you went about this 11:22 aspect of your terms of reference in the right way?

A. I think, on reflection, speaking to Mr. Young about his findings would have been preferable.

72 Q. If we could turn then to the fifth aspect of your terms

of reference, and that was to determine to what extent any of the four matters were known to line managers within the Trust prior to December 2016, and if so, to determine what actions were taken to manage the concerns. 11:23

As regards triage and the scale of the case notes retained by Mr. O'Brien at home, broadly you tell us in the report that they were aware of the issues but the scale wasn't known to them. Is that fair? 11:23

A. Yes. Yes.

73 Q. I think already this morning you've provided some explanation of your understanding of that, that you drew the conclusion, perhaps, that management found it difficult to manage Mr. O'Brien; the systems perhaps 11:24 weren't as helpful as they might have been to enable managers to keep a closer eye on this. You have talked about missed opportunities for management around some of these issues. In blunt terms, management could have done a lot better a lot earlier around triage and 11:24 around the retention of patient notes at home; is that fair?

A. Yes.

74 Q. While there may well have been difficulties in managing, did you detect in what you were being told 11:25 a failure to adequately challenge Mr. O'Brien and/or a failure to provide him with adequate support at an earlier stage, perhaps several years earlier, based on what you were being told?

A. I think there were -- I understood from the witnesses I spoke to that there were attempts to address some of the issues that had been raised and that, for a variety of reasons, those attempts had been unsuccessful and I think that had made it difficult then for the next person that came along. I think there were attempts and I think that they weren't successful. I think it's my view that there might have been some difficulty in non-medical managers managing medical staff, so I think that was one of the sort of pressures or difficulties that arose. That was my impression from the witnesses, that some of the non-medical managers felt that this is an issue that was more appropriately addressed by medical colleagues or medical managers. I think that was an issue for them. Again, that's my impression from what I was told. 11:26 11:26 11:27

75 Q. Notwithstanding the terms of reference at number 5 which asks you to look at what management knew and what was done, you don't provide a specific timeline or a specific identification of the management concerned who were perhaps less than effective in the steps that they took. You don't descend into finer detail, perhaps, to describe a missed opportunity on the part of management. Did you see it as your role with regard to term of reference 5 to go deeper, to name management, to point to the kinds of specific steps that they ought to have taken? Or did you, in the alternative, see your role as simply point out in more general terms that there was a problem here of missed 11:27 11:28

opportunity?

A. I didn't feel it was my role to address specific areas of deficits in terms of managers, either medical or non-medical. I felt the term of reference was to address were there opportunities and could things have been managed better. I felt it was somebody else's role, once they got my report to consider, whether these things needed to be looked at more carefully, or in more detail. This was a complex and lengthy investigation as it was, and I really felt that I was looking at this in a more general way. 11:28 11:29

76 Q. Hm. Clearly Dr. Khan thought there was a job of work to do in following this up, and we will maybe have an opportunity to look at his determination before the end this morning. But standing back from this in terms of management behaviours around this and the general shortcomings that you described, did you also think that there was really a need to get into the deep grass around this, from the Trust's perspective, to better understand what had gone wrong here over a period of years? 11:29 11:30

A. I expected that the outcome on receiving the investigation report was that there would be consideration of what needed to follow beyond it. I thought those were, to my mind, two separate things. One was in relation to Mr. O'Brien and the administration issues, and one was in relation to the management issues. So, I expected that something would, if you like, fall out of this in terms of having 11:30

read the report.

77 Q. Can I ask you, if you could just turn to the next page of your report. Scroll down to 703. Scroll up a little so we can see it better. You have said:

11:31

"Senior managers appear not to have known about the undictated letters. Reliance on the medical secretary to flag dictation has not been done is not appropriate or sufficient. This is now appropriately addressed through digital dictation. Likewise, senior managers also appear not to have known that private patients may have been scheduled with greater priority or sooner outside their own clinical priority in '15 and '16".

11:31

If I just look at those two conclusions with you. Private patients; if we could go to Mr. Haynes' statement to you. If we could bring up TRU-00787 and scroll down to paragraph 26. He told you that in terms of Mr. O'Brien's private patients:

11:31

11:32

"It seemed to me that private patients appeared not to wait very long. I was aware of patients seen privately who then had their operation out with the time scale for the same problem for an NHS patient. I raised this in an e-mail in June 2015 and also December 2015 to Michael Young and Martina Corrigan. It was an irritation for me that I had patients waiting much longer for the same problem. His waiting times seemed out of keeping with everyone else's. I believe

11:32

Mr. Young spoke to him about it. It is difficult to challenge a view and opinion with Mr. O'Brien".

If we could just look at the e-mails that Mr. Haynes referred to. If we go to TRU-274504 and if we scroll down, please. So, Mr. Haynes has referred in his statement to a May e-mail - and this is it - his May e-mail to Mr. Young. He obviously appreciated that Mr. Young was Clinical Lead and therefore had a managerial role within Urology Service. Without going through all of the e-mail, he says that he is: 11:33 11:34

"Feeling increasingly uncomfortable discussing the urgent waiting list problem while we turn to a blind eye to a colleague listing patients for surgery out of date order, usually having been reviewed in a Saturday non-NHS clinic." 11:34

Then scrolling up the page. On up the page, please. Thank you. Mr. Young says: 11:34

"Point taken. Agree. Play a straight honest game. We are best placed to finding out this but at risk if above comments are not taken on board. Management not playing straight either by resetting patients' prop". 11:35

He says "Discussion required".

We can go to the later e-mail as well but I don't think

it's necessary. If we can look at what Mr. Young told you. If we go to TRU-00756, and at paragraph -- he says:

"In respect of TOR 4, I am aware that Mr. O'Brien has private consultations at home. He doesn't see private patients in the hospital at all to my knowledge. I know this through conversations with Mr. O'Brien". 11:35

Then in paragraph 34: 11:36

"I can't comment on the placement of private patients in the NHS queue. I don't track Mr. O'Brien's patients. Any concern I heard about private patients were just hearsay", et cetera. 11:36

In terms of the conclusion that you reached that senior management appear not to have known about the private patients issue, that conclusion, would you accept, doesn't sit well with the evidence that you received? 11:36

A. When I wrote that conclusion, I considered what was known, and I think that was -- I have read that conclusion a number of times in preparation for this and reflecting on what the thinking process was at the time. I think the thinking process at the time was 11:37 actually exactly what Mr. Young has said in that, that there was a lot of mention of this. When it was raised with Mr. O'Brien, he had a rational explanation. So when Mr. O'Brien had been challenged in the past about

private patients, he said oh no, but yes, that is a private patient and they only look as if they have been there for that long but that's because actually I saw them a long time ago and I have added them to...

11:37

Because he managed his own theatre lists, that made it very difficult to challenge when people were put on and how long they had been waiting. I thought, in fairness, whilst there was hearsay and discussion about it, I wasn't convinced that anybody actually knew if it was a valid or a reasonable conclusion to come to. That was why I thought that -- that was why - I think Mr. Haynes mentioned it in his witness statement - I spoke to Mrs. Trouton. Mrs. Trouton, I think like Mr. Young, said, look, when it was raised -- I believe it was Mrs. Trouton said when it was raised, there was a rational explanation forthcoming. I think that was why I thought, on balance, I didn't feel that it was -- you know, it had been raised with him. I didn't feel that it had been clearly identified that this was a definite issue.

11:37

11:38

11:38

78 Q. You didn't have Mr. Haynes' e-mails to Mr. Young?

A. I did not.

79 Q. You didn't gather them, you didn't ask for them to be provided?

11:39

A. No.

80 Q. Mr. Haynes was obviously a senior clinician within Urology Services, thinking, on two occasions, that this is a serious issue that he needs to draw to the

attention of the Clinical Lead. He tells you, through the investigation process that you lead on, that that's what he did. You didn't see fit to draw his evidence to Mr. Young's attention to say, listen, you've put this down to mere hearsay but, in fact, a senior clinician from your team is able to demonstrate to me that management in the form of you, Mr. Young, did know about this issue and appear not to have provided an effective challenge. 11:39

A. I'm sorry, I'm not sure if there's a question. 11:40

81 Q. The question is why not bottom this out with Mr. Young? Mr. Young is telling you hearsay. In fact, what he received was far from hearsay. He is receiving a formal expression of concern on two occasions from a senior clinician in his team and he is able to pass this off to you as mere hearsay because he wasn't challenged? 11:40

A. Mr. Haynes, in his statement, also said to me that Mr. O'Brien's patients were added to the waiting lists or theatre lists haphazardly and in a way that was only known to Mr. O'Brien. Given that and given a statement from Mrs. Trouton - I think it was Mrs. Trouton, I am not sure if it was Mrs. Trouton or Mrs. Corrigan - that Mr. O'Brien had been challenged about these and had an explanation for them, my view was it was certainly suspected but, actually, I don't know that it was known. Now, that might be because nobody could work out when people were being added to Mr. O'Brien's waiting lists, and I fully accept that. But the fact 11:41

is it was my view that it was certainly suspected and had been suspected for some time but that it wasn't actually known, and that was why I drew that conclusion.

11:41

Having said that, the report itself, my conclusions were that when the information was interrogated, I felt that there was an issue to answer, and we have already discussed that.

82 Q. Isn't that the very point? You were convinced, you tell us, by Mr. Young's analysis performed in 2017, yet, two years earlier, armed with the e-mails that Mr. Haynes sent through, it appears that although he had knowledge as a senior manager, he didn't perform any analysis, and yet you have managed to find your way to conclude that senior managers appear not to have known if private patients were an issue. 11:42 11:42

Is this again, Dr. Chada, a failure on your part to follow this issue through to a proper conclusion and, in doing so, appearing to reach a conclusion that really wasn't consistent with the evidence that you received? 11:43

A. I think, as I have said earlier, it was a lengthy and complex investigation with lots of information and audit sheets and copies of patient lists and a lot of paperwork. I didn't feel that widening that further was necessary because I felt that the information that I had to draw those conclusions -- as I have said, 11:43

I felt that the information I was being given was that up to this point when it was formally sat down and looked at, that it was more hearsay, that there was an explanation for when patients were moved. I felt there was a lot of confusion about when patients were added. 11:44
I felt for those reasons, it was reasonable to accept that the Trust weren't clear and, therefore, that idea of knowledge as opposed to hearsay, that's the difference.

83 Q. So -- 11:44

A. That's my view. I accept the Inquiry might view that differently.

84 Q. So, when you write "Senior managers also appear not to have known that private patients may have been scheduled with greater priority", you are content to 11:44 stand over that conclusion, that's a safe conclusion?

A. Yes, I think --

85 Q. That's a safe conclusion?

A. I think they suspected it but they didn't know it.

86 Q. On dictation; as you indicated in your report, senior 11:44 managers appear not to have known about undictated letters. Mr. Haynes' statement again tells us something about his knowledge of undictated letters. TRU-00786, and paragraph 17. 11:45

"In respect of term of reference 2 I have completed IR1s in the past because of notes. I recall two patients, both of whom were seen in clinic by Mr. O'Brien, where there was no dictation. I picked up

one patient because I was asked by Martina Corrigan. The second was a lady from Omagh seen in clinic who was told she was coming to me. It didn't happen and so the GP sent another referral in. The first referral had not been triaged anyway. And I took her to theatre to do a nephrectomy. There were no notes. I put an IR1 in about that".

Again, Mr. Haynes is telling you that, in respect of dictation, that there were issues. Martina Corrigan appears to have known; IR1s were raised. You had evidence before you from Martina Corrigan in her statement that if dictation wasn't done, it would likely get a second referral. Noleen Elliott, Mr. O'Brien's secretary, told you everyone knew what was happening. 11:46 11:46 11:47

Again, would you accept that management were aware of the failure to dictate, whereas your conclusion rather suggests the opposite? 11:47

A. Yes, I would accept that that's something that I've missed. That paragraph 17 from Mr. Haynes, "IR1s were completed in the past because of notes" and the last line I put an "IR1 because there were no notes ", I thought he was referring to the physical notes, but he does mention that there was no dictation and I have missed that, I have missed that line. Mr. O'Brien's secretary told me that there was no dictation being done and she believed that people knew about that 11:47

because when she arrived, that's how it had always been. That was her belief as opposed to knowledge, I felt.

I think one of the other senior managers advised me that she wasn't aware that there were undictated letters. So I have missed that line from Mr. Haynes, I absolutely accept that. I think had I registered that, and when I went back to look at that. 11:48

Mrs. Corrigan said she was aware of undictated letters, Mrs. Trouton and other people said -- well, I think it was Mrs. Trouton, said she wasn't aware. The secretary said well, I didn't raise it because I thought everybody knew. So, it was a balance issue and had I -- had I considered that line from Mr. Haynes, I would have concluded that the Trust was aware. 11:48

87 Q. Again, looking at your conclusion, "senior managers appear not to have known about the undictated letters", that needs revised, doesn't it? It should be that some senior managers were indeed aware of undictated letters? 11:49

A. Yes, it does indeed.

88 Q. If we can go back to --

CHAIR: Mr. Wolfe, I am just looking at the time, it's 11:50. If we take a short break until five past? 11:49

THE INQUIRY ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

CHAIR: Mr. Wolfe.

89 Q. MR. WOLFE KC: Dr. Chada, we started this morning by looking at the comments provided by Mr. O'Brien to you on the 2nd April, and I was asking you whether they had been included in the appendices to the report that issued. You were very clear and pointed out that it had been certainly your intention to include them. We have been able, Chair, in the break - and thanks to Mr. Lunny for this as well - certainly the version of the report disclosed to Mr. O'Brien or disclosed by Mr. O'Brien back to the Inquiry, includes both of the appendices. That's by contrast with the version disclosed to us, as we understand it, by the Trust. That's just for your note. 12:05 12:05

I will show what I mean by that if you go to AOB-10001. Can I have that up on the screen, please. This is the version sent to Mr. O'Brien. If you go to AOB-10180, this is Appendix 25 setting out Mr. O'Brien's comments on his first statement. Then if we scroll down to AOB-10188, this is Appendix 26 and it's Mr. O'Brien's comments on his November meeting with Dr. Chada, again as supplied by Mr. O'Brien on the 2nd April. So, certainly this suggests that the version of the report sent out to Mr. O'Brien, as Dr. Chada anticipated, contained all of the appendices that she intended to -- 12:06 12:07

CHAIR: Can we clarify, though, Mr. Wolfe, whether the version that went to the Case Manager had the appropriate appendices?

MR. WOLFE KC: We anticipated that and that is obviously an important question. We aren't in a position to bottom it out as we stand here today.
CHAIR: But I am sure that can be looked into by Mr. Lunny. 12:08
MR. WOLFE KC: Certainly we have been, for the purposes of this module, working off the version contained in the core bundle. I am going to go to another page of that now and it does not appear to contain those appendices. Whether that's just a clerical error on 12:08 somebody's part, perhaps the Inquiry, perhaps the Trust, who knows at this stage, or whether, in fact, the version used in-house by, for example the Case Manager, was missing those appendices. We can explore with the Trust in a more relaxed fashion just what 12:08 comes of that and we will report back.
CHAIR: Yes. This certainly confirms what Dr. Chada has told us, that she intended them to be attached to the report, in any event.
MR. WOLFE KC: You can certainly see it in various 12:09 points within the body of the report that we have been using. For example TRU-00688, he says there:

"Given the timing of receipt of this commentary and to avoid further delay, et cetera, the drafted statement 12:09 along with Mr. O'Brien's comments have been included at Appendix 26."

So as Dr. Chada said this morning, that was certainly

her intention. We will carry out a little bit more further work on that --

CHAIR: Thank you.

MR. WOLFE KC: -- with the Trust and report back.

CHAIR: Thank you, Mr. Wolfe. 12:09

90 Q. MR. WOLFE KC: Now, could I bring you, Dr. Chada, to the conclusions section of your report. It commences at TRU-00703. Scroll to the bottom of the page, please, at the conclusions. You start your conclusions by telling the reader that Mr. O'Brien is an 12:10 experienced and highly respected senior colleague, a dedicated doctor. And, scrolling down, explaining that he himself is frustrated by the lengthy waiting time for assessment and treatment of surgery. So you'd no doubt that, notwithstanding the shortcomings you 12:11 report in respect of Mr. O'Brien, that the impression that you were forming was that notwithstanding these shortcomings, he was a dedicated doctor?

A. That was what I was being told.

91 Q. Bottom of TRU-00704. Again, you are being told he is 12:11 a skilled and conscientious doctor but, again, that's set aside some criticisms of him from others. I am just anxious to try and characterise your impression of Mr. O'Brien from what you were told. A doctor clearly with many attributes, clearly dedicated and 12:12 conscientious as reported to you, but with some flaws that needed to be addressed; is that it in a nutshell? Maybe significant flaws that needed to be addressed?

A. Yes, that's it in a nutshell.

92 Q. One of the points that you raised in this conclusion -- if we go to TRU-00715, it's just the bottom of the next page. You say that:

"Lastly, during interviews and in correspondence, Mr. O'Brien has displayed some lack of reflection and insight into the potential seriousness of the above issues. His reflection on the patients with delayed diagnoses was disappointing and is noted above". 12:13

We will maybe just come back to that point in a moment. 12:13

"He did not seem to accept the importance of administration processes. He did not feel writing to the patient was important, and he does his own thing about replacing administration time with extra operating lists while at the same time reporting lack of administration time. He felt he couldn't do the triage in the way it was expected but was also clear that he didn't agree with it anyway. I believe it appropriate and relevant to raise this with the Case Manager". 12:13

Why, in particular, did you feel that that was appropriate to raise with the Case Manager? Did you have in mind that this was a doctor who presented dangers because of his lack of insight or was it simply an observation that had to be put into the mix? 12:14

A. I didn't -- I didn't at any time consider that

Mr. O'Brien was clinically -- had had any clinical issues. I never considered that for a moment. That wasn't brought to my attention. However, I felt that he displayed some lack of insight, which, for a doctor - and of course I appreciate I'm a psychiatrist - but I felt that for a doctor whose role is caring for others, his response to some of the findings from the untoward incidents was -- I just felt it lacked insight. I don't know what else -- so I didn't think he was dangerous, sorry, no, but I was concerned that he lacked insight into how -- into the potential seriousness of the issues. 12:15 12:15

93 Q. I want to ask you just how this conclusion in this particular part developed. Could we have up on the screen TRU-284368. This is Siobhán Hynds writing to you on the 11th June. She says: 12:15

"He has accepted all final changes and this should be the final document. If you read over it tomorrow morning and want to make any changes, I can change and print it, et cetera. Otherwise this is a final copy for your records". 12:16

If we go then to the concluding page of the report, it's TRU-284413. This is the conclusion as it stands at that point. You are saying: 12:16

"Lastly, during interviews and in correspondence, Mr. O'Brien has displayed an apparent lack of

reflection and insight into the potential seriousness of the above issues, and I believe it appropriate and relevant to raise this with the Case Manager."

Obviously, that's a less well-defined and perhaps milder version of the conclusion that was to be developed. 12:17

Let's look then at how this develops. If we go to TRU-284414, this is your e-mail to Siobhán Hynds on the 12th June. You are referring her to the last paragraph. You are saying, with a triple question mark and then you're saying "too harsh". We can go to how the report now appears, TRU-284459. Just scroll down so we can see the red ink. Is it you who has made this change in red? 12:17 12:18

A. Yes.

94 Q. Your cover e-mail is, is it fair to say, reflecting a hesitation on your part as to whether this conclusion might, in light of all of the evidence, be a little over-the-top or too harsh? 12:18

A. I was reflecting on the fact that Mr. O'Brien had found the whole process very difficult. All of those things, all those things that I have drawn out in that paragraph, are included in the report in different places but I'm highlighting them. I felt it would be something that would be difficult for him to read. 12:18

95 Q. Were you asking for a steer from Mrs. Hynds as to whether this is too harsh?

A. I mean, I didn't feel that any part of the report didn't support this but I was anxious that Mr. O'Brien -- I was concerned that Mr. O'Brien hadn't been well and I felt this might be difficult for him. Mrs. Hynds had more experience of Maintaining High Professional Standards reports than I had. I'd certainly done a number of investigation reports, many of which have ended up in a referral to the GMC, so I wasn't -- it wasn't that I wasn't used to that situation, but I was conscious that Mr. O'Brien had already indicated to us that he hadn't been well through a lot of this process and was finding it difficult, and I felt a lot of that was already included, and was drawing attention to it a harsh thing to do. 12:19 12:20

96 Q. Did you discuss with aspect with Mrs. Hynds? 12:20

A. I did. Mrs. Hynds came back and said I was the Case Investigator and it was up to me. She said look, if that's -- she said if that's what you think, then you should put it in because that's your role. And I did.

97 Q. An aspect of your engagement with Mr. O'Brien touched upon his view of the implications of the failure to triage, and you draw attention to that in your report. If we just go to TRU-00685. Down at the bottom of the page, you report that Mr. O'Brien -- just on further down. Sorry, it's the top of the next page, I beg your pardon. 12:20 12:21

"On commenting upon the five cases which have confirmed cancer diagnoses, Mr. O'Brien was surprised that there

was such a small number upgraded. He advised it was heartening in a number of ways to find two of the cases are at an early stage. He noted the irony that one of the patients may have benefitted from the delay. Mr. O'Brien commented that was really the only one patient of concern". 12:22

I think in reading your conclusion where you talk about the lack of insight, that this was an ingredient which informed your -- 12:22

CHAIR: Sorry, Mr. Wolfe, to interrupt you. You used the initials there for a patient. Now, just to be clear, we will use the ciphers in future. I don't think that it necessarily identifies anyone particularly from what you have said, but just please be careful. 12:22

MR. WOLFE KC: Yes. I think we know who that patient is. I can give you the cipher now, if you want.

CHAIR: I don't need it but just in future, I think it's preferable if we do use them. 12:23

MR. WOLFE KC: Very well.

98 Q. So, am I right in suggesting to you that that was a key ingredient when it came to your conclusion around insight?

A. I wouldn't use the word "key ingredient" but it was one of the ingredients. I think it was an overall impression from Mr. O'Brien's responses and some of the -- to this in his witness statement. 12:23

99 Q. If we can just bring up on the page, please, AOB-01893. Just if we can scroll down, please. This is Mr. O'Brien's response to your report when communicating with Dr. Khan. He records that:

"The report states that Mr. O'Brien displayed some lack of insight and reflection into the potential seriousness of the above issues. He would completely dispute this contention. He believes that this impression has been gained due to his disbelief at the lack of insight on the part of the Trust into the harm and risk of harm suffered by patients already on the longest waiting list". 12:24

Was there a sense of confusion on your part in terms of how he was expressing himself? We can see, for example, that he took the view that the Trust's approach to triage in the context of massive waiting lists was placing in jeopardy those patients who weren't regularly flagged. In other words, those who were being referred in as routine and urgent who did not have, on the face of it, malign conditions were, in some cases at risk of complications, and it is in that context which he is explaining to you that his failure to triage has to be assessed and analysed? 12:24 12:25 12:26

A. Mr. O'Brien certainly expressed annoyance in relation to exactly that issue, that there were people on the routine waiting list and on the urgent waiting list who had morbidities that may not be cancer but nonetheless

were very significant. I mean, he certainly did express that. However, my impression was not based on -- I, mean I understood his disappointment and his disbelief in relation to that. I absolutely understood that but that was not where I think -- I think Mr. O'Brien's statement that "I believe that this impression has been gained due to my lack of disbelief on insight of part of the Trust", that is not where that impression was gained. 12:26

100 Q. He was making these broader points, wasn't he, that his focus necessarily in terms of relieving symptomatology for patients placed an onus on him, encouraged by the Trust perhaps, to operate, be in theatre more regularly than his job plan might otherwise have required of him, and that, because he was giving emphasis to that, other matters such as the administrative paths associated with his practice were viewed by him as of less importance. But that doesn't seem to come through in your report when you deal with his lack of insight; that balance doesn't seem to be there? 12:27 12:28

A. I think my report does cover Mr. O'Brien's points, that he replaced admin time with theatre time. In fact, I think I drew attention to the fact that in Mr. O'Brien's statement, I pointed out it wasn't up to him to decide what he wanted to do; that's not what doctors are required to do. We have a job plan and we are told what the Trust expects of us. So I think I did raise those issues in other parts of the investigation report. 12:28

101 Q. In terms of Dr. Khan's determination, you were in a sense a stranger to that. You weren't provided with a copy of it, it wasn't discussed with you, you had no input into it for obviously correct reasons. I think you have expressed the view that it might be of some assistance to know what determination was being reached and the view that has been taken of your report?

A. I think I raised that -- I was trying to be helpful to the Inquiry bearing in mind the Inquiry's Terms of Reference, and I have raised that in my Section 21 response. I just think from a learning point of view, you know, doctors audit regularly and we are expected to audit regularly and to consider what it is we do and what the outcomes are. Therefore, if one of your roles is to be a Case Investigator, for example, knowing how that report has been received and what action has been taken on foot of that report, actually I think is a learning opportunity rather than for any other reason. It's not that I should have any input into the Case Manager's determination, I appreciate that's completely separate and should be, but it's really about getting that feedback so that, if you are asked to do this again, that you can improve and you can consider the areas that perhaps could have been done better, or if questions are raised at a later stage about the investigation, that you actually get some feedback about right, okay, you know, I could change that part of my practice. Because it's about improving. So it was an issue about improving

12:29 12:29 12:30 12:30 12:30

performance really, not just for me but for any Case Investigator.

102 Q. Thank you. I think it's a matter for the Inquiry Panel obviously. If I detected any disappointment on the part of Dr. Khan with the output of your report, it was 12:31
that he wasn't able to understand why there had been managerial shortcomings in the management of Mr. O'Brien. He discerned from your report that there was systemic failings both on the clinical and operational side of management, and that required 12:31
a further body of work. You may not agree with that but is that the kind of feedback that would be necessarily useful for future reference?

A. I think getting feedback into, yes, deficits or things that could be improved is exactly. I suppose part of 12:31
it is understanding what it is you are being asked to do and what the purpose of the investigation is. As I explained earlier in my previous response, my view was the investigation was to get an overview of some of those management issues, and I expected that there 12:32
would be something else would follow.

103 Q. If I could then bring you to some other reflections that you kindly offered the Inquiry through your Section 21 statement, and briefly. If we go to WIT-23784, I think this is probably a matter you've 12:32
touched on in some length towards the start of your evidence. WIT-23784. Back a page, sorry, to 15.1. Thank you.

This is, I suppose, where you tell us that being asked to deal with complex investigations in the context of the demands on your other time is not necessarily a recipe for success, or certainly not necessarily a recipe for dealing with matters as urgently or robustly as they might require. Have you any other thoughts to offer around that? 12:33

A. I suppose whilst it's an investigation, it's exactly that. You know, I mean it's not really an inquiry. You know, you asked earlier about did I not go back to and speak to Mr. Young; it's also not about cross-examination and you don't really have that opportunity to keep going back and forth because the resources to do that just aren't there. So it's a difficult situation because in some ways it's almost like - well, it is - it's an investigation but without the sort of depth that if you were a detective or a police person or a lawyer or something, that you might expect to look at. 12:34 12:34

I think doctors aren't particularly good at their use of language as well in terms of being precise in their language. You highlighted that on my last occasion here in terms of one of the days, whether I chose 2018 and I meant earlier in the year. These are things that we learn from. But it's a difficult process to do under the current -- under the current NHS system. I think I indicated the last time, I am not aware that people are doing it now under the current NHS, which 12:34

I think is quite right. I think time set aside to do this and to build expertise is really very important to make sure that you have robust and fair and equitable outcomes.

104 Q. Scroll down to 17.2. If I can get the page number for you. You have explained that it does seem appropriate to address issues initially informally and then to progress down more formal routes if informal processes don't result in the desired outcome. 12:35

12:36

"I think the NHS process might have been used earlier in this case. However, I am aware of one of Mr. O'Brien's complaints to us that it was being used at all. He believed it was used too soon and without other avenues being exhausted. It seemed to me from the time this process has started in March 2016, a long period of time passed as the Trust tried to ensure the process was properly adhered to in an effort to prevent any future criticism or threat of legal action. Trust management's level of anxiety about this was clear to me. Mr. O'Brien had already made complaints and he had accused a previous medical manager, who was trying to address Mr. O'Brien's practice, of harassing him". 12:36 12:36

Now, I think you appreciate that that allegation in the last sentence is disputed by Mr. O'Brien, so putting that to one side and maybe more neutrally describe it as a difficulty between himself and a manager who we know to have been involved in a dispute with him. But 12:37

more generally you make the point that it should start with informal. The difficulty in this case was that it seems to you that it should have been moved to a formal process at an earlier stage but there was a fear on the part of the Trust in doing so. How did that come through? Who described that fear to you?

A. I think a number of the senior managers expressed anxiety about what had happened previously when there had been attempts to manage Mr. O'Brien. They had felt that -- I think I said earlier that I had the sense that they were anxious and fearful about progressing things.

105 Q. You seem to suggest that there was a fear of legal action. Apart from your knowledge of this difficulty between Mr. O'Brien and, as we now know Mr. Mackle, where Mr. O'Brien is, as you describe it or as you understood it - and that understanding is not without controversy - but apart from that dispute between Mr. O'Brien and Mr. Mackle, what else, if anything, can you recall specifically was in the background that might have caused this reluctance or hesitation on the part of the Trust?

A. Well, a number of the managers told me that there had been attempts to manage Mr. O'Brien in the past and that had been unsuccessful or thwarted in one way or another, so that was the impression that I gained. I expect when you are talking to those people, they might be able to clarify that further. That was certainly the impression that I was being given by the

12:37 12:38 12:38 12:39 12:39

people that I spoke to.

106 Q. Hm. But just to be absolutely specific, because we are familiar with the statements, and I am pressing you because I am not entirely sure what you're suggesting here when you say that it seemed to you that: 12:40

"A long period of time passed, as the Trust tried to ensure the process was properly adhered to in an effort to prevent any future criticism or threat of legal action". 12:40

We know that between March 2016, when, if you like, an informal approach was made, obviously with the letter to Mr. O'Brien, and December 2016, he was completely in the dark as to what was going on behind the scenes 12:40 because after the meeting in March, he wasn't approached. So, I'm not entirely sure - and if you can't help us beyond what you have said here, then so be it - where was this fear of future criticism or legal action coming from? 12:41

A. That was my impression from the witnesses that I spoke to. That's as much as I can recall. That was my impression, that people were anxious and fearful and that they had attempted to sort things out in the past and felt that they had been thwarted in doing so. 12:41

107 Q. In a similar vein, could we scroll down to WIT-23787. At paragraph 18.3, just so we can see the whole paragraph.

"Whilst I believe a number of different people knew there were issues with Mr. O'Brien's practice, I formed the impression different people knew different things at different times, and the pressures on workload, waiting lists and changes of personnel meant that no one" - in your opinion - "appeared to be aware of the full extent of the issues". 12:42

That, in part, explains some of the management shortcomings, as you saw it? You say: 12:42

"Once the extent of the issues became more apparent, it does seem the Trust management system attempted to address those issues with Mr. O'Brien. My impression was that he thwarted them by making complaints, hinting at legal action and trying to deflect or distract". 12:42

Can we take those three together, complaints, hinting at legal action and trying to defect or distract. Again in specific terms, if you can, what complaints are we referring to here, hints of legal action and deflection or distraction approaches? What are they in specific terms? 12:43

A. I was told by non-medical managers - not by medical managers, I don't think, other than Mr. Mackle - I was told by a number of managers that attempts to raise issues with Mr. O'Brien had been tried before and that one of the previous personnel, Dr. Rankin, who, whilst she is a medically-qualified person was actually in 12:43

a non-medical management role, had advised people not to progress in their contacts because there were concerns. So, these comments are my impression rather than -- and my impression was gained from the information that I received prior to the investigation, 12:44
in terms of the paperwork and from the witness statements. This is a personal impression which I hoped to be helpful to the Inquiry. I absolutely accept that this is a personal impression.

108 Q. We will obviously consider the granular detail of the 12:44
statements. But can you recall - and I can't so hopefully I am being fair to you - but can you recall any specific suggestion or threat of legal action being conveyed to you from a witness? I mean is what you said there to be found in the witness statements that 12:45
you gathered?

A. I believe so. I believe so. Certainly, as I say, that was my impression from what people were telling me, so I believe so. I mean, I couldn't take you to that, if that's what you are asking me for. 12:45

109 Q. It may well be my frailty of memory but we will look at that, you believe what you are saying you derives from the witness statements.

A. I mean, I can't -- I wouldn't have known it otherwise, you know. I suppose that's... I mean I have no 12:45
knowledge or experience of working with Mr. O'Brien or on the acute side or on surgical. That's not something that I would have known unless it had been raised with me.

110 Q. Certainly generally, the impression from some of the witnesses we would have spoken to was that informal approaches to Mr. O'Brien to mend his ways, such as around triage, for example, were repeated interventions on an informal basis; you would see improvement for a while and then he would fall away again. Certainly that is a broad impression that you would be entitled to take from what you received? 12:46

A. Yes.

111 Q. Did that, in turn, moving away from Mr. O'Brien, cause you to consider that medical or operational management wasn't effective? 12:46

A. Yes. I mean, I've said that the -- I have said in my investigation report that I felt that management were aware and could have and should have taken action earlier. 12:46

112 Q. You go on then to say at interview he was arrogant at times; there were subtle attempts to intimidate, for example by bringing along a relative who was a practising barrister, and sending an e-mail inquiring about your qualifications to lead such an investigation; whether you had revalidated or whether you were up to date with your CPD, et cetera. I think you believe this e-mail was sent to Dr. Khan after the investigation was completed. We will come to the e-mail in a moment. 12:47 12:47

Dealing with your contact with him through interviews, do you accept that he was entitled to bring a person

along to interview with him, whether a qualified lawyer or otherwise?

A. Yes, of course.

113 Q. Why did you interpret that as partly an attempt to intimidate? 12:48

A. It was my impression on the day. An impression.

114 Q. A fair impression?

A. I felt -- a fair, yes. I felt I probably have more contact with legal people and Mrs. Hynds perhaps doesn't. I felt Mrs. Hynds was intimidated by that -- 12:48 or at least "affected" by that probably is the better word, but that was my impression on the day.

115 Q. I think we do the benefit of a transcript of these interviews.

A. Mm-hmm. 12:48

116 Q. Is there anything you wish to draw to the Inquiry's attention as example of inappropriate behaviour on the part of the person who accompanied him, or do you accept that the interventions made by the person who accompanied him were entirely appropriate? 12:49

A. I thought the interventions were appropriate and the person who accompanied Mr. O'Brien was very pleasant and was trying to be helpful, I think.

117 Q. The e-mail you referred to, can I bring up on the screen AOB-02141. I am trying to put a date on it. 12:49 This is correspondence sent by Mr. O'Brien on the 12th March 2019. He is requesting from the Trust information in respect of yourself and Dr. Khan and, scrolling down, the titles of all training courses

undertaken in the conduct of formal investigations, the date upon which they were taken and copies of their accreditation, the number of investigations that have been conducted by the above persons and their respective roles in each of those investigations.

Is this the e-mail that you had in mind? It doesn't go on to deal with validation and issues such as this. This is the only e-mail, I think, between the Inquiry and your representatives that we have been able to turn up that comes close to this? 12:50 12:51

A. Yeah, it is the e-mail that I have in mind and I didn't have a copy of the e-mail when I was preparing my response. I suppose the word "accreditation" stuck in my mind. To me, accreditation was with the GMC or -- so, that's where I have got that from. I have obviously forgotten the context of that. 12:51

118 Q. Mr. O'Brien is obviously at this point in a grievance process with the Trust. Again, he is entitled, is he not, to investigate your credentials to investigate in circumstances where he is dissatisfied with your report? 12:52

A. He is, yes.

MR. WOLFE KC: Thank you, Chair, I have no further questions. Thank you, Dr. Chada. 12:52

CHAIR: Thank you, Mr. Wolfe. Dr. Chada, we are now going to turn to some questions from myself and my colleagues. I'm going to ask Mr. Hanbury, first of all, if he has any questions. Hopefully our system

here will work.

THE WITNESS WAS QUESTIONED BY THE INQUIRY PANEL AS FOLLOWS:

12:52

CHAIR: Can you see Mr. Hanbury. He may, in fact, be on the screen on the desk in front of you. No, just on the big screen. As long as you can see him all right then.

12:52

Mr. Hanbury, I just want to check your microphone is working all right so can you speak, please?

MR. HANBURY: I am here. Can you hear me?

CHAIR: We are on silent at our end. We have you now.

MR. HANBURY: Is that all right now? 12:53

CHAIR: Yes, thank you.

119 Q. MR. HANBURY: Thank you very much, Dr. Chada. You will be pleased to know you have answered a few of my questions already. I just wanted to look at a few clinical aspects with you, if that's appropriate. 12:53

Firstly, look at the dictation aspects. I just wanted to remind ourselves how long did the exercise take going through the undictated, seemingly undictated clinics, and how many urology colleagues did it take to do that exercise? Do you recall that, approximately? 12:53

A. I don't know the answer to that. I know that Mr. O'Brien had dictated on some of the notes before he brought them back, so they were dictated on in January, I think 2017 or something. So there's quite a large

number that Mr. O'Brien had dictated on. Then the rest were sort of shared out between urology colleagues.

I'm afraid that part of the investigation was being done by other people on the ground. I know it took quite a long time because we were waiting a long time for information to come back in relation to the undictated letters. I'm afraid I can't assist you any further in that.

120 Q. That's several months anyway from -- 12:54

A. Yes, yes, indeed.

121 Q. Okay. From that analysis --

CHAIR: Sorry, Mr Hanbury, just wait a moment, Mr. O'Boyle wishes to say something.

MR. BOYLE KC: (Off microphone). 12:54

CHAIR: I can assure you that we are reporting and we will be transcribing. I am not sure if there is a difficulty with you seeing the CaseView on the screen and us seeing --

MR. BOYLE KC: (Off microphone) part of the evidence has frozen. 12:55

CHAIR: It's frozen? Is that the case with everyone? Okay. Can I ask --

MR. BOYLE KC: It will be recorded in the transcript (off microphone). 12:55

CHAIR: I think that's the case but let me double-check that. Can I ask, Mr. Murphy, could you go and just check the situation if that's all right. I know that we will have a recording, an audible recording - I

believe so in any case - from our audiovisual people which means that we will be able to produce a transcript. I am just double-checking that that is the case and we can check what the situation is with CaseView. 12:55

Can I just check with PI Communications that we do have an audible recording from which we can later get a transcript? So, that meets the case. I am sorry about CaseView. Mr. Murphy has gone to see what the 12:56 issue may be and whether it can be resolved. Certainly we will need it resolved this afternoon in any case. If you don't mind, we will continue with Mr. Hanbury.

Mr. Hanbury, sorry about that. If we can come back to 12:56 your questions.

122 Q. MR. HANBURY: Just to go back to that analysis, I think you found from those undictated clinics 35 patients who were subsequently added to the waiting list, and three needing urgent appointments. Is it true to say that 12:56 those wouldn't have been picked up had you not been doing the analysis?

A. Sorry, that they wouldn't have been picked up?

123 Q. That's what I'm asking.

A. Yes. Yes, I assume that's the case. Mr. O'Brien said 12:56 that he -- in his account to us said that he added people to waiting lists and added people to investigation lists regardless of whether he did the dictation or not, but the findings from that review

seemed to suggest that there were additional things that needed to be put into place.

124 Q. Thank you. In his witness statement, Mr. Haynes that he states, he quotes "You can't run a safe practice without contemporaneous notes". As an active clinician, would you agree with that? 12:57

A. Yes.

125 Q. Thank you. Really in the same theme, do you think, looking at the surgical side which I accept is not your primary role, do you think it should be standard practice to dictate not only the results of Outpatient clinics but also small procedures, diagnostic, cystoscopy, day lists and even main lists? Do you think that would be advantageous? 12:57

A. Yes. 12:58

126 Q. Okay. Thank you. I think you have answered the triage thing, thank you. Just a couple of things on the notes in office. When you interviewed Noleen Elliott, Mr. O'Brien's secretary, she mentioned a couple of things. Did she mention anything about Mr. O'Brien and the reason why she put charts or notes in his office, and the reason for that? Was that a problem that... 12:58

A. I don't believe she made a specific comment in relation to that. She was aware that there were notes in Mr. O'Brien's office and that he requested notes and there were notes at home, but I don't recall her making a specific comment in relation to that. 12:58

127 Q. She didn't say the reason she put it in the office was for a particular task to be done?

A. No. She said that -- she was actually talking about notes coming back and was saying that when she asked Mr. O'Brien, when somebody else requested a set of notes or wanted a set of notes, it would have been returned and very quickly, but I don't think she made -- I don't think she said anything about why notes were being put into the office as such other than Mr. O'Brien required them.

128 Q. Okay. Just lastly on Noleen Elliott, she mentioned in her witness statement that she occasionally had phone calls from patients who seemingly hadn't been put on the waiting list and then she had to do it. Did she explain any more about that as a difficulty?

A. She didn't explain anything more about that as a difficulty. Mr. O'Brien, at a later stage, and other managers, both medical and non-medical, indicated that Mr. O'Brien added people to waiting lists at haphazard times. That, in fact, was one of the issues in relation to the private patient issue, because people might have been seen a long time ago but only added to the waiting list more recently, but Mr. O'Brien regarded it that the time started from when he first saw the patient. So that seemed to be the issue, that the patient may have been added at a later stage by Mr. O'Brien.

129 Q. Okay. That brings me on to another question about private practice. It wasn't necessarily your terms of reference but having picked up that, did you find out how Mr. O'Brien was sort of circumventing the normal

waiting list office process? Is that a fair question?

A. My understanding, and I am sure other people will be able to comment on this better, but my understanding is Mr. O'Brien managed his own waiting list. In terms of theatre, Mr. O'Brien made up his own theatre list. He 13:01
phoned the people individually himself and arranged their times and their appointments and where they would be in the list. I think that in itself, I felt, was an area of criticism and I raised that at the time of the investigation, because nobody had any idea how and when 13:01
people were being added to this waiting list, or why, with that level of -- well, I was going to say level of urgency. Actually that was the other issue, there was no level of urgency indicated on the waiting list. So it was a difficult -- I think the theatre list was 13:01
a particularly difficult area to try and unpick.

130 Q. Thank you. That brings me nicely on to my last question about that prioritisation thing you said. Obviously there were problems with long waiters and all surgeons hate cancelling things, and I guess one thing 13:02
about allocating someone of routine priority when you running out of theatre time because they are the ones that potentially may get cancelled. If I bring you to one of Mr. Carroll's statements; his statement said, to quote Mr. O'Brien, "My patients are all urgent and they 13:02
will all be done". So that said something to me. What do you think about that as a comment? Did that raise a red flag with you or a question with you?

A. It didn't raise a red flag, it just reflected what

Mr. O'Brien had said himself, and other people had said in terms of his arranging this waiting list or this theatre list, and Mr. O'Brien's view that -- and quite correct review, that the waiting lists were too long and people were waiting far too long, and he was very concerned about the lengths of wait for patients on his waiting list.

MR. HANBURY: Thank you very much. I have no further questions. Thank you.

CHAIR: Thank you, Mr. Hanbury. Dr. Swart? Let me check if we can hear you. 13:03

DR. SWART: Can you hear me?

CHAIR: Yes, we can. Thank you.

131 Q. DR. SWART: Right. 13:03

In your evidence last week, you spoke about the need to support doctors under investigation and you said you had some ideas about that. My first question about that is did you have any idea what support was actually being put in place for Aidan O'Brien? I don't mean just occupational health and counselling, I mean help for him to get everything done that he needed to get everything done in the context of the investigation, senior people to talk to about this? Do you have any idea what was in place? 13:03 13:04

A. I have no idea what was in place for that.

132 Q. Hm. What should have been in place?

A. I think as doctors we have a number of sources of support in terms of non -- I mean outside

investigations in terms of people we can access, of course. But in terms of the investigation and gathering information for the investigation and so on, my understanding is that Mr. O'Brien would have contacted Mrs. Hynds for any information that he required, and Mrs. Hynds would have sourced the information and then transferred it back to Mr. O'Brien. 13:04

Ideally, I think that that shouldn't be how this works. My view is that being able to have an identified person that the doctor under investigation can contact and deal with directly in relation to accessing these things. Mr. O'Brien also, on a regular basis, would have contacted the Non-Executive Director, Mr. Wilkinson, and pointed out that he needed things. Or he would have contacted Dr. Khan by e-mail directly. Again, I think that probably caused confusion and actually duplication of stuff which wasn't, I think, fair on Mr. O'Brien. I think having one person identified who would assist the doctor under investigation, I think, would be very helpful. 13:04 13:05

133 Q. I agree with that. Did you have any support and did you ask for any support? Was anybody identified for you? Bearing in mind this has been quite a difficult investigation, it will have taken its toll, and again was there a mentor or somebody you could be signposted to to bounce ideas off who was independent? 13:05

A. Psychiatrists are required to have a mentor. It's one

of the things that our college recommended. We always did it informally anyway but it's a formal thing now with the college. I would always have had people that I would have informally sort of discussed things with or if I was having difficulty with. In terms of support, from that point of view, from sort of an emotional point of view -- 13:06

134 Q. No, I am talking about practical support rather than the emotional side?

A. From practical support, no, not really. Mrs. Hynds was very helpful and, as I say, would have done a lot of the admin work in terms of tracking things down and sending e-mails. I would have talked and she would have typed, you know, in terms of putting things together but no, no practical support outside of that. I had a secretary who is absolutely wonderful, but my secretary was already assisting me in my Associate Medical Directorate role, and my clinical role which was a very busy role, and I didn't feel it was appropriate to expect her to add to that. 13:06 13:07

135 Q. I am thinking more of a senior critical friend of some sort. These investigations nearly always cause problems of some sort and one's own experience is always limited. In retrospect, would that have been helpful just to ask you some critical questions along the way? 13:07

A. I think in retrospect, that would have been helpful. I think one of the difficulties, and I've mentioned it already, is the lack of expertise in doing these.

These are not something that we do in our everyday practice. I think I'm -- I mean I don't know and the Trust could probably comment on this, but I think I have done more than most, so I'm not entirely sure who I would have leaned on for that. Absolutely, I think in retrospect that would have been extremely helpful.

136 Q. For example, one of the things I wanted to ask you about there was a number of times when Mr. O'Brien provided extensive amounts of information to you, and the most latterly right at the end of the investigation, it was after your deadline and all of that. Looking back on it now, do you think there would have been a way of handling that without opening everything all over again? I can understand why you felt enough was enough, but equally he's providing all kinds of data at a very granular level. Was there a way of rising above that, out of the weeds, so to speak, to get to the principles? In retrospect do you think you could have done with some help with that?

A. I think in retrospect some help with that would have been good. I think, as I have indicated earlier, a number of the issues that were raised as the terms of reference, it was my view Mr. O'Brien was conceding in any event the minutiae of it. I suppose I was concerned that getting bogged down and deflected and distracted by looking at minutiae of something, there was a risk of me, or anybody, being distracted by that. I was very mindful that that was something that I felt shouldn't happen. But I certainly accept having

13:07 13:08 13:08 13:08

somebody else to look through that; I did look through it all and it took some time but it was already past the date and I was already trying to formulate my report by that point. So, I progressed with that whilst I looked at the rest of it, but it would have been good to have somebody else to look at that.

137 Q. Just coming on to one of the things that you have been asked about extensively. I am not going to go into the detail, you will be relieved. But private patients, the issue of transfer between the NHS and private practice is always fraught with difficulty and most Trusts have a policy that says if you see them privately, and you want to see them in the NHS for any reason, you have to transfer their care to the NHS, and you shouldn't be transferring them back and forth as you wish, and that must all be documented. 13:09 13:09 13:09

Now, whatever is the case with the private patients in this situation, I can't see evidence that all of that happened robustly. My question to you is, is that a general problem in the Trust, do you think? Have you got any awareness of that? Do people pay enough heed to the rules and regulations around this, because it is quite clearly set out in the GMC guidance that you mustn't give private patients an unfair advantage. Have you any comments about that? 13:10 13:10

A. I think managing private patients in the Trust has become a much more robust system latterly. I think there have been times in the past, particularly

historically, where the Trust would not have had robust systems in place because a lot of consultants wouldn't have been involved with private practice; some people were seeing people outside of the Trust. So I do think there probably weren't robust systems in place historically. I believe that's not the situation currently. Certainly when I was an Associate Medical Director, we introduced, for example, a form that consultants had to complete if they were seeing private patients, and if they were seeing private patients on Trust property, and who was doing appraisals in relation to their competence to see private patients. That's as a psychiatrist. I'm not aware of what the situation would have been with surgeons. I would certainly accept that the Trust historically wouldn't have had robust structures and systems in place. 13:10 13:11 13:11

138 Q. Okay. Another thing; you commented on the term of reference 5 in terms of the managerial issues, missed opportunities, whatever you want to call it. It's been quite clear from the people we have spoken to that although all the managers, medical and operational, were trying to do their best, there was a little bit of confusion at times as to who was doing what. So, the doctors tend to leave most things to the operational managers because they are so busy but when there's an issue with a doctor, it has to be managed by a doctor. It's my impression that this isn't as functional as it might be. Would you agree with that in terms of what you have seen for this Inquiry, and is it a more 13:11 13:12

general problem in the Trust, or what do you think?

A. I do think that there was confusion about lines of management and who was to manage that area. I think that is an issue when it comes to senior clinicians and consultants in particular. There does seem to be this lack of clarity about what areas should be addressed by non-clinical managers and what areas need to be addressed by managers. I would completely agree with that, and I think improvements in that have been made. 13:12

I'm aware that -- I mean we did this investigation under Maintaining High Professional Standards, and we wrote out to people and said to them this is what we are doing. I'm not entirely convinced that people always knew what that meant, and particularly non-medical managers. However, it was explained to them. I think non-medical managers are anxious about managing doctors. 13:13

139 Q. And what's the solution to that?

A. I think there has to be a closer working with non-medical and medical managers. I think the problem, looking back from my time as a medical manager, the problem is you are not actually given enough time to do the medical management role because you are trying to manage performance but you are also trying to manage other governance issues, you are trying to manage SAIs, you are trying to go to 101 meetings, you are looking at service development, you are looking at quality improvement. You have two sessions a week perhaps and 13:13

you are trying to do too many things in that short space of time. You try to do those to the best of your ability, usually outside of work time. So I think more time, more protected time to properly engage in management is, I think, required. 13:14

140 Q. Thank you. Last question. This whole Inquiry and everything that we have heard about in your investigation is overshadowed by the huge problem with waiting lists in Northern Ireland. The waiting times are so long that there's a sense that that overshadows 13:14 everything. That doesn't mean that people shouldn't do their job responsibly, as you have alluded to. But are there any very senior level discussions as to how people should minimise the harm to people on waiting lists generally? I can't see any evidence of that in 13:14 any of the Trust documentation. Did you have discussions about that as Associate Medical Directors, for example, because when times are this long - Mr. O'Brien has a point - patients will come to harm?

A. I know at meetings there would have been discussion 13:15 about trying to verify waiting lists, for example, by writing out to people, you know, 'do you still require this appointment and things like that'? I think a letter would have gone back to GPs to say this person has been added to the waiting list, it's a waiting 13:15 list, if the situation changes please contact us again.

In terms of whether the waiting lists were being scrutinised to look to see whether something -- people

needed to be pulled out and moved or whatever, I'm not aware of that. Mental health, where I work, is a bit different, urgent things are very urgent. It's a little bit different because of the type of morbidity and the risk of mortality that we deal with. I'm afraid I probably haven't fully answered that question. I'm not sure that I am able to.

141 Q. Okay. But I think you can see what I am getting at?

A. I do, of course, yes.

DR. SWART: Thank you very much. That's all from me. 13:16

CHAIR: Thank you, Dr. Swart. Just a couple of questions from me. It's clear that your MHPS investigation, your report might not have been as granular as perhaps Mr. O'Brien would have wished. In your investigations, you have said that he agreed he 13:16 didn't do the triage, he agreed he didn't dictate letters, and he agreed that he had notes at home; and the only issue of dispute, in effect, between you and Mr. O'Brien - or your investigation, I should say, and Mr. O'Brien - was in relation to the private patients, 13:16 no matter what the numbers and the granular detail of all of that was. Is that a fair summation?

A. Yes.

142 Q. Okay. Just in terms of your training, as you say you probably had done more of these cases than many in the 13:16 Trust. In terms of training, it seems to be that there is a lack of expertise and a lack of continued knowledge and continued training, even aside from when you are being asked to do one of these things. We are

looking at how the whole system could be improved. I wondered what your view would be of having a regional pool of medics who come in to do these investigations? I mean, I was struck by your comment that no consultants will do these any more. So, how can that be addressed?

A. I completely agree that I think there needs to be a pool of expertise so that you are repeatedly exposed to this and repeatedly doing this, because you learn every time you do it. As you have highlighted, you know, we didn't go into as much detail as we could have. We are not saying as we should have because, honestly, Mr. O'Brien, as you have indicated, acceded to a lot of these points. But I think the time to do them and the expertise to do them needs to be in a pool of either three or four people in each Trust, if that would cover it and I would like to think it could cover it. If those people can be trained together and if those people can form a support network, and the sort of issues that have been raised already; be a practical support to each other, I think that would be very, very, very helpful. It also, as you say, keeps that learning going. If somebody isn't involved in an investigation like this for a period, at least if they were going to those sort of forums and learning from other people, that keeps that skill going.

One of the difficulties, it's a bit like induction in hospitals. Junior doctors come into hospitals now and

inductions could last two weeks, because everybody has to have a topic on the induction but they must be told before they start how to do this and how to do that. It becomes completely unmanageable and you start taking things out of induction and replacing them with something else. All of it is relevant and all of it is important, but it's about trying to work out -- and that's why I think this training needs to be targeted. It's not something that should be done for consultants as a body, it needs to be targeting people who are interested in doing it and are willing to take the time out from their clinical work. If you have somebody who is very focused and very involved in clinical work and doesn't really want to take the time out to do this, I don't think that's helpful. I think targeting people who are interested in doing it and who have time in their job plan to do it and then bringing them together is, I think, the way to go forward with this. 13:19 13:19 13:19

143 Q. Okay. That's interesting and helpful, thank you. Just one other thing. You talked about the impression that you formed. Impressions are formed on a cumulative basis. I take it it was just an overall impression as a result of all you heard from everyone you spoke to? 13:19

A. Yes, and I suppose that's exactly what I was trying to say. It was information from witness statements; it was information from e-mails; it was information from the documentation I was provided with before; it was information from the meetings with Mr. O'Brien himself and trying to plan and trying to organise those 13:20

meetings. You just form -- you stand back and you form an overall impression, you know. You walk away and you think this is my impression of something. It's never something that's formed in a single contact or a single moment in time. It's always something that's much, much wider than that. 13:20

144 Q. Okay. Thank you very much, Dr. Chada. I think we have concluded with your evidence. We hopefully will not need to call you back but I am sure if we need any further information, we can ask for it in writing. 13:20

Mr. Wolfe, it's now twenty past one, so if we sit again at twenty past two for our afternoon's witness, to give people sufficient time for lunch.

MR. WOLFE KC: Yes. Ms. Horscroft is taking the next witness, who is Mr. Wilkinson. 13:21

CHAIR: Who has been waiting here all morning, waiting patiently.

THE INQUIRY ADJOURNED FOR LUNCH AND RESUMED AS FOLLOWS: 13:21

CHAIR: Good afternoon, everyone.

MS. HORSCROFT: Good afternoon, Chair. Your witness this afternoon is Mr. Wilkinson, and Mr. Wilkinson will take the oath. 14:20

JOHN WILKINSON, HAVING BEEN SWORN, WAS EXAMINED BY MS. HORSCROFT AS FOLLOWS:

MS. HORSCROFT: Thank you, Mr. Wilkinson.

In preparation for your evidence today, Mr. Wilkinson, you have prepared first of all a response to a Section 21 notice, and then yesterday as well you filed an addendum with some corrections to that. I propose, first of all, just to take you to the first page of your Section 21 response. That can be found, please, at WIT-26091. Do you recognise that, Mr. Wilkinson, as being the first page of your response? I think you are nodding yes. 14:21

A. I can, yes. 14:21

145 Q. Just for the transcript. Thank you. Then if we could go please to WIT-26199. Scroll down. 26119, thank you, Mr. Lunny.

A. That's it, yes.

146 Q. That's your signature as it appears? 14:22

A. Yes, it is. Indeed.

147 Q. Subject to the corrections that we will come to in the addendum, would you be content to adopt that as part of your evidence today for the Inquiry?

A. Yes, I am. 14:22

148 Q. If we could go then to the addendum at this stage, the first page reference is WIT-91941. Is that the first page of the addendum statement that you have filed, Mr. Wilkinson?

A. Yes, it is.
149 Q. If we could just go on to the next page then, please. If we scroll on down to the bottom, is that your signature, Mr. Wilkinson?
A. That's it. 14:23
150 Q. Would you like to adopt that as well as part of your evidence?
A. Yes, I do.
151 Q. We will come to some parts of that in more detail as we go through your evidence. Just by way of background, 14:23 your background is in education; isn't that right?
A. Yes, it is indeed. Yes.
152 Q. You have said in your statement that you were a post-primary school principal for 20 years; you had former involvement with the NICCEA and the 14:23 South-Eastern Education and Library Board?
A. Yes.
153 Q. You had said in your statement as well you were appointed as Non-Executive Director to the Southern Health and Social Care Trust on 15th February 2016? 14:23
A. That's correct.
154 Q. Are you still on the board?
A. I am, yes.
155 Q. Yes. In your statement as well, just for the Inquiry's reference, we don't need to bring it up, but at 14:24 WIT-26116 you had said that upon joining the Trust, you had no knowledge of Health and Social Care policies or procedures or governance. Is that right?
A. That's absolutely true.

156 Q. You have gone on in your statement then at WIT - again, we don't need to bring it up but for the references for everyone for the Inquiry it's WIT-26106 - that you underwent induction training for non-executive directors from the 22nd September 2016 until 1st December 2016. Is that right?

A. Yes, that's correct, yes.

157 Q. And you describe that as broad general training?

A. I would. I would describe it as very broad general training, yes. 14:24

158 Q. Yes. What did you take away from the training?

A. I took away the complex nature of the organisation in the first instance, and that on some occasions they drill down very deeply into their own respective areas. I went away at the end of that time fully understanding 14:25 the complexity of the organisation.

159 Q. You described as well in your statement that you had training in respect of MHPS specifically on the 22nd September 2016. I wonder if we could bring up a paragraph from your statement, please, at WIT-26106. 14:25 If we could go down, please, to paragraph 64. If I could just read out for the benefit of everyone, you said:

"I received broad general training on the MHPS 14:25 Framework. The role of the designated Non-Executive Director was unclear and was highlighted as such by the trainer who, on several occasions, stated that the role was indistinct and that the Department of Health had

been asked on several occasions for clarification but none had been provided."

So, what did you take in respect of MHPS specifically and the training around that? Did you feel that it was beneficial, did you feel it gave you an understanding of your responsibilities? 14:26

A. I took away a general understanding of the role of the Non-Executive Director as the designated person, but in terms of the detail as to how they would actually carry out that role, I was still unsure of that role. 14:26

With regards to the way in which it was actually delivered, there was an overriding comment made that, look, the role of the NED, if I can use that phrase, the role of the NED is indistinct; you have to search for it and you have bring it together, and this is what we have done for this level of training. At that stage I had no knowledge that I was going to be asked to undertake this role, so I was content that it was okay at that high level of understanding. On reflection now, I know that it wasn't sufficient. 14:26 14:27

160 Q. We will come in more detail to the description itself. Just on the next page there, which is on the screen, you have said that throughout the course of the O'Brien case, you asked on at least two occasions for assistance regarding role definition and clarification but this was not able to be provided. Who did you go to to ask for that? 14:27

A. Well, in the first instance I went to Mrs. Toal, and then Mrs. Toal redirected that to DLS and they offered their assistance with regards to that.

161 Q. Again, just on this page at paragraph 65, you have said in respect of the Trust guidelines that you think that they were mentioned at the induction but you don't have a clear recollection of specific guidance and training from them. Did you feel that the focus was more on the MHPS Framework than the Trust guidelines? 14:28

A. No, I would agree with that statement. I felt that it was more on the framework rather than the Trust guidelines, although they were mentioned. There's no doubt about that, that they were mentioned. 14:28

162 Q. We have also been provided - we don't need to bring it up but for the Inquiry's reference at TRU-164752 - that there appears to have been training for non-executive Directors on the 8th December 2016. Did you attend that? 14:28

A. Yes. That was a mop-up session for those new members of the Trust non-executive directors, and for anyone else who didn't attend the original training in September. I sat in on that again just for my own benefit. 14:28

163 Q. If we could bring up the MHPS policy where it defines the role of the NED. It's at WIT-18499, please. If we could scroll to paragraph 8, please. It says: 14:29

"The non-executive member of the board appointed by the chairman of the board to oversee the case to ensure

that momentum is maintained and consider any representations from the practitioner about his or her exclusion, or any representations about the investigation".

What did you understand that to mean in practice as to how you would apply that?

A. Well, first of all can I say that the overriding impression was that I was to ensure that the momentum of the case was -- other aspects of it weren't highlighted to me sufficiently. In terms of how I would actually carry that out, that wasn't made clear. If I could go on to say that I found the process to be organic for me. In other words, as I went through the process, I was learning on-the-hoof, as it were. That was quite alien to me in terms of where I came from. In terms of my other work it would have been more detailed, it would have been more prescriptive, it would have been guided more. 14:29 14:30 14:30

164 Q. You have said, I think, that the emphasis seems to have been on the ensuring momentum aspect of it. It obviously also refers to consideration of representations. Did you feel that that was part of your role, and did you feel suitably equipped or able to deal with that? 14:30 14:31

A. I took that on board myself that that was part and parcel of my role and therefore I did engage with that particular aspect of the role. In terms of how I actually would engage with, for example HR,

Mr. O'Brien, Case Manager, Case Investigator, that wasn't clear and therefore very indistinct for me.

165 Q. Did you take advice on that whenever you ended up in the role? I know you said it progressed organically for you but did you take advice? 14:31

A. Absolutely. Again, that would have been through Mrs. Toal, the HR person, HR Director.

166 Q. In your statement, the way you had described the role - it's at paragraph 2 of your statement, I don't think we need to bring it up unless you want to see it, 14:31 Mr. Wilkinson, but it's at WIT-26092 - you have said that the primary purpose of your role was to ensure the momentum of the MHPS process in respect of Mr. O'Brien was maintained by ensuring timely responses to requests made by him. Did you feel there was an obligation to 14:32 go beyond just any requests made by him? Did you feel that your role extended beyond solely that aspect of it?

A. No, I didn't. Put simply, no, I didn't. My role was to ensure that I was -- I find this difficult because 14:32 to get the right word to describe the role of the NED is most difficult, but I will use the term "listening ear" at this stage.

167 Q. So, are you saying that you felt your role was really kept solely to requests that were made by the 14:32 practitioner and it didn't extend, for example, to ensuring the momentum beyond that, so being proactive in terms of ensuring that the case was progressing. It would only arise if the practitioner brought it to your

attention?

A. Yes, and Mr. O'Brien did bring certain things to my attention and therefore I would have dealt with those virtually immediately; if not, the next day.

168 Q. But you didn't feel that you had an obligation to, as I say, be proactive or to ensure the momentum yourself without it being led by him? 14:33

A. That wasn't my understanding of the role.

169 Q. If we could scroll up, please, to paragraph 7 of this document. You will see the bottom line of paragraph 7. It says: 14:33

"Only the Designated Board Member should be involved to any significant degree in the management of individual cases." 14:33

Did you feel that managing the case formed part of your responsibilities?

A. No. If I was to try and manage the case, then I would have to take into consideration every single aspect of that case as it developed. As a non-executive director, I didn't see that as part of my role because perhaps I would have needed to have been full-time. I didn't have the capacity, the capability, nor the resource in order to take on that particular role. 14:34 14:34

170 Q. Did that aspect in respect of management, did that form part of the training that you received or the advice that you received whenever you had gone looking?

A. Absolutely not.

171 Q. The Trust guidelines seem to reflect a slightly different definition of the role. I wonder if we could bring those up at TRU-83702. If we could scroll down, please. It states that:

"The non-executive board member must ensure that the investigation is completed in a fair and transparent way".

14:35

Did you consider yourself able to ensure that it was fair and transparent? Is that something that you had in your mind throughout the process?

14:35

A. It was in my mind with reference to Mr. O'Brien, and if he had concerns that there were issues, that issues weren't being dealt with by the Trust, then that was up to me to try and intervene and ensure that he was being treated in a fair and transparent way, but I was not instrumental in changing the situation. I could make representation but that's as far as it went.

14:35

172 Q. The last sentence there refers to the non-executive board member reporting findings back to the Trust Board. I think we will address that a bit more maybe later on in your evidence, Mr. Wilkinson.

14:36

A. Okay.

173 Q. I am going to jump forward slightly to the meeting that you had with Mr. O'Brien on the 7th February. This meeting, of course we now know, was recorded. Were you aware of that at the time?

14:36

A. No. I just find this difficult but I have to bow to

the fact that it's admissible. In my other job, if it was going to be recorded, then you had to inform the person that it was going to be recorded. But I have no hassle with the evidence being recorded and being admissible. I have nothing -- I have no concerns about what's in it. 14:36

174 Q. That you weren't aware it was recorded?

A. In short, I wasn't aware.

175 Q. I just want to refer to it at this stage in respect of what you'd said to Mr. O'Brien at that meeting about what your role would be. I wonder should we just bring it up, please. It's at AOB-56075. This is the transcript of the meeting. At paragraph C: 14:37

"My role, as you would know, is to facilitate to expedite the carriage to the investigating panel or whoever your concerns and represent you to them directly, and to keep pushing to efficiently and effectively get this seen to". 14:37

Do you feel that that was a clear way of describing to Mr. O'Brien what your role would be? Do you think that went beyond potentially what your role would be in practice?

A. I suppose really what those phrases are saying is that I was going to be acting as a conduit, carrying information to key personnel that needed to respond to Mr. AOB. It wasn't necessarily saying that I would do that work, I would meet face-to-face with the people 14:38

concerned. I didn't see that as being my role.

176 Q. If we could scroll down a little bit more. Just at paragraph E, you say to Mr. O'Brien "I am here at your disposal". 14:38

Again, do you think that that's open to interpretation from Mr. O'Brien to have thought that potentially your role went beyond how you saw it?

A. I don't think so. I think Mr. O'Brien was well-versed in MHPS and Trust guidelines and that he would have understood what my role was. 14:38

177 Q. Do you feel it was part of your role to provide support to Mr. O'Brien? For example, sort of from an employer relations perspective or from a comforting perspective or beyond the role that you have described there, did you feel that formed part of your role as the Non-Executive Director? 14:39

A. I think this is one of the issues with the role of a nonexecutive director, is finding the word that best describes what the nonexecutive director will actually do as a designated person. I don't want to be pedantic about it but support can mean different things to different people. That's why I think there needs to be some sort of guidance material which describes the activity of the nonexecutive director. It could be supporter, it could be inquirer, investigator, it could be so many other things. But that wasn't clear within the guidance material, nor was that intimated to me. 14:39 14:39

Whether or not Mr. O'Brien interpreted it in a wider degree, I can't stand over how he interprets that. I can give him what the guidelines say. But as unpacking that statement, that's most important.

178 Q. Mrs. Toal has given evidence to the Inquiry. In her written evidence - again I don't think we need to go to it but it's at WIT-41144 - she set out that the role of the Designated Board Member is particularly difficult in her view to comprehend, and she questions what that can realistically be under MHPS. She also says that she didn't believe that you, Mr. Wilkinson, would have had sufficient knowledge to determine or challenge if any of Mr. O'Brien's representations were responded to appropriately. Do you think is that a fair evaluation, in your view? 14:40 14:40 14:41

A. I think that's a very fair evaluation.

179 Q. In your own statement, you'd said that you remained unclear as to the role of the nonexecutive director. Was that throughout the process did you feel that you were unclear? 14:41

A. Throughout the process, and I kept returning to Mrs. Toal, asking the same question and seeking advice from DLS with regards to what my role actually was because I was concerned to be fair and open and transparent with Mr. O'Brien but, at the same time, honouring my role. But I remained unclear. 14:41

180 Q. When you were seeking advice, were you seeking advice on specific queries or questions or were you seeking advice on the role in general?

A. I think both of those were the case. The initial response would have been, look, here is a set of concerns, there are 37 of them, what do I do with these? How do I manage this, because I had no previous knowledge of dealing with that sort of thing within the Trust. So I was seeking advice in order to try and expedite and to make some sort of return to Mr. O'Brien.

181 Q. As we go through, we will maybe see examples of that. This is actually a correction that you had made in your statement but you were appointed in or around the 9th January, and that seems to be when you responded to Mrs. Brownlee's request to take this on. Did any of the other nonexecutive directors have more experience in MHPS than you, or why do you think you were selected? 14:42

A. In answer to your first question, yes, there would have been others who would have had more experience, simply because they were there longer than I was. Why was I chosen? I suppose that relates to -- well, I don't know really why I was chosen. I could speculate why I was chosen. If you want me to answer that, I can do that. 14:43

182 Q. Well, what were your thoughts?

A. What's my thoughts on that? As you alluded to at the very beginning of the interview, I was a member of the Southern Education and Library Board. During my time with them, I got to know Mrs. Brownlee and, in fact, Mrs. Brownlee asked me to join the Trust. Well, she 14:43

asked me to apply. Now, you had to make a choice of where maybe you want to exercise that role, so I had the Southern and South-Eastern Trust down. Then eventually I got word that I was going to be appointed to the Southern Trust. I expect that because she knew me, perhaps that's why she asked me to take on that particular role. 14:44

183 Q. So there isn't a formal mechanism in place or a procedure in place for selecting or choosing who the Designated Board Member is going to be? 14:44

A. Not as far as I am aware.

184 Q. Do you think something like that might be appropriate or helpful?

A. Yes, in some senses, but more explicit training would be what I would be looking for. 14:44

185 Q. You said in your statement then that you met Mrs. Toal to review the role after being appointed. What did reviewing the role involve? What was the discussion that you had with Mrs. Toal?

A. I have to say that it comes back down again to that phrase which is about maintaining the momentum of the investigation, and, if there was an exclusion, to represent the person at the time of the exclusion, or to support the person if there were some concerns that he had. 14:44 14:45

In terms of illustrating the role and how you would actually engage with the role, how you would engage with the person or the people that you might want to

engage with, how would you set up meetings, none of that was made explicit. I'm not sure how this proceeded in previous cases. I have no awareness of how it was done in previous cases, nor were there illustrations given as to how it was performed on previous occasions.

186 Q. You also received a telephone call or had a meeting on 26th January with Mrs. Brownlee about the case. What was the substance of that communication?

A. Sorry, what date was that again? 14:46

187 Q. 26th January 2017 you have met with Mrs. Brownlee. I can bring it up on the screen?

A. No, no, you are fine. That was a meeting?

188 Q. Yes.

A. Yes. 14:46

189 Q. At the outset; it would be the first meeting.

A. Really, the substance of that was, John, this is a really good surgeon, he has the interests of the patients at heart, I'm not sure why this process is where it is at the moment, just look after him. 14:46

190 Q. Had you been aware at that stage of any connection or friendship or relationship between Mrs. Brownlee and Mr. O'Brien? Were you aware of that, anything like that?

A. No, I wasn't aware but, sorry, at that meeting she did mention that she was a patient of his and that, in essence, her life was saved by him through surgery. 14:46

191 Q. Did you feel that that discussion or the way she approached that discussion was appropriate in the

circumstances?

A. At that time, I just took it at face value, I have to say. But as things progressed, then I began to question. I use the term "independence of the Chair".

192 Q. We will maybe come on in more detail to that. Just to go back briefly to your meeting with Mrs. Toal. What background or knowledge about the case were you given in terms of the details of the history of the case by Mrs. Toal? 14:47

A. Absolutely minimal. I have to say there was no documentation associated with that meeting, which, on reflection, would have been very useful. Because I was just working from the SAI stage but I didn't know anything about -- and maybe it wasn't pertinent, maybe it was better to be clean like that, I'm not sure. But dating back 2014, 29 and the lead-up to all of this, I was unfamiliar with that. Maybe that's the way it should have been, I'm not sure. 14:47 14:48

193 Q. Obviously throughout the process, Mr. O'Brien has asked you and come to you with different queries that it appears you didn't feel - you can correct me if I am wrong - equipped to deal with that. Would that be fair? 14:48

A. Absolutely. The concerns and then the questions were so diverse and were so scattered to be addressed by different clinicians and management within the Trust, it would have taken me an age to address. So I focused on -- I focused on Mrs. Toal and I put the monkey on her shoulders, as it were. I don't mean that in 14:48

a disparaging sense, I just mean that she was taking control of that and seeking the questions -- seeking answers to the questions to be addressed.

194 Q. When you had said that you didn't know if it would be helpful to have more background or more knowledge of the history, do you think something like that would have assisted you maybe in being more instrumental in your role in terms of dealing with Mr. O'Brien's queries and concerns? 14:49

A. I have absolutely no doubt about that, but then that brings me back to the question of what words describe my role. I must apologise to the Panel for that because it's something that sat with me throughout all of this. Would I challenge Mr. O'Brien? Would I be an open supporter of Mr. O'Brien? Was my role to investigate? Those are only some of the action terms, perhaps, that could apply to the role of the designated person. 14:49

195 Q. You had then your first meeting with Mr. O'Brien on the 7th February 2017. It seems that Mr. O'Brien reached out to you on 1st February, and that's a correction you've made in your addendum statement. But you met with Mr. O'Brien and his son, and that meeting was recorded as well. Did you feel any impact of Mr. O'Brien's son being present? 14:50

A. Yes, to an extent again. Although I didn't allow myself to be, and I will use the term "intimidated", by the fact that he was there. But what I did find strange - and I have been listening to some of the 14:50

other interviews - what I did find strange was that his son interjected every now and again during the interview process. Again, looking back to my role in education and if I was involved in an investigation and there was someone there as a supporter, or someone to comfort someone during this process, they did not have the right to speak during the process. So, whenever his son was interjecting, maybe to clarify something or maybe to correct Mr. O'Brien, I found that strange, I did find that strange. 14:51

196 Q. I think you described this meeting in your witness statement as being a difficult meeting. What made it difficult?

A. Well, there were two things. First of all, getting a grasp of where the case was, bearing in mind that there was a history to it. So, I was being brought into that and trying to catch up and listen to the different processes that had taken place up until that time. And the interjection of his son was a strange meeting, and strange in terms of the tenor of the meeting. Do you want me to... 14:51 14:52

197 Q. Well, if you have anything else to add to that.

A. Well, the tenor of the meeting, and I think I make it in my statement and it's not an exact statement of what was actually said, I said that Mr. O'Brien stated to me that the situation as it was, and if it was to continue, he would bring embarrassment to the Southern Trust and to certain people within the Southern Trust. Now, that's my paraphrasing of it, it's not a direct 14:52

quote. But I found that strange, that that tension existed.

198 Q. That's one of the corrections that you have made in your addendum statement as well. You are accepting, I think, that he didn't use the words "degree of embarrassment"; is that right? 14:53

A. No. Those are my words to try and describe what Mr. O'Brien was actually saying.

199 Q. Why did that language come into your head to put into your statement? Obviously now you have seen the transcript and you can see that those aren't the words that were used, but why that language in particular? 14:53

A. That was my -- I have to say, that was my understanding of what he was saying. He mightn't have used the word "embarrassment", there may have been other words used, but that was my understanding of where he was with regards to this particular investigation. 14:53

200 Q. At this meeting -- and you'd referred to, I think, Mrs. Toal in your initial meeting with her and her reference to your representations around the practitioner being excluded. Obviously at this stage whenever you have met Mr. O'Brien, he has already been excluded for a number of weeks. Were you aware of that? 14:54

A. Eventually. You see, because I wasn't appointed until later, as you know, I only became aware of it whenever I was appointed that he had been excluded. 14:54

201 Q. That's not obviously how it's set out in the guidelines. What were your views whenever you realised

that he had already been excluded?

A. Well, that's another strange aspect to where the process was. It was strange that if it was the case that the informal process was taking place then, that I should have been appointed as a designated person. So I took up the role where it was. 14:54

202 Q. Did you query the fact that he'd already been excluded without there being a Designated Board Member appointed?

A. I didn't. No, I didn't query it, no. 14:55

203 Q. Did you think you should have?

A. Well, whilst I say I didn't query it, I did say look, I am coming into this role late but I didn't ask why.

204 Q. I don't think the board was informed of his exclusion. I know that the board was informed later in January. Was that right? 14:55

A. Obviously not because as soon as an exclusion is being proposed, then the board should be informed of it.

205 Q. Did you feel a need to inform the board once you were appointed and realised that he had been excluded already and the board hadn't been informed? 14:55

A. This is another strange aspect of the role. From my understanding of the designated person at that time, and I was told this clearly, that during the process, then the board should be kept, I will use the term "clean of the situation". During the process I did query that on an informal basis, about to what extent should the board be kept informed of progress, because it's clear within the guidelines that the nonexecutive 14:56

director should have a relationship with the board but what that explicitly was, I wasn't sure.

206 Q. Whenever again you met Mr. O'Brien on this date, on 7th February, were you aware of the time frames of the investigation; the fact that, for example, the investigation in the guidelines should be concluded within four weeks and that time period was... 14:56

A. Absolutely. That was clear in my mind and I made representation, I don't know how many times, to the Trust with regards to the time scales. 14:57

207 Q. Did you feel that your representations were instrumental in being able to change anything about that?

A. It didn't change anything because of the ongoing investigation that was taking place. As the investigation went on, then the time scales seemed to expand to accommodate the necessity of the investigation. 14:57

208 Q. In that same meeting on the 7th February, you've said - and it's in the transcript - that the conduct of the investigation is concerning. What were you basing that on, or where did that particular phrase come from? 14:57

A. Really in and around the time scales and how that was being managed. If the guidelines say four weeks, then it should be four weeks. There may be extenuating circumstances that cause it to expand, but perhaps then the person under investigation needs to be made aware of why it was expanding. Then I suppose there were, and I will use the term "competing priorities here". 14:57

The competing priority was, first of all, fairness and transparency with regards to Mr. O'Brien. That's a critical aspect of the investigation process. But also there's the competing priority with regards to patient safety and the concerns around patients. So, those were two competing priorities that were, in my view, operational throughout this investigation.

209 Q. From the outset, did you have it in your head that there was a patient safety risk involved in this?

A. Not from the outset. Not from the outset at all. That became more apparent as the investigation continued. 14:58

210 Q. When do you think that started to enter your consciousness?

A. That's difficult to say. What I would say would be whenever I saw additional SAIs being looked at, whenever you had the number of untriaged referrals, and the other three areas, then it became apparent to me that maybe more time needs to be spent on this. But that's not my call as an NED, I suppose it's management's call with regards to how that should be expedited. 14:59

211 Q. I suppose, though, you know, as a non-executive member of the board and your responsibility to the board, did it occur to you to think should I ask somebody if there's a patient risk involved in this? 14:59

A. With regards to the patient risk, and again this is not -- I had an informal conversation in and around a lunch table with my colleagues, saying, look here, there are issues out here. Now, not specific to the case. But

their response would have been this needs to be kept away from us because it might damage future investigations. I am talking about if there were appeals.

Now, on reflection, I should have brought it to the Governance Committee or to Trust Board and let the Chair of those two committees say to me this is not appropriate for this meeting.

212 Q. You had said, I think, at the outset you had been aware that there was an SAI. I know there were some that came later but you had, I think, been aware that there was an SAI at the start. Did that not flag to you that there are patient safety risks here; that there is an issue of concern, as you say, to potentially take to the Governance Committee or an appropriate person on the board to let them know of the concern? 15:00 15:01

A. Yes. I would have assumed, I suppose, that the Director of Human Resources, Mrs. Toal, would have seen the opportunity, if that was required. I have to say that during my tenure of this particular role, I was relying very heavily upon Mrs. Toal, and indeed Mrs. Hynds, who were very helpful in terms of me carrying out the role. 15:01

213 Q. I think actually following this meeting on the 7th February, you indicate in your statement that you had met Mrs. Toal the next day, and that it was to discuss the paper of concerns, I think, that Mr. O'Brien had brought to you. I think actually if we just bring up 15:01

your contemporaneous note of that, it's at WIT-26121. It's just here you have written, I think, "clarify the role, protect the role".

A. You are right, yes. Arising out of that conversation with Mr. O'Brien, it was clear to me I needed more information about how to carry out the role. In terms of protect the role, so that I wasn't overstepping the mark, so that I wasn't going too far, so that I wasn't seen as a supporter, so that -- and this is back to the definition again. So, that's why the role was being protected; just to make sure that I was doing the job right, doing the thing right and doing the right thing. 15:02 15:02

214 Q. Were you assured by Mrs. Toal that you were going far enough or not going too far?

A. No. She took advice on that from DLS to see where I should be just with regards to that. 15:03

215 Q. In respect of this paper of concerns specifically or just --

A. No, in general, in general. But also in terms of the paper, of the 37 questions -- 37 concerns. 15:03

216 Q. Yes. I think that it's ultimately decided then that the response to that would come from the Case Manager rather than yourself?

A. That's right. That's right.

217 Q. Is that because you didn't feel that you had the requisite knowledge to be able to deal with it yourself? 15:03

A. I wouldn't have the knowledge, I wouldn't have the time, I wouldn't have the resource. I'm

a non-executive director, I'm not a full-time employee of the Trust. I'm employed one day a week. I'm not saying that I don't want to put in the time, but on average you are doing two-and-a-half days a week I would say, at least, counting the time at home you are going to be reading papers for Trust Board, for governance audit and so forth.

218 Q. On the 2nd March then, it seems that you'd texted Mr. O'Brien seeking a meeting. As you set out in your statement, on that same day you also seem to have gotten a phone call from Mrs. Brownlee. What was the context of that phone call from Mrs. Brownlee? 15:04

A. I think she was looking me to be more supportive of Mr. O'Brien, and she had concerns about the situation. I am not sure if I have a contemporaneous note on that or not. I can't remember if that's the telephone call where Mrs. Brownlee said that Mrs. O'Brien was suffering as a result of that. 15:04

219 Q. Well, if it helps you, I can bring up what Mrs. Brownlee says about -- it's at WIT-90902. In that first paragraph, she said: 15:05

"I remember Mr. O'Brien or possibly his wife phoning the office and speaking to me about the long drawn out process and the Trust not meeting his time scales". 15:05

I think she refers to how upsetting Mrs. O'Brien found the situation. If we could scroll down. She says then she informed you - if we could scroll down a little bit

to that next paragraph - that she had asked you to call Mr. O'Brien to offer additional support, and you explained you didn't feel you needed to call Mr. O'Brien. What's your recollection, I suppose, of the -- 15:06

A. I think that summarises it fairly well in terms of Mrs. Brownlee was asking me to provide additional support, and the aspect of Mrs. O'Brien feeling that this was causing her health issues was told to me by Mrs. Brownlee. I think what I was doing, I was making the point that in terms of the independence of the role of the designated person, then I was going to adhere to that and any representation that was being made to me, I would discard. I think that's what I was saying there. I was marking the line a bit. 15:06

220 Q. As in representations from Mrs. Brownlee you would discard?

A. Yes.

221 Q. You do then, though, seem to contact Mr. O'Brien that day so was that as a result? 15:07

A. No. It wasn't as a result of that. Definitely not as a result of that.

222 Q. Did you feel the timing --

A. The timing, yeah. Absolutely.

223 Q. Did you feel that that was appropriate contact from Mrs. Brownlee? 15:07

A. No, I don't, because there were successive telephone calls. I note in some of the statements, there may have been allusions that I was making the phone call to

Mrs. Brownlee. If there was one phone call from me at the beginning to set up a meeting, that was it. Any other time, Mrs. Brownlee would have been contacting me. I know that because of the contemporaneous note I would have made in my diary. 15:07

224 Q. Obviously Mrs. Brownlee sets out - you can see on the screen - she doesn't consider herself to have been advocating for Mr. O'Brien, just in fairness to her, and she repeats that throughout her statement. But do you feel like there was an attempt to pressure or put influence onto you by reaching out in that way? 15:08

A. I would use the word "influence".

225 Q. Following then your reaching out to Mr. O'Brien on the 2nd March, you have a conversation with him then on the 6th March. In your statement, you had set out about that, that you had concerns that he misunderstood the role that you were to play. You say in your statement -- I don't think we need to bring it up but I will just read it for the Panel's benefit at WIT-26097. You said: 15:08

"I did not perceive myself to be an advocate, a representative, supporter, mediator or inquirer. advised AOB that if he needed aspects of the Inquiry clarified, he should address his queries and concerns to the Case Investigator and Case Manager directly." 15:08

Was that following advice that you had passed that message on to Mr. O'Brien, or how did you come to that

conclusion that he should contact them directly?

A. As I said earlier, this was just a concern of mine, just what was my role. Those words were trying to give an illustration of what that role could have been. Following advice, it was that I was to be careful about how much I was -- or how far I was being drawn into the case. Therefore, I was saying to Mr. O'Brien maybe you should be contacting the people or the person directly as opposed to using me as a conduit, because that was only going to delay the time scale. I also said that if he was finding that there was some degree of time-lag between when he was asking the question and when he was getting a response, then of course he was to contact me and then I would try and expedite the matter. 15:09 15:09 15:10

226 Q. Mr. O'Brien then e-mails you on the 6th March, so the same day as this telephone conversation, and he says that he was taken aback and disappointed?

A. Mm-hmm.

227 Q. He also says that it implied that "your role on be my behalf does not enjoy an autonomy". For the Panel's behalf, that's AOB-01464. Did you get an impression from Mr. O'Brien during your conversation with him that he was disappointed in how you were reflecting the role should be engaged? 15:10 15:10

A. I'm hesitating because I definitely know later that he was disappointed. Perhaps he was thinking that I wasn't doing what he wanted me to do. Therefore, perhaps he didn't see the role as being important

enough for him to continue with because it wasn't impacting the progress of the investigation. Later on in one of the transcripts, he uses the word to describe the role of the nonexecutive director, or me, as "useless". That's a quote. I think that's from Gráinne --

228 Q. I think that's in a discussion with Gráinne Lynn from NCAS.

A. That may have been where he was at that particular time. But there was another meeting on 21st March when he passed on other information to me. 15:11

229 Q. What other information?

A. Well, I think those are the questions that he was wanting asked. I distinguished between 37 concerns in the first meeting and then I think there were 49 questions later. So he was still -- he was still interacting with me at that stage. 15:11

230 Q. Yes. You described that he was disappointed in your role. Do you feel that your description or your engagement with him led to him having potentially what you see as a misunderstanding or a misconception of the role? 15:12

A. He may have had an understanding of what my role was and maybe I didn't agree with what I thought his understanding was. This is the problem with the designated -- and I am not making excuses for myself on this, I just see this as being a big issue that needs to be addressed. 15:12

231 Q. He does then, as you say, send through I think it's 47

questions --

A. Yes.

232 Q. -- to be addressed. You respond to that. If we could bring up AOB-01464, please. This is your response. I think it's fair to say, and you can tell me if I am wrong, but you don't seem -- the line that you use is "as per my role, I will continue to ensure that the momentum is maintained". There doesn't seem to be further clarification, for example, that you aren't going to be an advocate for him, or are the words that you have used in your statement. Do you feel that you should have set that out more clearly to him? 15:13 15:13

A. In my opinion, and I am open to correction, I didn't see myself as an advocate for Mr. O'Brien. In essence, to maintain the momentum was a critical aspect of it; to respond to concerns that he had was a critical aspect of it; to ensure that he was being heard and that his concerns were being responded to in a timely manner, that's what I was trying to achieve. 15:13

233 Q. You feel like you were clear enough with him about that? 15:14

A. Absolutely.

234 Q. You do then have a further meeting, I think, with Mr. O'Brien and his son on the 22nd March. You record then in your statement that from that point on you've limited direct contact between -- sorry, from Mr. O'Brien, made by Mr. O'Brien to yourself, was how you put it, and you say you felt uneasy about that. Why uneasy? 15:14

A. Well, he was copying me into a lot of e-mails that were going between different people within the Trust. Again, it's clarity in and around the role. I was uneasy because I wanted to be in a position to help or assist with the progress of the investigation but knowing where the demarcation lines were was difficult. If Mr. O'Brien wasn't contacting me directly, then that was a cause of concern. I brought this up with DLS.

But every time I was copied into an e-mail, I took that as being a personal request to me so I was still following up copied e-mails. Maybe they were directed at someone else but I felt that I needed to. If there was a delay on something, I would have been on the e-mails to Mrs. Toal or Siobhán, Mrs. Hynds, or Dr. Khan saying, look, this needs to be dealt with, you need to expedite this, what is your response to this? So, I was still pushing on even though Mr. O'Brien had almost sidelined me in this because the e-mails weren't directed to me directly. That was my understanding. 15:15 15:15 15:15 15:16

235 Q. If we go back at the outset of your evidence, you seem to have suggested that, in your view, your role was to maintain momentum in respect of representations made by Mr. O'Brien. Because you weren't then having direct contact from him, did you feel that your role had become superfluous or did you feel that there's still an obligation on you to ensure the momentum, whether or not it's coming directly from Mr. O'Brien? 15:16

A. I felt morally that I had an obligation to follow that

and to keep my eye on what was happening. Regardless of the position or the impression that Mr. O'Brien had of me, I still felt that I had to track that and follow that, and therefore still make representations to key personnel who were carrying out their respective roles. 15:17

236 Q. The description in the MHPS guidance of your role, it says "and consider representations", so the ensure momentum "and" rather than by. I suppose I am just wondering even if that was your understanding of the role, was it correct and should you have been more 15:17 proactive in terms of seeking to push the case forward even if there wasn't representation coming from Mr. O'Brien?

A. I still was doing that through my e-mails saying to different people look, there are outstanding witness 15:17 comments here, can you progress this? So I was still asking the question. But in terms of the actual -- you see, it's a different role. Within education I would have been saying you get this done and get it down now. So there was that -- there was that, I will call it 15:18 a power element. In my role, I was almost just offering advice because -- sorry.

237 Q. No, sorry, you finish.

A. No, I've finished.

238 Q. I suppose I am wondering why didn't you feel you had 15:18 that power? I mean, that's what your role is set out to do. Why did you not feel that you could be more instrumental? What could you have done to be more instrumental?

A. I don't know what I could have done that would have made it more instrumental, bearing in mind the knowledge that I have of the role. I was pressurising rising people to respond.

239 Q. I think one thing again that Mrs. Toal had suggested this was in your oral evidence -- I don't propose to go to it but it's at TRU-03421. She suggested I think the missing part of all this was somebody out of those, myself, Dr. Khan the Medical Director, Mr. Wilkinson, actually sitting down and saying right, where are we with this? That's how she put it. 15:18 15:19

Did it ever occur to you say we need to get everyone around a table here and try and work out what the blockages are and more forward? 15:19

A. There would have been some meetings with Mrs. Toal and Mrs. Hynds and myself, and at those meetings we were teasing out some of those issues. But you could easily explain away why it was taking longer than expected to carry out the role or the investigation within the time scale. 15:19

240 Q. Whenever you say easily explain away, you know, was that that you were just being told we need more time and did you accept that at face value, or did you dig you know if -- if you are saying it was easily explained, did you dig beyond the explanations you were being given? 15:20

A. Maybe I shouldn't have used the words "easily explained". It was explained in terms of the volume of

material that had to be looked at, in terms of clinicians who were already doing a full day's work and had to find the time in order to do this. Some clinicians were on holidays, and that could have been a four-week period. So, there were reasons why it couldn't be carried through as quickly as I would have wanted to.

Then the question has to be asked, is the four-week - and this is coming from an educationalist as opposed to a medical person - is the four-week period a reasonable period to expect? I am well aware of the pressure that's being exerted on a clinician during this time and it's best to work to as limited a period of time as you can, but there may be extenuating circumstances where you have to operate outside of that four-week period.

241 Q. I suppose what I'm asking is were you accepting at face value that the Trust was telling you it's going to take longer than the four weeks and whenever that kept getting extended, did you just accept that?

A. Yes, because what else -- this is a -- what else was I to do? Was I to investigate that? Was I to bring people in and investigate that? Is the investigative part of the nonexecutive director a key aspect of it? If it is, then I doubt whether or not a layperson is the person to carry out this role.

242 Q. Who do you think then would have been more appropriate?

A. Someone placed within the health system, who is well

trained. Because it is a well -- I believe now it's someone that needs to be well-trained, and needs to know the structures and processes within the nonexecutive director role. That person needs to know what he or she can or cannot do and what is expected of them.

243 Q. You have referred to being copied into e-mails and so on with updates. Throughout 2017 and 2018, there are e-mails and you seem to, as you have referred to it, had meetings, for example, with Mrs. Hynds. I'm not going to go to all of these but I will give some references for the Panel's note. 15:22

A. Yes.

244 Q. So at TRU-261888, on the 6th February Mrs. Hynds had provided you with an update about the exclusion and the return to work. You appear to e-mail Mrs. Toal thereafter on the 15th February, and that's at AOB-01442. What you say there is that you would urge the Trust to process these matters as a matter of urgency. It seems then that you had a meeting with Mrs. Toal and Dr. Wright on the 23rd February. What you say in your statement around that, which is at WIT-26095, is that you were satisfied that the momentum of the case would be maintained. I am just wondering what gave you that assurance; what allowed you to be satisfied that the momentum would be ensured or maintained? 15:23

A. Because they were explaining to me what they were actually doing and how they were doing it, and that

gave me satisfaction. Again, I didn't investigate, I didn't interrogate them with regards to what they were doing but I was satisfied, on face value, that they were doing what they were saying they were doing.

245 Q. Did anybody at any stage give you an idea that it won't take four weeks but it might take X amount of weeks? 15:24

A. Oh, yes.

246 Q. I am more asking was there ever a target time scale that they had in mind, or did it just appear to be open-ended to you? 15:24

A. No, I did ask the question about when they thought that it would be finished, and that was one of Mr. O'Brien's questions. If my memory serves me right, I think they intimated a completion date in or around, was it April? I can't remember that date just offhand. But yes, 15:24 I did ask the question when do you anticipate that this is going to be completed.

247 Q. Sorry.

A. Because that would only be a fair indication to Mr. O'Brien when it was going to be completed. 15:25

248 Q. Obviously it wasn't completed in April. You got a further update, I think from Dr. Khan, on the 13th April and that's at TRU-261935. Again, that's an update from him. Again, your response is you say: 15:25

"I'm charged to ensure that the case is progressing in a timely manner, taking into consideration the nature and scope of the investigation".

You say that it would be a good idea, I think, to keep Mr. O'Brien informed. Then you get another seemingly a monthly almost update from Dr. Khan --

A. Yes.

249 Q. -- on 15th May and the 27th June. 15:25

A. Mm-hmm.

250 Q. In the 27th June e-mail, he indicates that all the witnesses have been met and that there are going to be issues with speaking to Mr. O'Brien before 31st July. At that stage, obviously, the 31st July is about seven 15:26 months into the investigation. Did that cause concern to you that you were so far in and that Mr. O'Brien hadn't been met with yet?

A. Oh absolutely, but that was the time scale issue that was mentioned at the very beginning of my involvement 15:26 of this and persisted the whole way through. If you were to track my e-mails, you will see that I am continuously saying, look, we are operating outside of these time scales and we need to expedite this quicker. But then there were all of these other questions in and 15:26 around witnesses and availability of clinicians and so forth.

251 Q. Mr. O'Brien actually e-mails -- if we could bring this up please at AOB-01689. Mr. O'Brien e-mails Dr. Khan, copying you in, Mr. Wilkinson. This is on 31st July. 15:27 He attaches, as you can see there, a letter which addresses a number of concerns he has in advance of his interview with Dr. Chada, and it's quite a lengthy letter that he provides. I wonder if we could just go

to AOB-01685, which should be part of the letter. Yes, if you could scroll down, please. In the middle of that paragraph, you can see that Dr. Chada has advised in June that Mr. O'Brien should receive a witness list, and he hasn't received that. He also states that he hasn't been provided with the testimonies of any witnesses. Were you aware that he hadn't those documents, which could be seen obviously as very important? 15:27

A. I was aware and I saw those in an e-mail, and I responded to the e-mail which directly -- in my memory I think it was Siobhán, or Mrs. Hynds, in particular, and Dr. Chada saying look, it's only fair that Mr. O'Brien receives this information. 15:28

252 Q. I think, and I can be corrected on this, but there is a later e-mail where Mr. O'Brien chases statements before his next interview, and you do respond to this -- 15:28

A. Okay.

253 Q. -- to that one. I'm not sure, and I am sure that I can be corrected if I am wrong on that, that there is a response to this particular e-mail. You were copied in and I assume then you accept that you would have been aware at this time? 15:28

A. Yeah, absolutely. 15:28

254 Q. Was that a matter of concern to you?

A. Of course it was because if someone is in the middle of an investigation and they require statements, then they should be readily given over to the person concerned.

That's why, when I picked it up later, I was trying to get them to expedite this and make sure that they were forwarded.

255 Q. If I'm right in saying that there is no response to this particular one, do you feel you should have responded or that you should have taken action? 15:29

A. Yes, I will accept that.

256 Q. We can go potentially then to the e-mail that I think you are referring to, or that you might be conflating, Mr. Wilkinson. It's at AOB-01766. This is an e-mail in advance of Mr. O'Brien's second interview with Dr. Chada, where he is asking for three statements. I think if we scroll to the next page, we can see that you do respond to this one. Yes. 15:29

A. Yeah. 15:30

257 Q. Is that what you were thinking?

A. That's what I thought. That's the one.

258 Q. Yes. Was it concerning for you that here we are a number of months again down the line, there's to be a second interview and there are still statements outstanding? Was that a matter of concern? 15:30

A. Yes. Whenever I received that, I was concerned that that information hadn't been given across.

259 Q. Did you feel that this was the best sort of tool that you had to try and do something about it, by sending an e-mail, or did you feel there was anything else you could have done? 15:30

A. From experience, I know that whenever I contacted Mrs. Toal or Mrs. Hynds that the matter would be

expedited, that she would listen to what I was saying.

260 Q. I appreciate you saying that they would listen to what you are saying but obviously there's still considerable delay here. Do you feel, for example, that your e-mails were instrumental in changing or in reducing the delay? 15:31

A. I think they were instrumental because it was drawing to their attention that this had to be done and should be done. Yes, I do.

261 Q. Then you receive an update on the 20th November from Dr. Khan, which is at, for the Panel's note, TRU-269355, where you are told that they hoped to have their report done as soon as possible. There seems to be a bit of a lag then where there doesn't seem to be much activity or updates -- 15:31

A. No.

262 Q. -- until, it seems, February 2018, when you have an update from Mrs. Hynds. That's, again for the Panel's note, at TRU-261971. She, Mrs. Hynds, indicates that they have not received feedback from Mr. O'Brien. But on the 4th March there's a further e-mail from Mrs. Hynds where she says that Mr. O'Brien has been provided with all documentation for his comment. 15:32

Was it concerning to you to think that he might not have had all the documentation at this point in March 2018? 15:32

A. It would have been concerning, yes. It would, yeah.

263 Q. Did you feel the need to raise or escalate or take any

action?

A. I can't remember what I actually did do but if there was something like that coming through, there may have been a conversation - again, I am sorry but I can't remember - there may have been a conversation. I would have seen Mrs. Hynds and Mrs. Toal on a regular basis when I was over Trust Board, and I would have been asking them questions how are things progressing and so forth. There wouldn't have been a formal meeting in and around that. 15:32 15:33

264 Q. Whenever you are saying that you would have met them regularly, I suppose on one view of the documentation and the e-mails, a lot of the documentation seems to come, for example, from Dr. Khan to you or from Mrs. Hynds to you? 15:33

A. Yeah.

265 Q. Were you acting proactively --

A. Yes, I believe I was because I actually would have been acting for updates. Orally I would have been asking for updates and, as a result of that, then they would have sent this information to me. 15:33

266 Q. Whenever you say you were asking orally for updates, what would have encouraged you? Did you have a regular timeframe in how you sought an update? How would you have managed it from your own perspective? 15:33

A. I would have been looking roughly for monthly updates because I wouldn't have wanted it to be extended over that extended period of time. I needed to have a handle on where the investigation was. So for that

reason, you probably can see there is a pattern to those e-mails that are coming through, and they are generally on a monthly basis.

267 Q. Do you feel that you should have done something more formal than perhaps raising it orally, as you have described? 15:34

A. If I was doing this again, I would have been looking for regularised meetings with HR, with the Case Manager, with the Case Investigator. I know Siobhán would have been, as it were, second-in-command, so Siobhán would have done, I think, a regular meeting, a formal meeting on a monthly -- if it could be arranged, bearing in mind -- but I think that's part and parcel of the learning that comes out of this, that as a non-executive director, it would have been good to have those formalised meetings, to sit down and seek, well, where are the hiccups in the process. 15:34 15:35

268 Q. At the time, and, as I say, we are talking now about in and around March 2018, over a year since the investigation started, at the time did you not think we need formalised meetings or we need something to formalise this to try and combat the delay? 15:35

A. Honestly, no. That was not within my mindset at that time. I thought that by contacting and meeting with both Mrs. Toal and with Mrs. Hynds, that we were tackling that particular issue. 15:35

269 Q. Again, you are copied into correspondence on the 10th June. This is from Mr. O'Brien. It's at AOB-01815. He is chasing amended minutes and an update on the

investigation. You do respond, asking for it to be given immediate attention. Again, are you concerned at this stage that he doesn't appear to have all of the documents that he is requesting? Do you feel you could have been instrumental in checking previous requests to ensure that he had everything that he needed or that he should have had? 15:36

A. Yes, again -- but yet again, I was relying on management within the Trust - that's Mrs. Toal and Mrs. Hynds and the Case Manager - to pass on that information. I think in response to that particular e-mail, I did make a response. Maybe not, but I thought I did say look, guys, this needs to be expedited again. That has been one word that has been consistent throughout this investigation "expedite, expedite", you know. 15:36 15:37

270 Q. I suppose the difficulty is that, on one view, it still took a very, very long time.

A. Yeah. Someone has to make a judgment, if I can be so bold. Someone needs to make a judgment with regards to the time scales and what are the circumstances around this which allows for the investigation to expand, and what are the limits of that because you just can't have an open situation, it needs to be time-bound. The four-week, in my opinion, is maybe just a little -- can I -- it's maybe just a little bit short. But to allow it to expand to a year, I think that's testing the boundaries just a little bit too much. There needs to be some thought given to the time scales, bearing in 15:37 15:38

mind that these are clinicians who are busy. That's not an excuse. If we want the clinicians to respond in a more timely manner, then they need special time to do this. They need to be taken out of their jobs, perhaps, in order to respond to these in a more timely manner. I think that's the most humane thing to do. 15:38

271 Q. Then you received another update from Mr. O'Brien to Dr. Khan. This is on the 21st October 2018 and Dr. Khan says that new concerns have emerged. Did that concern you from again a patient risk or a patient safety perspective? 15:39

A. Of course it did, I have no doubt about that. Again the issue in and around that was my perception - and this is just my perception - that there were at least two, if not three, processes that were going on at the same time. There was the Trust Board business that was happening; there was the MHPS process that was going on; there was my role in that. How they linked and meshed together, I found to be most difficult. I knew there was an obligation on the designated person to report to the board, I saw that, but I didn't see the opportunity to do that. There was no history of MHPS being reported to the board during my time, and my understanding is that in the history of the board, there was no reporting process into the board or into governance. Now, that has changed significantly over this last year, year-and-a-half. 15:39 15:39 15:40

272 Q. In what way has it changed?

A. Now there is a report that comes to governance, which

looks at it in very general headline terms. It's looking at progress being made and, therefore, there is an opportunity for scrutiny and for challenge against each of the cases that are listed. Before that, there was no opportunity for that to happen. 15:40

273 Q. Even though there's potentially, as you say, no history of things like this coming to the board, it could be said that ultimately, as a board member, you still have the responsibility to keep patients of the Southern Health and Social Care Trust safe. Whenever these 15:41 concerns -- I don't know if you think this was at the time when you started to have concerns about patient safety or if it would have been earlier, but whenever that came to your mind did you not think to yourself the board needs to be informed in some way, whether 15:41 that be in a way that keeps the other aspects of the investigation separate from the board so that the board would be made aware that there was a potential risk to patient safety?

A. There is no doubt in what you are saying. Whenever 15:41 these other aspects were being uncovered, then I understood that the investigation was going to expand even more, and that did concern me. The avenue for how I was going to inform the board and governance, I didn't see that avenue because I had no history of that 15:42 happening and whenever - I think I mentioned this earlier - whenever I asked at a general level, look, I am concerned about job plans, I am concerned about appraisals, I am concerned about safety, in terms of

the specifics of this case, then there was almost 'we don't do that, we have to wait, it might contaminate, if you want to call it, the investigation'.

So there was a misunderstanding both in terms of myself and in terms of -- well, I can't speak for my colleagues. In terms of myself, there was a misunderstanding in terms of how I could feed into the board and the opportunities to feed into the board. Again, I will come to this is a learning for me. I come back to guidance for the nonexecutive director. I think that needs to be clearly stated that this should be the case. It wouldn't take too long to draft up a booklet for prospective designated persons to make the role more explicit and to give them the structures whereby they can operate within, and what the expectations are. 15:42 15:42 15:43

274 Q. If we almost separate out the two aspects of it, so your role as the Designated Board Member for the MHPS but also just your role as a board member generally, because I am talking here about becoming aware of new concerns -- 15:43

A. Yes.

275 Q. -- linking that to patient risk. Taking that to the board, I suppose, separately to taking concerns about the investigation to the board, do you feel that regardless of the definition of your role or the training that you'd had as a Designated Board Member, that whenever patient safety started to come into your 15:43

head, that that should have gone to the board?

A. Yes. To put it simply, yes, that should have been.

276 Q. Just to sort of wrap that up in terms of the delay aspect of it that we had been going through, do you feel that you should have informed the board at any stage about the delay in the case? Again, separating out potentially the intricacies of the investigation or the findings or anything like that but just to draw to their attention that there has been an MHPS investigation that has gone so far outside of the expected timeframe? 15:44 15:44

A. Again, I would put that within guidance to any nonexecutive director designated person, yes, I would, and I would expect that to take place. I suppose during the process, I became more accepting of the need for the expansion in the time scale because of the patient safety aspect, yeah. 15:44

277 Q. Do you feel that you could have gone to Mrs. Brownlee about the delay?

A. No. 15:45

278 Q. Why not?

A. Because I became more aware of her relationship with Mr. O'Brien, her connection to Mr. O'Brien. That would have been compromising her so I wouldn't have gone there. 15:45

279 Q. I can go into the board in more detail. I am wondering, Chair, do you want to take a break or do you want to continue? I am obviously in everyone's hands?

CHAIR: I think it's quarter to four. We would like to

finish today, if possible. Are you content to sit on?

A. Yes, absolutely.

CHAIR: As long as the witness is content, we will try and sit on and conclude.

MS. HORSCROFT: No problem. 15:46

280 Q. To continue with the bit about the board then. We have looked at the Trust guidelines, and I know we said we would come back to this, but part of the role within the Trust guidelines is that the nonexecutive board member reports findings back to the board. Was that 15:46 done?

A. No, because I didn't perceive -- first of all, I didn't perceive the avenue whereby I should be doing that. There was still in my mind that the advice that I was given, that this should proceed without any 15:46 interference from board, that the board should be kept -- I am going to use the term "the board should be kept out of this", this investigation will continue to its conclusion and then the findings will be reported to the board. 15:46

281 Q. For example, when the determination came out, that could be seen as being the findings. You didn't feel that at that stage the board should be made aware of those?

A. To be straight about that, I didn't know when it had 15:47 finished. I didn't actually know that that was concluded.

282 Q. At the determination stage. And why weren't you aware -- were you not aware that that was --

A. Because it wasn't clearly told to me that that was the case. Hence, after the determination, I continued to have an interest in what was going on. You would see e-mails taking place between myself and others, even though the determination was concluded.

283 Q. Yes, we will come to those. I think just to wrap up this bit about the board. Again I can be corrected if I am wrong, but it seems like the Trust had received a confidential update on 27th January regarding Mr. O'Brien's exclusion. Then it appears that the board isn't told anything until the Early Alerts in and around September 2020; is that right? 15:47

A. That's correct.

284 Q. So they hadn't been informed of anything in the interim? 15:48

A. No.

285 Q. Do you think that there's a governance failing in that?

A. Yes. Put simply, yes. But I think that the Trust was operating on what had been previous practice, and I can't verify that because I was only fresh into the Trust at that stage but that seems to me the way it was done. There's no doubt about it, that the board needed to be kept more informed, even at a general level, as to the progress of this investigation. 15:48

286 Q. Was that your responsibility? 15:48

A. If you look at the Trust guidelines, you will see there that the Director of HR, and I think it's under the NED's role, that that contact should be there. How that is achieved is not defined. That's not an excuse.

I'm just saying, look, how do you carry out this role? What should you be doing in order to keep everyone informed? What are the avenues open to you; what should you be doing?

287 Q. Do you think that reporting back to the board, for example, when it became apparent that timeframes weren't being adhered to, do you think that that could have been used as a resource or a mechanism to try and expedite the case? 15:49

A. Yeah, yeah. The question is I know now, on reflection, that the NED has an obligation. I was working alongside HR at that stage so I would have anticipated that that connection with Trust Board and with governance would have been a mechanism. Now, that doesn't excuse the absence of behaviours on my part. It's clarification in and around whose responsibility it is and the way in which it should be done. 15:49 15:50

288 Q. You'd indicated that you continued to be involved in e-mail traffic after the determination. I think you seem to be saying that you had some level of confusion about when your role ended; is that fair to say? 15:50

A. That's fair to say.

289 Q. Yes. Were you aware of the outcome of Dr. Khan's determination and the recommendations that he had made?

A. Yes. 15:51

290 Q. For example, that there was to be a review and that there was to be a Conduct Panel and so on. Did you consider it part of your role then to ensure that those aspects were completed in a timely fashion, because

obviously we are aware that that didn't happen either?
A. I didn't know what I was to do after the determination. There was a frustration on my part. I wanted to do the right thing. Therefore, I continued to track it and to make representation to individuals within my knowledge sphere. Now, whenever it comes down to looking at the way in which Mr. O'Brien was to be, I will use the term supervised, that was outside of my remit. I didn't see that as being something that I should be concerned with. 15:51 15:52
291 Q. Is this the return -- the monitoring plan?
A. The monitoring. I didn't see that as being part of my role.
292 Q. Do you think that you should have been made aware of that, or do you think you should have asked? From the perspective of, again, a board member and also as the designated NED, do you think that is an aspect that you should have had more involvement in? 15:52
A. I don't see that as -- I don't see that as being part of this particular role at all. 15:52
293 Q. And what's that based on? Is that based on advice; is that based on your understanding of the guidance?
A. That's based on my understanding of the guidance. The fact that I continue to have an interest or track what was going on, as I say, was a moral obligation as opposed to following it through, because I didn't know if it had ended. 15:52
294 Q. Did you seek advice on when your role would conclude?
A. I remember having a meeting with Mrs. Toal and sitting

around and saying look, where is this going now? What is happening now? I think I can remember that there was a point made about there was a grievance submitted and there was going to be -- the words I can remember was there may be a High Court case, there is going to be another case but you will not be involved. It was only then that I recognised that I had no longer a role to play.

295 Q. So you are saying that you recognised you had no longer a role to play. You are right in saying that there's a grievance lodged by Mr. O'Brien, but you do still seem to receive updates and be in contact with there is Toal thereafter. For example on the 15th May, you refer to this in your witness statement - it's at WIT-26102, for the Panel's note - you receive an update and you are told that the case was becoming increasingly complex and required significant lookback at various cases. Again, did you have a concern about patient safety at that stage? This is in 2019, so we are in and around a year after you are told by Dr. Khan obviously that there are more avenues being opened up. Did you have a concern again at that stage about patient safety?

A. Yes, I did obviously have a concern about this but it comes back to the point that you made earlier: The avenue whereby I was to alert Trust Board or Governance to that wasn't still clear to me.

296 Q. Did you ask for any further detail about what was making it increasingly complex; about what cases were

being looked at? Did you ask for any detail to go behind that information?

A. Not in terms of detail. I would have got general highlights of what was going on but not the detail.

297 Q. I wonder if we could bring up, please, just in respect of the grievance, TRU-262019. This should hopefully be your diary entry for the 12th June 2020. Again, we are another year on from the previous update from Mrs. Toal. 15:55

Maybe just before we do this, we will just deal with this which would wrap up the last bit. If we could go to TRU-261994. This is an e-mail from Dr. Khan about the new concerns. I think you actually reference this in your statement. It refers to a deviation from an agreed action plan. Were you aware of the action plan to some extent, I suppose? 15:55 15:56

A. Just to some extent.

298 Q. Again, did you look behind any of this in respect of the new concerns that have emerged? Did you ask for any further detail or -- 15:56

A. No, I didn't.

299 Q. -- dig deeper?

A. No. I didn't drill down into that.

300 Q. If we could go then again, sorry, to TRU-262019. This is your diary and I think this is on the 12th June. If we could scroll down, yes, we can see here it seems to be a note of a conversation that you have had with Mrs. Toal? 15:56

A. Yes.
301 Q. And about a third of the way down you can see, if I translate your writing properly, "still trying to get grievance done!". What was your thought process or what had you been told behind expressing it in this way? 15:57
A. Do you mean the exclamation mark?
302 Q. Yes.
A. That relates back to my own situation where a grievance comes in - and I suppose it's thinking out loud on paper - where a grievance comes in and everything has to stop until the grievance is processed. There I was saying oh no, this is going to take another turn, we are going to have to -- this is going to have to wait a bit more. It wasn't anything to do with the Trust, it had something to do with how I felt. This is a contemporaneous note, this is my jottings as something was occurring. So that's what that was about. 15:57 15:58
303 Q. I think what you are saying from your previous experience, you understood that when a grievance was lodged, everything stops? 15:58
A. Yes.
304 Q. Did you feel that that was appropriate in this case, that everything seemed to sort of grind to a halt on the basis of a grievance? 15:58
A. I assumed that that was going to happen. It wasn't that I knew it was going to happen, it's just that's what I assumed was going to happen and, my goodness,

this is going to be even more protracted.

305 Q. Obviously this is a number of months on from the grievance being lodged. Even at that, did you feel concerned by those timeframes, that the grievance was lodged in November 2018 and we are now in June 2020? 15:59

A. Yeah. You'll see at the next jotting that I have there:

"Original issue not dealt with. Still trying to get grievance done. There have been delays caused by AOB 15:59 asking for further information and Trust inability to match deadlines".

Really what that is saying there seemed to be a combination of issues there that's causing these 15:59 delays and that there seems to be problems on both sides of the house.

306 Q. Did you feel that those were appropriate reasons for the delay?

A. From where I was standing, yes. 15:59

307 Q. Did you question with Mrs. Toal in this conversation, for example, what information requests Mr. O'Brien had been making, or what the Trust's inability to meet deadlines were?

A. No. 16:00

308 Q. Did you think it was part of your role to inquire further like that?

A. Trust would have been very familiar with continued urging to provide information and to act within an

agreed time scale. They knew my position on this. I assumed that there were good reasons, on both sides of the house, why the delay was occurring.

309 Q. You will see as well further down on your note, you seem to discuss there "role of NED". 16:00

A. Yes.

310 Q. It says: "Primarily keep your distance. Don't get too involved". I'm just wondering is that advice that you were receiving in respect of that precise period in time or was that advice that you were receiving 16:00 regarding the role generally?

A. That was advice I was receiving with regards to it generally, not to be drawn in. That was an important -- not to be drawn in but to -- and this was -- sorry, this was with regards to Mr. O'Brien specifically, not 16:01 to get drawn in to the investigation and to carry out roles that may be expected from him. So, that's...

311 Q. What do you mean by in respect of Mr. O'Brien specifically?

A. Because in the past he was wanting -- you can see, for 16:01 example, whenever the concerns or the questions were coming, he was not pleased that I hadn't addressed those issues myself and that I hadn't replied to those questions or concerns myself. He thought that my role was being usurped or was being subsumed within the 16:02 Trust. Again that's another issue, I think, that does need to be looked at.

With regards to this, it was, look, don't be drawn into

being an advocate, don't be drawn into be an investigator; whatever your role is, don't be any of those.

312 Q. You also, I think, were told by Mrs. Toal that Mr. O'Brien was seeking retirement but a return to work. What were you told in and around that aspect of the issues? What information were you given about that? 16:02

A. Simply what you have articulated to me. The other thing, there was an issue that came up with regards to his return -- he was going to get retirement and then the next minute he wasn't going to get retirement, I think, was there because he wanted to return to work or he wanted to continue to practice. 16:02

Now, this was getting -- the whole area of contract law, employment law if you want -- sorry, employment law in particular, I didn't see that that was my issue. I honestly didn't see that. I saw that as being Trust business and they needed to expedite that aspect of it. 16:03

313 Q. If you didn't see it as being your issue, why do you think you were being told about it or how did that happen?

A. I have absolutely no idea.

314 Q. Did you feel it was appropriate? 16:03

A. They may have wanted to share it with me as a colleague, perhaps. I didn't really want to know about that.

315 Q. Well, why didn't you?

A. Because I thought it was outside of my remit. This was moving on to another area altogether. It wasn't originally within the terms of reference of the investigation. That was moving on to something else.

16:04

Again, I would have been much happier if someone had said to me, John, your role is now finished, and was clear about that.

316 Q. Did you have any concerns about the way in which the grievance or the return-to-work issue was being dealt with? 16:04

A. This is a dangerous reply, which is why should I? You know, why should I? I see that as being again outside of the role of this particular investigation.

317 Q. This conversation that you were having with Mrs. Toal, as we have said it's in June 2020, we are coming up on nearly two years since Dr. Khan's determination, there are a number of aspects of his recommendations that haven't been actioned; I think you have accepted the board hasn't been made aware of his decision? 16:04 16:05

A. Mm-hmm.

318 Q. Do you accept that the momentum was lost over the course of this investigation?

A. Not having oversight of the whole of the process, I would find it difficult to answer that. On the face of it, you could say, without a doubt, it lasted two years and more, the momentum was lost. But again, if you drill down into the situation and you find out or you are made aware of the issues with regards to 16:05

a clinician's, and I don't want to rehearse this all again, but there's clinicians not being made available; I will use the word the inability, maybe that's better, the inability of Mr. O'Brien to reply in a timely manner to requests that was made for additional information; for the board to supply Mr. O'Brien with additional information or statements, it seems to me that within all of those parameters, that the momentum was kept going. How instrumental the role of the NED was in all of this, I have great doubts. 16:06

319 Q. Your role was ineffective really at being able to ensure that it was completed in a timely fashion?

A. It depends what you mean by a timely fashion. If you mean within four weeks, obviously it wasn't completed. It was a long period of time that this took place. On face, I would say my role, the role of the nonexecutive director, was ineffective. That complies with other information I have in my own personal file with regards to a report that was written. Now, whilst that person - I can't remember the name of the person again - but they were looking at the role of the NED and said it was ineffective, look, it didn't serve any purpose at all; the role of the N ED operated outside of the Board. I can't remember -- 16:07

320 Q. Is this the Kennedy Review that you are referring to? 16:07

A. Yes. Whenever I read it and I only got it about a week or so ago, whenever I read that, I said yes, that's exactly how I feel about this.

321 Q. Just while you raise that, one thing that's highlighted

in the Kennedy Review is that's one solution would be to have agreed standards and means for measuring compliance with the standards, and that that would serve to provide regular objective information for the board. They seem to think that keeping the board updated -- 16:08

A. Yeah.

322 Q. Do you agree with that?

A. Absolutely. The learning that comes out -- the learning that comes out of this, for me as a person, I would be in a much better position to carry out this role if I ever accepted to do it again. But the learning is there. The problem is there's a roll-on, roll-off position with nonexecutive directors and the cultural capital is lost every time those people leave. Therefore there's a lack of knowledge and understanding and skills which is lost every time. That needs to be captured in some way. 16:08

323 Q. I think you have accepted that to some degree, your role was potentially ineffective. Was it apparent to you at the time, or is that a reflection? 16:09

A. That's a reflection because I was doing the best I could to try and keep things moving and to expedite the matters. I still have a lot of trust in people, in managers, and maybe that's a failing but that's the way I operate until people let me down. I don't think people let me down when I was asking them to expedite things; I don't think so. There were other factors which we have talked about which were in play which 16:09

slowed down the process. I think both sides are at fault on this. But there has to be a better way.

324 Q. Do you have any thoughts on what better way there would be?

A. Yes. If we go right back -- this could take a wee while. If you go back to training, first of all. The training needs to be more explicit to begin with, and tie in framework with guidelines. It needs to set the role of the nonexecutive director much more clearly. There needs to be a handbook -- in my opinion, there needs to be a handbook provided for the nonexecutive director which clarifies not only his role but the way in which -- and it will not take lots of work to do that. I carry out other duties and there is a handbook which is provided which clarifies the role clearly that you have to do. 16:10 16:10 16:10

There's the way in which you should interact with key personnel within the Trust; what is your obligation I have said to HR, to the Case Manager, to the Case Investigator. What is your role; how should you play your role? Should there be an agreed monthly meeting between the key personnel to make sure that things are being progressed? 16:11 16:11

I have put some of this in the statement but I can't remember it all. I definitely believe that if you are put into this role, the training can be fine but unless you have, and I heard the word earlier on today, unless

there's a mentor beside you on a one-to-one basis just going through and giving you the confidence and the competence to carry out this role and to highlight some of the issues which you have rightly put to me this afternoon, and to highlight those and then to put them into place, I think if those types of things are put in place -- and then your position with the board, that was unclear to me. I knew that there had to be a board aspect to this because it was in the Trust guidelines, but it wasn't clear to me how I was to achieve that. If you excuse the phrase, perhaps I should have been more bloody-minded about the thing and just done it, and told it's not appropriate, John. 16:12 16:12

I think those sorts of things - and I have others in my Section 21 statement - those sorts of things will certainly help the NED to carry out his role in a more effective way. 16:12

325 Q. Just to go again to what you were saying about the board - and I know we have been through this - but your knowledge of how to interact with the board. There were then, in 2020, matters regarding the Early Alert brought to the attention of the board. 16:12

A. Hm.

326 Q. And we have discussed a little bit about the contact that you had with Mrs. Brownlee in respect of the meetings that you had and the telephone conversation that you had with her. On the 22nd October 2020, she doesn't appear to have declared a conflict of interest 16:13

in that meeting. What were your views on that?

A. I found that strange, bearing in mind that she had some sort of connection with Mr. O'Brien. She would have been careful at all other times to make sure, if there was a conflict of interest, that it was declared. But that was a reflection that I had after the meeting. I think on subsequent meetings, she did declare an interest and, therefore, did leave. Then whenever it came the telephone calls which I received, that made it even more strange for me. 16:14

327 Q. We have spoken about the meeting that you had with her on the 26th January 2017, and that was sort of at the outset of your appointment. We have also spoken about the telephone call you had with her on the 2nd March 2017. You also set out in your statement that you have received inquiries from her on the 15th February 2018, the 11th September 2018, and then 11th June 2020 and the 18th June 2020. You described the one on the 18th June 2020 as being a strange call. What made you feel that it was strange? 16:14 16:15

A. Initially, Mrs. Brownlee came on and was making requests of me, the detail of which I just can't -- I knew it was to have conversations with Mr. O'Brien to see if this matter, this whole situation, could be expedited more quickly; would I have a chat with Mr. O'Brien. I found it strange because, as Chair of the Trust, I felt that she shouldn't be making those requests of me, and that in terms of the independence of the role, then those were out of order. I think at 16:15

the end of that telephone call, she came back off that position, having listened to me. I can't remember if I noted I wouldn't be doing it. That was the just how I felt about that.

328 Q. Again, in fairness to Mrs. Brownlee, she indicates in her own statement that she didn't try to influence you in any way, but did you feel influenced in any way generally but also in respect of your feelings about what you could or couldn't tell the board? 16:16

A. So, my question on that would be what was the purpose of the telephone call? Really what I am saying, why did she ring up in the first place then, other than to make comments? That's why the word "advocate" doesn't sit easy with me. Influence, does influence mean advocate? I just know initially she wanted me to do something. 16:16 16:17

329 Q. And did it work?

A. No.

330 Q. You don't feel that you would have acted any differently? 16:17

A. Oh, definitely not. I am a fairly independent sort of person and I would judge the situation as I saw it within the rules that are there. No. No.

331 Q. I think, Mr. Wilkinson, you have given us what your reflections are or what way you think, unless you have anything that you wish to add about that? 16:17

A. Just about my role within this investigation, is that what you mean?

332 Q. Yes, things that the Panel might be interested to hear

about your views on how it can be improved?

A. Well, I think I have illustrated how I think they can be improved. I just found -- I am being straight. If I was asked to do this job again given the information about the role of the NED at this particular time, I wouldn't do it because there's too much ambiguity and you would need more -- I could do it better this time, I think, I think I could do it better because I have learned from it. But I don't know whether I even have the option of saying no, which is an interesting thing. But I just found throughout the process, I found it difficult to do. But I think there is learning and I have tried to illustrate to the Inquiry Panel how that might be achieved. 16:18 16:18

This is like baring your soul, almost. I know there are shortcomings in the way that I have carried out this role, and I was going to say I am not looking for sympathy but I will not get sympathy. I know that I could have done it better, but in defence I need definitions, I need processes to be clearer and expectations to be clearer. 16:19 16:19

MS. HORSCROFT: I don't think I have any further questions for Mr. Wilkinson, but the Chair and Panel may have some questions for you.

CHAIR: Thank you. Mr. Wilkinson, I am going to go to my colleagues, first of all, and I will go to Mr. Hanbury first if he has any questions for you.

THE WITNESS WAS QUESTIONED BY THE INQUIRY PANEL AS FOLLOWS:

MR. HANBURY: Thank you very much. I hope you can hear me. I have just two short questions for you. One is, 16:20
to my mind it was always going to take a long time, this investigation; would you agree with that? If you had sat down, say, in February 2017 with the Case Investigator and the Case Investigator and had a pretty good idea of what was in front of you, that is an 16:20
analysis of 783 triages, 668 case notes to go through, and all the time that took, 13 witnesses to see, and Mr. O'Brien as well probably on a couple of occasions, it would have dawned on you roughly how long that was all going to take. You could have then had a much 16:21
better idea of sort of expectation versus reality. What would you comment on that?

A. I would absolutely agree with that and that's why I think, in retrospect, the opportunity to have round table meetings to discuss it and to sit down with 16:21
people would have been the way forward for that because at least then that could have been communicated to Mr. O'Brien, that this was going to be longer than the four-week period that is set aside for the investigation. Perhaps that might have alleviated some 16:21
of the pressure and the tension that Mr. O'Brien felt.

333 Q. Thank you, I totally agree. Then the second one, since you seem to be the sort of timekeeper here, and that was obviously what hung over you, is one of the things

that delayed after the November '17 meeting was Mr. O'Brien requested to stall the whole process so he can spend two months doing his appraisal and then there was Christmas. So, you know what happened there, sort of two to three months of nothing, at least from the point of view of the investigation. In retrospect, since you had some ear to the board with the Medical Director there, do you think that was the right decision to allow him to do the appraisal, or should he just have cracked on? Your advice to the next person doing it, do you think things like this should just be stopped until the investigation is completed? 16:22 16:22

A. I would agree completely with that as well. There seemed to be a favourite word of mine going around now which is "expedite". In order to expedite the process, then to stall those other processes would certainly enable things to progress at a quicker pace and at least get to a conclusion quicker. 16:22

It just seemed -- everything seemed to stall the process. They were legitimate enough in themselves but what was the priority? I think there were competing priorities at different levels throughout this process. The very high level, as I mentioned earlier on, was the need to expedite the process so that Mr. O'Brien got a conclusion to it, and then there was the patient/client experience and safety aspect of it. And then there was the whole process itself and the processes within that process which elongated the whole 16:23 16:23

thing. I would definitely agree with you that those should be suspended pending the outcome.

MR. HANBURY: Thank you very much. I have no more questions.

CHAIR: Thank you, Mr. Hanbury. 16:23

Dr. Swart, if you have some questions.

334 Q. DR. SWART: I think as a NED, your first MHPS investigation was particularly challenging, if it's any consolation. Mostly the involvement isn't of this 16:24 degree and I am sure people have told you that already.

You quite clearly made a big point about the clarification of roles and responsibilities, and everyone involved in this process has made similar 16:24 points. There is clearly a need to define that. That's pretty consistent down all levels of the Trust, actually, in terms of who was doing what in regard to this issue.

16:24

Another feature which has come through quite clearly from our witnesses is that there's a huge emphasis at the Southern Trust on performance targets. I think one of your Acute Medical Directors put it as I would not say that quality was overtly discarded. But many 16:25 people have said the focus was on performance, performance, performance. I think this is because of the waiting lists and it's understandable. Equally, as a board member your prime responsibility is also for

patient safety, and the fact that the board was unaware of all of this for such a long time seems to me to be quite a significant issue.

You weren't the only board member who knew about this, the Medical Director knew about it, and yet it wasn't raised with board members for a discussion. You feel you didn't have a route. This says something about the culture of the board. What was your experience as a board member of the relevant priority of performance quality and finance and so on? Would you accept that perhaps there's some learning in this in terms of patient safety being more of a priority issue? 16:25 16:25

A. Yeah. It's an interesting question simply because the board within maybe this last year, year-and-a-half, have created another subcommittee which is a performance subcommittee. 16:26

335 Q. Mm-hmm.

A. Probably in direct response to the waiting lists, I would suggest. However, I Chair the Patient Client Experience Committee, and coming through there there is a marked interest in quality and in the patient experience. I haven't really been asked about this but there was an occasion where ironically I had to attend the Urology Department within the Trust, and I used the opportunity to ask some questions. As a result of those -- and I did declare that I was a nonexecutive director, by the way, it wasn't a subversive thing - and I used that opportunity to ask questions. As a 16:26 16:26

result of that, I brought I think it's the lead nurse back down to the Patient Client Experience to describe what the patient experience was in terms of the quality of experience that they were actually getting out of Urology. My query wasn't as a direct result of being involved as the designated NED. 16:27

In answer direct to your question, I think there's a balance within the Trust in terms of performance and quality. We try to address both of those. There is a direct input or interest in performance because there's a Performance Committee and they do a lot of drilling down. The quality bit of it is done through the Patient Client Experience where we look at SAIs; I would look at concerns and complaints; we have the HCAT; we have Care Opinion which is looking at the quality of the experience. So, that's part and parcel of what we do. So there's a balance; I would argue there's a balance to that. 16:27 16:27

336 Q. What I am really trying to say, though, this sort of situation puts patients at direct risk, quite considerable risk, and we have heard directly from the families. That was going on for quite a long time. 16:28

A. Yes, I understand --

337 Q. You know, this isn't just a simple question, of course, it's more do you think the board has actually learned as a result of this? 16:28

A. Without a doubt.

338 Q. Yes.

A. Without a doubt. That's evidenced by the pro forma that they are beginning to use in Governance and reported up into Trust Board. That was non-existent, non-existent. They understand that, by using it, they can challenge. There's an avenue for scrutiny that wasn't there before. So I think they have learned.

339 Q. Okay. That's all from me. Thank you.

A. Thank you.

CHAIR: Just one short question, Mr. Wilkinson. You talked about how you felt sidelined by Mr. O'Brien in that he e-mailed other people and simply copied you into it. You had actually told him that you couldn't answer the questions and that he should go directly to these other people, so from his point of view what was he to do other than go to them directly? 16:29

A. Yeah, but I didn't instruct him to go to the other people only. I said that if it was the case that that person could answer your question directly, then to avoid coming through -- it wasn't that I didn't want to do it; it was more appropriate, in my view, that he directed those questions to the people who could answer it without going through a loop in order to get to it.

But that didn't, and I wasn't suggesting that that would, negate the situation where he could come to me, because I did say if there was a problem and if there was an issue, that he was to come back to me but he never really did. He copied me into e-mails but I still wanted to know what was going on and if I saw

something that needed to be addressed, then I chased it a bit.

340 Q. I suppose the other side of that coin is when you saw this happening, did you try to contact him and say, look, are you all right, is there anything I can do here more for you? 16:30

A. I did on one occasion that I can remember. There should be an e-mail about that, where I did go back to him and say, look, if this is the case -- oh, I remember now. There was a -- was it a grievance letter that was sent to the Chief Executive, the Chair and the Director of HR. I was copied into that, and I wrote to him and said if there's something that I can do here in terms of my role as the nonexecutive director, please let me know, please contact me. 16:30 16:31

341 Q. And did he do so?

A. No.

342 Q. Thank you very much, Mr. Wilkinson. I am glad we have managed to get you through your evidence at some speed today but I think we have covered all the issues. Thank you, Ms. Horscroft. 16:31

Ladies and gentlemen, tomorrow we have a very early start. The reason for that is that our witness is currently in New Zealand and will be joining us remotely. In fairness to him, he will be starting at I think it's 9:00 in the evening for him, so a long day's work, then having to come and speak to the Inquiry. We are going to start at 8:00 in the morning, 16:31

so please set your alarm clocks, ladies and gentlemen, I know I will have to. Thank you.

THE INQUIRY WAS THEN ADJOURNED TO THURSDAY, 30TH MARCH AT 8:00 A.M. 16:33