



Urology Services Inquiry

Oral Hearing

Day 38 – Thursday, 20th April 2023

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

Held at: Bradford Court, Belfast

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

Gwen Malone Stenography Services

I N D E X

W I T N E S S

P A G E

Mr. Aidan O'Brien (Contd.)

Examined by Mr. Wolfe KC

3

1 THE INQUIRY RESUMED ON THURSDAY, 20TH APRIL 2023 AS
2 FOLLOWS:

3
4 CHAIR: Good morning, everyone. Mr. O'Brien,
5 Mr. Wolfe.

10:02

6
7 MR. AIDAN O'BRIEN CONTINUED TO BE EXAMINED BY MR. WOLFE
8 KC AS FOLLOWS:

9
10 1 Q. MR. WOLFE KC: Good morning, Chair, good morning,
11 Panel. Good morning, Mr. O'Brien.

10:02

12 A. Good morning, Mr. Wolfe.

13 2 Q. Two short pieces of housekeeping, before we commence
14 this morning. Mr. O'Brien, you'll recall yesterday
15 morning you were looking at the cipher list, as was I.
16 We were frantically searching for the designation of
17 a patient you wish to call in aid to support
18 a particular point you were making about capacity, I
19 think, broadly. And that reference, I think you were
20 searching, for was Patient 84, is that right?

10:02

21 A. That is correct.

10:03

22 3 Q. The second point, Chair, relates to a line of
23 questioning that developed yesterday. If you pull up
24 on the screen please TRU-00806. This is a version of
25 Mrs. Trouton's statement to Dr. Chada. The second line
26 on that page - which is the last sentence in
27 paragraph 12 - I was asking Mr. O'Brien about the
28 assertion that new urology colleagues were not willing
29 to let him not triage. So, I've been advised, and it's

10:04

1 a prudent point to make that that is an earlier draft
2 of Mrs. Trouton's statement and she was to subsequently
3 amend it, and the amended version with tracked changes
4 is available to us. If we could just pull it up,
5 please, TRU-00810. On the bottom of that page you can 10:04
6 see that -- yes, you can see that the relevant sentence
7 remains intact and isn't amended. So, there's no
8 change to the substance of the point, it's just to
9 direct you to the appropriate version of Mrs. Trouton's
10 statement. 10:05

11
12 Could I take up now with you, Mr. O'Brien, the issue of
13 the March 2016 meeting that you had with Mrs. Corrigan
14 and Mr. Mackle? The letter dated 23rd March presented
15 to you at that meeting can be found on AOB-00979. 10:05
16 We can see from your statement - it's paragraph 983 -
17 that you say:

18
19 "At that meeting I read the letter and I asked
20 Mr. Mackle and Mrs. Corrigan, what am I supposed to 10:06
21 do?"

22
23 And the only response that you were given was from
24 Mr. Mackle who simply shrugged his shoulders. We can
25 through various documents that that is a consistent 10:06
26 recollection you had of how that meeting was dealt
27 with.

1 Could I put to you Mr. Mackle's perspective and see
2 what, if any, difference there is between you? When he
3 gave evidence - and I'll refer here to the transcript
4 reference, I don't need to bring it up, I can summarise
5 it - the transcript reference is 002265. He says that 10:06
6 he would have been careful with his body language. He
7 wouldn't have been shrugging his shoulders. He would
8 have read the bullet points from the letter. It was
9 a short meeting. You took the letter, folded it, put
10 it in your pocket, said you would consider it. And 10:07
11 Mr. Mackle doesn't recall offering any support and nor
12 does he recall being asked for any support.

13
14 Is there much between you in terms of how the meeting
15 developed, based on that summary? 10:07

16 A. I think there's a significant point. The meeting is
17 etched on my memory. I have a very clear and
18 unambiguous recall of it. It was conducted in a very
19 well-mannered, courteous and professional manner.
20 I went to that meeting. We didn't sit down. Eamonn 10:07
21 and I stood facing one another. Martina was seated on
22 a seat with her back to the window. And Eamonn
23 explained to me that he wanted to share some concerns
24 that they had and he felt that it was better and kinder
25 to deliver those concerns to me in person rather than 10:08
26 sending them through the post. So, he went about --
27 there were four concerns, and he said 1, 2, 3, and then
28 he couldn't remember the fourth one. He opened the
29 envelope and he read the fourth one, and he handed it

- 1 to me. And I scanned down through it. And at the end
2 of that I said to him: 'what am I to do?' And he --
3 I mean I know Eamonn's body language. He just went
4 like that (indicating). As he shrugs his shoulder, he
5 tends to have a facial movement as well. That's what 10:09
6 he did. The only words that Martina spoke was to
7 explain that she was the there in place of Heather
8 Trouton who couldn't attend that day, for whatever
9 reason. And I looked at it again, and I left.
- 10 4 Q. Your question, again, to him was what am I to do with 10:09
11 this?
- 12 A. Yes, what am I to do? what do you want me to do.
13 words to that effect. A simply singular question like
14 that. what am I to do? what am I supposed to do? And
15 he shrugged his shoulders. 10:09
- 16 5 Q. If we just go to the bottom of the letter please, it's
17 two, perhaps three pages on. Yes, thank you. The
18 letter was explicitly clear about what you were to do?
- 19 A. Yes, it was to respond with a commitment and an
20 immediate plan to address the above as soon as 10:10
21 possible.
- 22 6 Q. while he may have shrugged his shoulders, that was the
23 answer to the question, wasn't it? That's what you
24 were to do?
- 25 A. Yes. 10:10
- 26 7 Q. Was your question meant in a different way?
27 A. In what regard?
- 28 8 Q. Was your question a request for assistance?
29 A. No, it was --

- 1 9 Q. Help? Support? Or was it --
- 2 A. -- advice as to what I was to do. How am I going to
3 tackle this? No support or advice was given. I think
4 I was looking for advice in the first instance. How do
5 I go about doing this? And I remember clearly walking 10:11
6 up the stairs to the second floor to my own office and
7 sitting there and reading it and thinking, how am
8 I going to tackle this mountain, particularly a review
9 backlog, with those sort of numbers? And the only way
10 that I could consider doing it was just to do more. 10:11
11 Certainly, with regard to the review backlog, if you
12 compare the waiting list figures for reviews as of
13 March '16 and compare them with early December '16 when
14 an update was done, I had taken 294 patients off the
15 back end of that review backlog, which extended back 10:12
16 into 2013. But, unfortunately, during the course of
17 those months I had added another 220 as a consequence
18 of possibly reviewing reviews or discharges or
19 whatever. And I did all of the additional operating
20 that you demonstrated yesterday. 10:12
- 21 10 Q. We will look at some of those explanations of what else
22 was going on at that time. But it doesn't seem
23 explicitly clear from what you've just said that you
24 were asking him for support or assistance. But you
25 went away and thought about it and the questions that 10:12
26 came into your head was, how am I going to do this,
- 27 A. Mmm.
- 28 11 Q. And just so we're clear, Mrs. Corrigan has said that in
29 her discussions with Mr. Carroll, I think it's in an

- 1 email to Mr. Carroll on 28th April - the reference is
2 TRU-274671 - that the expectation was that they were to
3 get a response from you in four weeks?
- 4 A. I have read that.
- 5 12 Q. Is that your understanding of what you were to do? 10:13
- 6 A. No.
- 7 13 Q. How did you read the letter when it asked you to
8 provide an immediate plan? Was it less than four weeks
9 or --
- 10 A. I didn't interpret this at all as me having to reply 10:13
11 with a written plan to anyone. And I -- that was my --
12 it was never my interpretation that I had to reply with
13 a plan. To me a response can be inclusive, indeed, of
14 a reply which, to my mind wasn't explicitly specified
15 in this letter. I wasn't asked to reply with a plan. 10:14
16 But I responded with all of the actions. That was my
17 interpretation of it. And it was -- if there was any
18 doubt about that, when you ask what are you supposed to
19 do, that seemed to me to -- I never even considered
20 that I had to reply with a plan to anyone. It was to 10:14
21 respond with a commitment and an immediate plan to
22 address the above as soon as possible. That's what
23 I did to the best of my ability.
- 24 14 Q. The language of this, respond with a commitment and
25 immediate plan didn't speak to you of communicating 10:15
26 a response to what was asked of you?
- 27 A. It did not.
- 28 15 Q. Thank you. So, in terms of four weeks, you had to come
29 back to us within four weeks. Can you recall that

1 being said?

2 A. I certainly do not recall it because it wasn't said.

3 I didn't know of that until I read it in that email.

4 16 Q. When you took it to your office and you read it and

5 thought about it, did you speak to anybody about it? 10:15

6 A. No. I just was too demoralised, so despondent,

7 demoralised.

8 17 Q. Did you speak to friends/family about it?

9 A. I didn't even speak to my family about it.

10 18 Q. One response might have been, after you had thought 10:16

11 about it and calmed down, would have been to go back to

12 Mrs. Corrigan. We understand your difficulties with

13 Mr. Mackle, but to say, 'listen, you handed me this

14 yesterday or last week and I've been thinking about it.

15 I'm going to need some assistance to work through some 10:16

16 of these issues.'

17 A. In retrospect that might have been -- my response might

18 have been better to have included that kind of step but

19 I didn't do it. I felt that I was being left on my own

20 to try to cope with these concerns. 10:16

21 19 Q. We'll work through the concerns. If you go back to the

22 top of the letter. Scroll down to Issue 1 then. At

23 that point it is recorded at 253 untriaged letters

24 dating back to December '14. You've reflected already

25 in your evidence that the impossibility, from your 10:17

26 perspective, of doing triage was something that you

27 thought was already in the mix, was already known?

28 A. Yes.

29 20 Q. I think you called to mind the meeting, I think you

1 said it was February '15 when the default --

2 A. I'm not sure when it was, but it was early '15.

3 21 Q. I'm not holding you to that at all. But that kind of
4 message from you was in the system, if you like?

5 A. Yes. 10:18

6 22 Q. Here we are, 18 months further on, perhaps from that,
7 certainly a year further on from that, you're still
8 finding triage impossible. Is this not an opportunity,
9 whether at the meeting or after, to say, 'listen, this
10 isn't working. My role as urologist of the week 10:18
11 doesn't afford me the time to safely manage inpatients
12 as well as do my triage or all of my triage'?

13 A. Well, I had already done it a year previously and
14 I didn't think that there was any need to do so again.

15 23 Q. Just looking at the review backlog, you've mentioned 10:18
16 already that you were able to tackle these figures --

17 A. Yes.

18 24 Q. -- but swarming in behind them were more patients.

19 A. Yes. So the net reduction at the end of that 7- or
20 8-month period, until I went off on sick leave, was 10:19
21 a reduction of 72, I think it is, 74.

22 25 Q. Just that so we're clear in terms of the plan that you
23 were being asked to produce, was it your understanding,
24 when they talk about a plan on how these patients will
25 be validated and proposals to address the backlog, was 10:19
26 it your understanding that patients would have to be
27 seen within a particular time or was this an analysis
28 that you were being asked to provide?

29 A. I considered this expectation, let's call it, of my

1 apparently having a responsibility to validate a Trust
 2 review backlog as surreal and I didn't have time --
 3 I did some validation because you can -- if you're
 4 looking for -- I would review, particularly, the
 5 oncology ones. So, there were some people that you 10:20
 6 could actually look at their previous history, their
 7 last review, see what it is that -- is a review face to
 8 face really necessary or could I phone them? And I did
 9 that. But on others where you have to see the patient,
 10 examine the patient, I reviewed them. So, that's how 10:20
 11 I did it.

12
 13 So, whether it was virtually, as is labelled now, or
 14 face to face, that's how I did it. But I didn't sit
 15 down and do a desk-top validation exercise. 10:21

16 26 Q. Some of the specific points within this paragraph, the
 17 Trust are saying:

18
 19 "We need assurances that there are no patients
 20 contained within the backlog that are cancer 10:21
 21 surveillance patients."

22 A. Mm-hmm.

23 27 Q. Was that something you were able to produce for them?

24 A. No.

25 28 Q. They say that they're aware that you have a separate 10:21
 26 oncology waiting list?

27 A. Yes.

28 29 Q. What does that mean?

29 A. Well, we all had separate oncology review lists, so

- 1 we did a separate clinic for patients who already had
2 a diagnose of cancer. Mine was on a Friday.
- 3 30 Q. And they were looking, from you, a validation or an
4 assurance that there are no clinically urgent patients
5 on that list. Again, was that an assurance you were 10:22
6 able to communicate with them?
- 7 A. No.
- 8 31 Q. You've answered no to both of those questions. And why
9 was that?
- 10 A. Because it's entirely unreasonable. 10:22
- 11 32 Q. In what sense?
- 12 A. Well, it's just --
- 13 33 Q. Was it unreasonable because it was a workload thing to
14 do it or was it an unreasonable question to ask more
15 generally? 10:22
- 16 A. Well, certainly because it was workload that they were
17 passing on to me with an expectation that somehow, in
18 my time, in addition to all of the things that we have
19 discussed yesterday, that I would, nevertheless -
20 doesn't matter how many hours or days it will take - 10:22
21 that I will undertake a validation exercise in order to
22 relieve the Trust of its anxieties. But there is no
23 limit to the expectations of the organisation, as
24 Mark Haynes described.
- 25 34 Q. In terms of this backlog, in the course of that year 10:23
26 were you provided with any assistance from any of your
27 other colleagues to address the backlog? In other
28 words, were some of the cases passed on to them for
29 validation?

1 A. Not to my knowledge, no.

2 35 Q. In terms then of the third item. So, as I explained
3 yesterday, consultant colleagues were reporting in
4 a frustration in relation to record keeping around
5 clinical encounters described here as consultations and 10:23
6 discharges. It goes on to say:
7
8 "If your patient is reviewed in another urology clinic,
9 in those circumstances a new appointment slot is
10 required due to the lack of documentation. And the 10:24
11 lack of documentation, etcetera may mean that further
12 investigations may not be organised."
13
14 And we saw a flavour of that yesterday in Mr. Carroll's
15 email, for example, and I think an acknowledgment from 10:24
16 you.
17
18 Again, here was an opportunity to say, 'I'm just not
19 managing the dictations. I'm doing...' as you
20 explained yesterday, '...additionality in theatre, 10:24
21 I need some leeway here or some solution.' But
22 that didn't emerge from you, did it?
23 A. It didn't because the -- well, this was the first I was
24 aware of any such frustration. I think I made
25 reference to it yesterday, that my colleagues had never 10:25
26 spoken to me about it. But the cohort of patients to
27 whom it is referred were, I regarded, completely
28 separate from the dictations that I still had to do on
29 the patients whose records I had in my home.

- 1 36 Q. You'll have to explain that to me.
- 2 A. So, largely the ones that -- the records at home
3 largely emanated from the clinic in South West Acute
4 Hospital and in Armagh Community Hospital. They
5 wouldn't have been reviewing those patients on the 10:25
6 whole. So, I felt -- I considered this was something
7 more historical, that they had been doing additional
8 clinics. I was aware that some of my colleagues were
9 doing evening clinics. I wasn't even aware that they
10 were reviewing my patients, never mind have this 10:26
11 frustration. But this is the first I became aware of
12 it.
- 13 37 Q. So, what they appear to be pointing up here is, as your
14 colleagues are going through these cases they're
15 finding this lacuna in the documentation lists? 10:26
- 16 A. Yeah.
- 17 38 Q. But is it not logical to think that you know that
18 you've other cases sitting at home, waiting to be
19 processed. They must be, are they not, directing your
20 attention to anything else you might have out there. 10:26
21 Clearly they had not done an audit at this stage to
22 know precisely what is going on. That's another
23 matter, it's a matter for the Trust. But, surely, in
24 your head you must have realised that what they're
25 telling you is: 'This is what we know now. Get your 10:27
26 dictation into shape.' Did you recognise the force of
27 that point?
- 28 A. I did.
- 29 39 Q. Again, it appears that you didn't communicate your

1 inability to work through these things as quickly as
2 they expected.

3 A. Well, that is true but, thereafter I made changes to
4 that making every effort to dictate, in a timely manner
5 going forward, the particular cohort of patients that 10:27
6 were oncology reviews, whereas previously I sent by
7 email at the end of each clinic, either a clinical
8 summary or an update to be put on the Cancer Patient
9 Pathway System, I abandoned that and, instead,
10 I prospectively dictated on patients. 10:28
11

12 So, it certainly did change my behaviour but,
13 obviously, in addition to additionality, it was going
14 to take time for me to work through that.

15 10:28
16 But I didn't think that -- and I thought it was unfair
17 to expect my colleagues to help me out. And you will
18 see, if it remains unchanged in the amended Heather
19 Trouton documentation that you have just shown us,
20 where they would not have allowed me not to do triage, 10:28
21 I don't think they would have been particularly
22 receptive to being asked to help out. They may have
23 been, I don't know, it's just a judgement call at the
24 time. I just thought this is something that I have to
25 do myself. 10:29

26 40 Q. You say, when you wrote to Dr. Khan on 31st July 2017 -
27 this is on the eve of your interview with Dr. Chada,
28 and we'll maybe come to that a little later - but in
29 describing your sense of disillusionment, I think, or

1 despondency arising out of that meeting, you described,
2 and I quote, that you were "burdened with the same
3 concerns prior to being given the letter" and still,
4 essentially had those concerns - I'm coming out of the
5 quote now - after the meeting. But here was an 10:30
6 opportunity. We looked yesterday at the history of
7 rapping your door informally on regular occasions -
8 triage predominantly, but also patient notes. Did
9 you not recognise this as something of a step change in
10 the approach to you? 10:30

11 A. In one manner, yes, but in another matter I considered
12 the brevity of the meeting, as I have described it to
13 you, to be somewhat perfunctory. It was a transfer of
14 all of these concerns that we have as an organisation
15 to you. And I tried my best in the subsequent months 10:30
16 to address them.

17
18 It has to be stated by me that the long waiting list
19 for administration for surgery was not one of their
20 concerns. It certainly remained a concern of mine. So 10:31
21 if I hadn't done the operative additionality during
22 that year, I may have made more progress on these other
23 fronts. But, as a clinician I couldn't ignore the
24 risks of patients coming to serious harm as
25 a consequence of the length of time they remained on 10:31
26 ever increasingly long waiting lists.

27 41 Q. Is that part of the problem here? We saw yesterday the
28 extent to which you were working additional to your job
29 plan in the conduct of theatre.

1 A. Yes.

2 42 Q. But you continued to do that.

3 A. Mm-hmm.

4 43 Q. We can see in part of your statement you're explaining
5 that you even delayed your surgery, your own surgery, 10:32
6 to continue to deal with theatre to relieve
7 difficulties for your patients. But here you have -
8 and maybe you didn't quite read it in this way -
9 a directive to produce a plan to address these aspects
10 of your practice. Did you put your head in the sand to 10:32
11 some extent and say, 'well, I'm not going to do that
12 because the greater priority is the theatre work.'
13 And, commendable, though no doubt dealing with those
14 patients in theatre was, this was an issue that had to
15 be addressed? 10:33

16 A. No, I would refute any notion that I put my head in the
17 sand. I tried to do all of that. You know, I have
18 carried the burden of concern and anxiety about patient
19 management and patient outcomes on all fronts and all
20 domains since I was appointed there in 1992. And as, 10:33
21 you know, has been documented in Ronan Carroll's
22 witness statement to his Section 21, where he was asked
23 specifically whether the Trust or the Health and Social
24 Care Board had undertaken any exercise to assess the
25 risk that patients were exposed to by remaining on long 10:34
26 waiting lists, he had no awareness of any such exercise
27 having been done. This is an issue which we will come
28 on at a later date, I presume, to discuss in more
29 detail, this interface or overlap between the

1 professional responsibilities of the clinician and the
2 operational issues. But I'd been knocking on the door
3 for years with regard to getting a Trust - and, indeed,
4 to be fair to The Trust, its commissioners - to address
5 the issue of ever increasingly long waiting lists, 10:34
6 which were unacceptable. And they, as I made
7 reference yesterday to Mr. John Templeton, Mr.
8 Templeton did everything in his power, he pushed the
9 boat out as much as possible or the envelope in terms
10 of trying to get more resources and funding to fund an 10:35
11 increasing service that was obviously required, and
12 that led him to invite Prof. Sam McClinton from
13 Aberdeen - I think it was in 2004 - to do that review,
14 and that resulted in a major waiting list initiative.

15
16 So, there is a disconnect here and it's a very serious
17 issue that I would dearly love the Inquiry to explore
18 in all its detail. So, here you have a written
19 expression of concern by the organisation with regard
20 to lack of dictation, and I know how important it is, 10:36
21 we have discussed that yesterday, patient notes at
22 home, inappropriate, and to the scale that it was, and
23 inappropriate; the review backlog, particularly in
24 regard to cancer; and triage. And there's not one word
25 of their concern about patients awaiting urgent 10:36
26 admission for years. But I couldn't ignore it.

27
28 Now, they haven't been able to address that for all of
29 the various reasons that we touched upon yesterday.

1 44 Q. Very well, Mr. O'Brien. But with the greatest of
2 respect, you're the employee in these circumstances.
3 The employer, on the face of this letter, is giving you
4 an instruction, and there were solutions: step back
5 from theatre. You've given reasons why you didn't 10:37
6 think that was a viable option. Change your working
7 practises to some measure or degree; ask for help;
8 return the notes immediately. None of that was done?
9 A. That was not done. I didn't return all the notes
10 immediately. I returned them as I processed them, to 10:37
11 use that word.

12 45 Q. Is that maybe not the most serious matter in the world?
13 A. Which?

14 46 Q. The notes. I don't wish to underplay it but maybe in
15 the grand scheme of things not the gravest matter in 10:38
16 the world?
17 A. The notes, yes.

18 47 Q. But it's an important matter for the Trust?
19 A. It is an important matter for the Trust.

20 48 Q. For all sorts of reasons, no doubt? 10:38
21 A. Yes, yes.

22 49 Q. A never simple instruction?
23 A. Mmm.

24 50 Q. And I asked whether you put your head in the sand
25 around these things. Plainly you didn't want to 10:38
26 release the notes because you had work to do on them?
27 A. Yes.

28 51 Q. But you, as the employee, have disregarded, without
29 explanation, that simple instruction.

1 A. I do acknowledge that and I concede that that is the
2 case.

3 52 Q. I want to ask you about this. You've made this point
4 in various documents in one shape or form. I'll pull
5 it up from your grievance, it's AOB-02031. If just 10:39
6 scroll down, please. So, here you are talking about
7 the letter. Just down a little bit further, I hope.
8 There we go. It is the start of the next paragraph at
9 the bottom.

10
11 So, you make the point in a number of places, I think,
12 that the letter is not described as a formal letter.

13
14 "It does not refer to the Trust Guidelines. It does
15 not state on the face of the letter that it was issued 10:39
16 pursuant to any Trust policy or procedure. It does not
17 refer in any way to any suggestion of misconduct or
18 even to a performance issue. Neither expressly nor
19 impliedly can it be interpreted as a formal warning, or
20 any form of disciplinary sanction. Nor could 10:40
21 misconduct or lack of performance be inferred from the
22 letter. In fact, the letter starts by stating, 'we are
23 fully aware and appreciate all the hard work,
24 dedication and time spent during the course of your
25 week as consultant urologist.' The Trust was fully 10:40
26 aware of my workload and was aware of the problems that
27 backlogs could not be related to any lack of effort on
28 my part. I did not have the time to do all that was
29 expected of me to do."

- 1 That letter starts with, perhaps, a legal-type
2 assessment of what the letter is not.
- 3 A. Yes.
- 4 53 Q. What were you thinking there? What was the point at
5 the root of that? Let me frame it as a question: Are 10:41
6 you suggesting that upon receipt of the letter it
7 wasn't bringing itself within any of these procedures
8 and that, in a sense, explains, at least in part, why
9 it didn't meet with a response from you?
- 10 A. No, I think that that is much more to do with any 10:41
11 relationship that I'd had or had not had with what had
12 happened in December of that year.
- 13 54 Q. So, are you saying that if it -- and I think the Trust
14 says this isn't -- the letter isn't to be regarded as
15 falling within, if you like, the MHPS process. 10:41
- 16 A. Mmm.
- 17 55 Q. But, the MHPS process may more properly be viewed as
18 having something of a start in September, albeit we'll
19 look at in a moment where that went. But what is the
20 point that you're making here? That really, because 10:42
21 it doesn't sit within -- because this letter didn't sit
22 within a process, it was of less significance, of less
23 moment?
- 24 A. Yes, to an extent that is correct; that it doesn't
25 diminish the clinical aspects and consequences of all 10:42
26 of these concerns, not for one moment. And I just --
27 if things had been handled differently in, let's say,
28 March, April, May, June of 2016, where people were able
29 to sit down together and try to come up with a plan,

1 a constructive, collaborative, supportive plan and
2 which may have, indeed, entailed the employer saying,
3 'we're going to take responsibility for any risks
4 associated with patients remaining longer on a waiting
5 list. Don't you concern yourself, these are our 10:43
6 concerns, let's deal with these and then we can come
7 back to that other concern of yours at a later time.'
8 Then we wouldn't have got, in my view, ever to
9 September or, indeed, to December 2016.

10
11 So, I'm just making a statement that I didn't regard it
12 as, in any sense, the initiation of some kind of
13 informal process that would progress to an even greater
14 degree of formality, but that doesn't ignore the
15 significance of the concerns that were raised, which 10:44
16 I already was totally aware of.

17 56 Q. A few pages further on in your grievance, go to
18 AOB-2033, you go on to say that:

19
20 "Had the Trust Guidelines been followed the process may 10:44
21 have led to an informal Local Action Plan that would
22 likely have resolved all of the issues."

23
24 So, you're constructing an argument here, I think,
25 which says that if the Trust had placed the MHPS 10:44
26 characteristics around the March intervention,
27 you would have been on notice that this was being
28 regarded by the Trust as a grave matter that required
29 your immediate attention. Is that broadly the point

- 1 you're making here?
- 2 A. That's one way of interpreting it. I think, if
3 Dr. Swart doesn't mind me referring to her, she asked
4 a witness in recent times, did no one ever just use
5 common sense in dealing with these concerns? And if 10:45
6 we had set down around the table and used common sense
7 to address and resolve these concerns over a period of
8 time, then the construct of an MHPS process or
9 framework or the Trust Guidelines, or both, would not
10 have been required. But the employer was perfectly 10:46
11 entitled to say, you know, 'we have to address this.
12 You have to collaborate. We have to engage. We have
13 to have end points, milestones, audit and so forth to
14 get to an endpoint which is sustainable, and we're
15 going to have to discuss ways and means by which it 10:46
16 will be sustainable in the future.' To my mind, that
17 would have worked. But that wasn't done.
- 18
- 19 Insofar as I have contributed to that never getting off
20 the ground by not replying with a plan or not seeking 10:46
21 help, you know, that is a possibility and I regret that
22 in retrospect. But I just felt I wasn't left in that
23 kind of situation where I could seek that help.
- 24 57 Q. Just to pick up on your point about sitting down, the
25 common sense, the good communication between colleagues 10:47
26 and between management and clinicians; what do you put
27 the failure to sit down after this March interaction,
28 what do you put that down to?
- 29 A. I just think -- I'm not an expert on this but there's

1 a degree of dysfunctionality in the management of the
2 Trust and you will have heard a great deal of reference
3 to it. You know, you will ask someone: 'Did you not
4 feel responsible for that?' And they'll say no, 'well,
5 no, I considered that to be somebody else's 10:48
6 responsibility.' And this parcel goes up and down like
7 an escalator, or it goes around in circles with no one
8 at a corporate level or no group of people saying:
9 'Here's an issue. Now, it's been going on for years
10 ago. We have legitimate concerns. We have 10:48
11 accountabilities. Let's sit down with this person once
12 and for all and address this. And in the addressing of
13 it listen to his concerns because he may have
14 experience, actually, that we should have as well and
15 how do we work through those?' That's what I mean. 10:48

16 58 Q. Yes. No doubt the Inquiry will reflect upon your
17 answer. On one view the Trust have started the ball
18 rolling here with this letter and the meeting,
19 perfunctory though and short though the meeting may
20 have been, the ball moves into your side of the court. 10:49
21 You're going away to consider it but nothing comes out
22 the other end. Obviously, September and all of that is
23 a different matter. But it shouldn't have needed the
24 application of MHPS characteristics into this
25 engagement to have led you to spring into life on what 10:49
26 they're asking, should it?

27 A. It should not at all. I don't think it was required at
28 all. And, to the best of my ability, I did spring into
29 life. I worked harder than ever before.

- 1 59 Q. But that effort, and we can see it's reflected in the
2 documents we saw yesterday, over and above your job
3 plan, that was directed in a way using your time but it
4 was directed away from what they were asking you to do
5 on that page, on the page of that letter. 10:50
- 6 A. Not totally. I mean, you know, certainly the amount of
7 time that I dedicated to additional operating because
8 of my concerns about patient risk and so forth didn't
9 totally deflect. I made progress on these fronts. It
10 mightn't be tabulated, but I did make progress. 10:50
11 I reduced the outpatient backlog. I started dictating
12 prospectively, I had a backlog of that to do. I made
13 progress on that as well, as reflected in the numbers.
14 It wasn't 668, it was 189. I do really wish that I had
15 even managed to use my time more productively to get 10:50
16 that down to zero; that would have been a great
17 achievement. So, I made progress.
18
19 I was reassured that there was a default mechanism in
20 for the triage and I was making progress in auditing 10:51
21 that to ensure that everybody referred was actually
22 given an appointment and not overlooked.
23
24 So, I regret I didn't make more progress but
25 I certainly made every effort. 10:51
- 26 60 Q. I think we have something of an illustration in
27 statistical terms of progress being made. It's fair to
28 put this on the screen, of course, TRU-257706. That's
29 not what I intended. Allow me a moment...

1 If we go to TRU-274723, Mrs. Corrigan is writing to
2 Dr. Wright who, as we know, has an awareness that you
3 had been approached in March and she is being asked to
4 update Dr. Wright on whether any progress had been made
5 in broad terms. And she's saying: 10:53

6
7 "There are currently 174 untriated letters dating back
8 to May 2016."

9
10 whereas the Panel will refer back to the March letter, 10:53
11 the figure in the March letter was 253.

12
13 Can you account -- were you working into triage or how
14 was this apparent reduction achieved? I'm conscious
15 that by January they were talking about a figure of 783 10:54
16 referrals not triaged. Can you help us in terms of
17 whether you were making some progress around triage or
18 the figures not just being well or consistently
19 counted?

20 A. I don't think that that figure stands up to scrutiny at 10:54
21 all because what I had been doing, following the
22 meeting in early 2015, when I advised everybody that I
23 had found it impossible, and it's important to point
24 out the default mechanism included the referral and
25 booking office, they held on to either the originals or 10:54
26 photocopies in order to put them on to the waiting
27 list. I received either the originals or photocopies.
28 So, what I had been doing after I received the letter
29 of March '16 is going back and just going on to the

1 Patient Administration System to see if that person who
2 was referred in March '15, for example, had been
3 admitted, had had an appointment. If they did, that
4 was that. I was happy with it.

5
6 So, I had got up to the end of June. I didn't
7 appreciate, you know, that patients were being
8 appointed as a consequence of the default mechanism
9 after that. So, the referrals that I had not triaged
10 are the referrals that remained outstanding from -- 10:55
11 that's as far as I got with my audit and I was able to
12 identify four patients that, during the month of
13 December '16, when I was working on my sick leave, who
14 hadn't, I felt, been given appointments and I handed
15 those over to Martina on 9th January. So, I don't 10:56
16 think -- it's interesting this because there might be
17 some legitimacy to it. Is the case, effectively, that
18 on this date of this audit there were only 174 patients
19 who had not been triaged by me and still awaited
20 appointments? That's the only possible explanation for 10:56
21 it.

22 61 Q. Yes. But it's clear, isn't it, that between the advent
23 of urologist of the week and the commencement of the
24 MHPS investigation, if we talk in terms of late
25 December as the start date for that, when the decision 10:56
26 was taken, they produced a figure based on, as we
27 understand it, the count of letters in your drawer at
28 something in the order of 783?

29 A. That's right.

1 62 Q. I don't think you ever disputed that.

2 A. Not at all. I mean I retained them in chronological
3 order. I did say yesterday that I did some urgent and
4 non-red-flag triage. I did -- always. I wasn't able
5 to complete it. I wasn't able to do 50 percent of 10:57
6 them, I may have done 20 or 30 percent of them, I don't
7 know, I didn't keep a record of it. You all I'm just
8 saying is that that is a true number. I kept them,
9 I handed them -- well, I told them where they were,
10 where Martina could find them. So, as of the last week 10:57
11 of June '15, because I was the urologist of the week
12 then, I still had 783 referrals that I had not triaged
13 and that I had not completed the audit of. I gather,
14 actually, that there was only one patient from that
15 week who still had not had an appointment, which speaks 10:58
16 for itself because that was June '15. I don't think --
17 it's very difficult to understand where that number
18 comes from.

19 63 Q. Very well. We can ask Mrs. Corrigan.

20 10:58
21 The reason I brought this document to the screen was to
22 reflect the point that you were making earlier about
23 making progress on some of these issues. And if
24 we went to the March letter we could see that they were
25 referring to 41 cases in 2013, which were in the review 10:59
26 backlog. You appear to -- I can bring that up just to
27 show you quickly. It's somewhat awkward jumping
28 between documents, but if you take my word for it that
29 TRU-274696 has 41 patients in the review backlog for

1 2013, and you can see the rest of the figures. And if
2 we jump back to where we were in the August document,
3 you can see - that's TRU-252776 - sorry, it's not.
4 Back to my mistake of earlier. I beg your pardon. Do
5 you have that in your memory? 11:00
6 MR. LUNNY KC: 274273.
7 64 Q. MR. WOLFE KC: Thank you, Mr. Lunny. There you can see
8 that the 2013, to make this very -- what I thought was
9 going to be a straightforward point, the 2013 element,
10 the backlog has disappeared; is that reflective or was 11:00
11 that your work being clearing --
12 A. Yes.
13 65 Q. -- aspects of the backlogging --
14 A. Yes.
15 66 Q. -- in chronological fashion? 11:00
16 A. Yes.
17 67 Q. I'm obliged. Thank you.
18
19 Now, we know - and this is an illustration of it - that
20 unbeknownst to you, it seems that Dr. Wright had 11:00
21 reawoken to an interest in this matter, and Mr. Gibson
22 was tasked to provide a screening report. We also
23 know, running parallel to this, that Mr. Weir and
24 Dr. McAllister were having discussions about how to
25 address the issues that were known to have arisen from 11:01
26 the March letter. And we can see part of that
27 interaction between Weir and McAllister - TRU-281130.
28 And they had both been tasked by Mr. Gibson to update
29 on whether they had heard anything from you following

1 the March letter. And Charlie - as he calls himself -
2 Dr. McAllister is writing to Mr. Weir:

3
4
5 "See below. This has come to light subsequent to our 11:02
6 discussions on this subsequent last Thursday. It
7 appears that the boat is missed. I note that you are
8 on leave this week and I am off [etcetera]. Please
9 hold off on attempting to address this issue until the
10 dust settles on the process below." 11:02

11
12 And the process below, just to scroll down, is
13 Mr. Gibson explaining that the Medical Director has
14 asked for him to do, essentially, a report on this
15 matter. 11:02

16
17 All of that was unseen by you in real-time; is that
18 fair?

19 A. That's absolutely correct. And I referred earlier to
20 going around in circles and passing the parcel. In all 11:03
21 of this process, the number of times I've scratched my
22 head and said why didn't Simon Gibson actually email me
23 for a plan or why did he not ask me? It's like
24 standing in the middle of a circle and, you know,
25 people are playing hokey-pokey around you. It doesn't 11:03
26 involve -- why wasn't I asked?

27 68 Q. Have you answered that question yourself? Or what's
28 your perception of it?

29 A. I just think that purpose has been replaced by process

1 and people have become confused by the -- I don't know.
2 I don't know what this was all about. Why not just ask
3 me: 'Did you not realise that we were expecting a plan
4 from you in writing? What have you done? Why have
5 you not given us a plan?' Instead, actually, they're 11:04
6 asking one another in confidence, sensitivity, you
7 know, 'have you heard of a plan?' Bizarre.

8 69 Q. You think it unhelpful in terms of where the process
9 ended up? If they'd spoken to you, do you think the
10 process could have been arrested before it went to the 11:04
11 December decision?

12 A. Yeah, particularly involving the likes of
13 Dr. McAllister, Colin Weir. If I had been aware of
14 that kind of involvement. Because those are two
15 individuals that I had high regard for, that would have 11:04
16 been a totally different matter.

17 70 Q. We'll come in a moment just to look at the reasons why,
18 perhaps in part, the matter didn't come to you and I'll
19 take your views on that.

20 11:05
21 You have said as part of your grievance that
22 Mr. Weir's -- I think based on what Mr. Weir said in
23 his statement to Dr. Chada, and perhaps also based on
24 your discussion with Mr. Weir in the autumn of 2018,
25 that you see something wrong in the fact that he 11:05
26 appears to have been told to hold off attempting to
27 address the issue until -- let me just get this right.
28 Maybe we'll pull his statement up, please. If we can
29 go to TRU-00782. And at paragraph 9 he's saying:

1 "I remember that the intention was for Martina and
2 Ronan to discuss with Mr. O'Brien but I do recall it
3 was always meant to be on an informal basis. This
4 meeting didn't happen as far as I understand. I had
5 discussed the matter with Martina and Michael Young and 11:06
6 then I was made aware that it had gone to the Medical
7 Director's office and Dr. Wright was looking at it."

8
9 He goes on to say:

10
11 "I don't think people knew the enormity of the problem
12 or how far back. I know I was told at a point not to
13 meet with Mr. O'Brien about this issue."

14
15 Is that the point that you were getting at when 11:07
16 complaining that Mr. Weir had been pulled out of
17 meeting with you?

- 18 A. I was complaining about the lack of engagement. The
19 point I was making with regard to the earlier email is
20 just that these other people are included in the email 11:07
21 and I'm not included in the email. But answering your
22 question directly regarding this, I mean at the time of
23 submitting the grievance I felt there was something
24 malevolent going on at that time. Why would a Clinical
25 Director be asked not to speak to me about these 11:07
26 issues? But it may not have been. It may just have
27 been if it was Ronan, and having listened to him giving
28 his evidence, that this had now taken on a different
29 shape and form and was about to be discussed at an

1 oversight meeting and --

2 71 Q. It's -- sorry to cut across you. It's what
3 I interpreted, your use of the word "malevolent", I
4 think, on reading your material, I was interpreting you
5 as suggesting there may have been something malevolent 11:08
6 or inappropriate about this. We've looked at this
7 issue with some of the witnesses, Mr. Carroll,
8 Mr. Weir. There does appear to be something of
9 a vagueness around it. Mr. Weir ultimately came to the
10 recollection that he thought it might have been 11:08
11 Mr. Carroll who dissuaded him from speaking to you
12 because the matter had gone formal. There seems to be
13 two possibilities; either it's being misremembered by
14 Mr. Weir and that in fact, as we saw in the last email,
15 Dr. McAllister had told him not to speak to you because 11:09
16 the boat had sailed.

17 A. Mmm.

18 72 Q. Isn't that one possibility?

19 A. That's one possibility. It may not have been nefarious
20 or malevolent at all. 11:09

21 73 Q. And we know that come the middle of September, put it
22 that way, a decision was taken at an Oversight
23 Committee and Mr. Weir may have wanted to speak to you
24 at that point, but it had gone into that process.
25 11:09

26 Let's turn to that process. The direction of travel
27 here was, for reasons that we've explored with
28 witnesses, to an Oversight Committee meeting, it took
29 place on 13th September. In advance of the Oversight

1 Committee meeting, Mr. Gibson engaged with NCAS, and
2 we can see the product of that NCAS engagement in the
3 following letter. It's at AOB-01049. And we can see,
4 Mr. O'Brien - I think you're familiar with this
5 letter - and we know from your grievance that you have 11:11
6 a number of concerns about it. I want to take you
7 through those concerns. Maybe the best thing to do is
8 to look at your grievance and call to mind what those
9 concerns are and then take your view on it. So, if
10 we go to -- we'll come back to this letter presently 11:11
11 but if we go to AOB-02035. Just scroll down a little.
12

13 The first point I will take you to is you say that:
14

15 "Mr. Gibson claimed that I had been spoken to on 11:11
16 a number of occasions about my behaviour but that no
17 records were kept of these discussions. I have, in
18 fact, not been spoken to on a number of occasions about
19 my behaviour. The only communication I had was
20 a letter on 23rd March 2016." 11:12
21

22 We can go back to the letter, just to orientate
23 ourselves in terms of what Mr. Gibson said. If we can
24 go back to that letter at AOB-01049. Just the top of
25 the next page, please. It says at the top of the page: 11:12
26

27 "The doctor has been spoken to on a number of occasions
28 about his behaviour but unfortunately no records were
29 kept of these discussions. He was written to in March

1 of this year seeking an action plan to remedy these
 2 deficiencies, but to date there has been no obvious
 3 improvement."

4
 5 Your concern about that paragraph, is it not misplaced? 11:13
 6 You have been spoken to, as we saw yesterday,
 7 historically, repeatedly, about triage, about records
 8 at home. In that sense, that paragraph is historically
 9 accurate?

10 A. It is historically accurate but I hadn't been spoken to 11:13
 11 since March '16. There'd been nothing since March '16.

12 74 Q. He doesn't suggest that there was. The sentence is
 13 constructed in a way to let the reader know that there
 14 had been discussions, albeit not recorded, and then
 15 we have it he was written to in March. 11:14

16 A. Yes. I do appreciate and I acknowledge that that is
 17 the case and that's how that sentence or paragraph
 18 construct should be interpreted. The point that I was
 19 wanting to make is that the impression that I felt was
 20 being given was that there had been ongoing discussions 11:14
 21 or attempts to resolve my behaviour or to address the
 22 behaviour and the concerns since March, but with no
 23 improvement. So we may have been at crossed wires, if
 24 that's the...

25 75 Q. Going back to your grievance then, please, AOB-02036. 11:14
 26 Just scroll down, please. So, you raise four further
 27 points now about the NCAS interaction.

28
 29 Firstly, you're concerned that the decision to seek

1 NCAS advice should be taken by a responsible Clinical
2 Manager and you want to know on what authority
3 Mr. Gibson communicated with NCAS about your behaviour.
4 why were you concerned that he, as the agent for the
5 Medical Director, is engaging with NCAS? 11:16

6 A. Well, I didn't know at that time whether he was an
7 agent for any Clinical Manager. I didn't know whether
8 the Medical Director had asked him to do so. I think
9 I'm correct in stating that.

10 76 Q. I think it's fair to say, in ease of you, that many of 11:16
11 these grievance concerns are being released by you,
12 perhaps not with the full picture --

13 A. That's right.

14 77 Q. -- perhaps not with all of the documentation?

15 A. That's right. 11:16

16 78 Q. It's fair to make that point.

17 A. Irrespective of any authority having been claimed to
18 have been given by the Medical Director, it is still
19 the case that it should have been a Clinical Manager,
20 whether it was the Medical Director himself, or a 11:17
21 Clinical Director who would have been in contact with
22 NCAS.

23 79 Q. You then make a point that you should have been placed
24 in the picture, you should have been informed that
25 a screening process was underway, and that speaks for 11:17
26 itself. You've already reflected on the poor
27 communication, as you see it.

28
29

1 Then, thirdly, - and this is where we get into,
2 I suppose, the meat of what you are concerned about in
3 the NCAS correspondence - you believe that:

4
5 "The description of the concerns provided to NCAS were 11:17
6 seriously misleading around the backlog issue."

7
8 You say that:

9
10 "Mr. Gibson described by review backlog as different to 11:17
11 my colleagues, who have largely managed to clear their
12 backlog."

13
14 You say:

15 11:18
16 "This is simply false and misleading."

17
18 And you point to "Mr. Young having a similar review
19 backlog to mine."

20 11:18
21 Secondly, you say:

22
23 "Mr. Gibson was stating that I was not taking on
24 patient consultations. This is a very serious
25 allegation and it is false." 11:18

26
27 I just want to ask you about that, and we'll get you
28 back to the letter in particular. We'll try to
29 remember what you've just said there when we go back to

1 the letter..

2

3 Thirdly, then, you're saying that:

4

5 "Mr. Gibson gave the impression that I'd received 11:18
 6 a warning that I was in breach of a Trust policy on
 7 having patient notes at home. This, again, is
 8 manifestly untrue. I was not warned of a breach
 9 of Trust policy."

10

11:18

11 Then over the page you say, fourthly:

12

13 "Mr. Gibson received advice from NCAS to take what
 14 could be described as an informal approach."

15

11:19

16 And you say that:

17

18 "The record of 22nd December suggests that they were
 19 taking a formal approach."

20

11:19

21 The word "formal" was used, as you'll recall.

22

23 Just on that, before we go back to the letter, do
 24 you accept that the use of the word "formal" in the
 25 December minute is an unfortunate typographical error? 11:19

26 A. I had been sceptical of it, I have to confess, but I do
 27 accept that -- if that's in good faith, I do accept
 28 that.

29 80 Q. Thank you. If we go back to the letter and if we could

1 take up the point that you've made that a serious
2 allegation had been made that you weren't taking on
3 patient consultations. The letter is AOB-01409.
4

5 Have you reviewed this letter recently? I wonder, 11:20
6 could you highlight the part of the text that you're
7 concerned about? You say he made the serious
8 allegation that you weren't taking on?

9 A. I haven't reviewed it recently, no.

10 81 Q. If we go through the letter then. The first point of 11:20
11 concern that he's highlighting, I suppose, is the
12 problem with the backlog. And he's explained - and
13 this is something you take issue with - that this
14 practitioner is different to his consultant colleagues
15 who have largely managed to clear their backlog. And 11:21
16 you say that's not correct and you point to Mr. Young's
17 practise.

18
19 In explaining this to the Inquiry Mr. Gibson, based on
20 his screening report, said that while outpatient review 11:21
21 backlogs existed for your urological colleagues, the
22 extent and depth of these is not as concerning. And he
23 was, I think, pointing to, I suppose, the age profile,
24 or the vintage, how far they go back in terms of the
25 backlog, we saw from the statistics a moment or two ago 11:22
26 that you cleared '13 but there were backlogs from '14.
27 In that sense was your deficit on backlogs different to
28 your colleagues?

29 A. I don't think it was materially different to that of

1 Mr. Young. The other colleagues were appointed in
2 2011, 2013. I think the thing that concerned me most,
3 actually, was the inference that colleagues who had
4 backlogs had largely managed to clear them and that
5 I hadn't managed to clear my backlog. There again 11:23
6 a kind of transfer of responsibility for either having
7 a backlog, that's some kind of failure, and if you
8 haven't cleared your backlog, that's an even further
9 failure.

10 82 Q. Mm-hmm. And in fairness to this process and the NCAS 11:23
11 input to it, they don't appear to see it in the kind of
12 black and white terms which you're concerned that
13 Mr. Gibson was presenting it as. We'll look at the
14 advice they give around that. But I'm just looking at
15 the remainder of this page, referral issues described; 11:23
16 charts at home issue is described; and then the note
17 taking is described. Again, I think you have concerns
18 about how that is described in the sense that your
19 view - a view which appears to have been accepted by
20 the Trust - is that it's dictation as opposed to note 11:24
21 taking, per se?

22 A. Yes. Yes. And listening, actually, just to
23 Ronan Carroll speaking yesterday, I think someone made
24 reference at on stage to dictation not being available
25 on the Patient Administration System or on ECR or in 11:24
26 the patient chart. I think, actually, that there again
27 there could have been some talking at cross-purposes
28 because I always took umbrage at the notion that I did
29 not make handwritten notes at consultations and, to my

1 knowledge, I've never failed to do so.

2 83 Q. To our knowledge, that's not an issue raised which is
3 against you.

4

5 Just the last entry on that page, "to date you're not 11:25
6 aware..." this is --

7

8 "Mr. Gibson, you're not aware of any actual patient
9 harm but there are anecdotal reports of delayed
10 referral to oncology." 11:25

11

12 Have you a sense of what that alludes to?

13 A. No, I do not. And you made -- when you were discussing
14 this with Mr. Gibson, reference was made to Patient 102
15 and I think we discussed that at length yesterday and 11:25
16 my views on the matter. I think that's the reference
17 that was being -- Mr. Gibson in his evidence indicated
18 that that was the singular case that he was referring
19 to. That was my interpretation of his evidence.

20 84 Q. I think he was also asked about Patient 93, which was 11:25
21 a failure to triage case.

22 A. I see.

23 85 Q. But we'll come to that, perhaps, a little later.

24

25 On to the next page of the letter. We've looked at the 11:26
26 top paragraph and then there's an advice section in
27 terms of possible options were discussed.

28

29 "The Trust has a policy of removing charts from the

1 premise and it would appear that this doctor is in
2 breach of the policy. This could lead to disciplinary
3 action. He was warned about this behaviour in the
4 letter sent to him in March. So it would open for you
5 to take meted disciplinary action. Therefore, I would 11:26
6 suggest that he is asked to comply immediately with the
7 policy."

8
9 You take umbrage with Dr. Fitzpatrick's phrasing of
10 that on the basis that you're assuming that Mr. Gibson 11:27
11 is suggesting you've had a formal warning?

12 A. Yes.

13 86 Q. It's clear, isn't it, that the March letter does place
14 a shot across your boughs in respect of the notes at
15 home, in the sense that you're being asked to get them 11:27
16 back to the Trust - I'm not sure if the word is
17 immediately, but in short order. In that sense, were
18 you perhaps being overly sensitive about how that was
19 being expressed?

20 A. Well, it wasn't a warning. It might have been a shot 11:27
21 across the boughs, as you have just expressed, but it
22 wasn't a warning in any kind of disciplinary process or
23 implication.

24 87 Q. Then we have the note taking issue and NCAS suggest an
25 audit. The point I made to you earlier that this 11:28
26 process allows for the bringing in of a wider angled
27 lens than and the adviser here is suggesting an audit
28 and seeing whether, as we move through the letter,
29 whether support could be provided to you.

1 Looking at the remainder of the letter, I don't see the
 2 point that you were making in the grievance, that some
 3 offensive, if you like, allegation had been made about
 4 your failure to see patients on review.

5 A. Yes. 11:29

6 88 Q. Just scroll down.

7
 8 "The problems with the review patients and the triage
 9 could best be addressed by meeting with the doctor and
 10 agreeing a way forward. We discussed the possibility 11:29
 11 of relieving him of theatre duties in order to allow
 12 him the time to clear this backlog. Such a significant
 13 backlog will be difficult to clear, and he will require
 14 significant support. I would be happy to attend any
 15 such meeting. " 11:29

16
 17 So, rather than suggesting or making a seriously
 18 misleading allegation that you weren't seeing patients,
 19 I think the implication here is you are continuing to
 20 see patients, and that is the problem. You need to be 11:30
 21 relieved of that --

22 A. Yes.

23 89 Q. -- in order to clear a backlog.

24 A. Yes. Yes.

25 90 Q. Upon reflection, can you explain to me how you -- 11:30

26 A. I cannot.

27 91 Q. -- came to say it was seriously misleading?

28 A. Yes, I cannot. It must have -- I must have drawn it
 29 into that consideration when I was writing that part of

1 the grievance from somewhere. But, obviously, it's not
2 there.

3 92 Q. If, upon reflection, you have further thoughts about
4 that, don't hesitate to bring them to my attention as
5 part of your evidence. 11:30

6
7 I suppose the other thrust of your concern about this
8 process, or the other aspect of your concern is that
9 you were completely unsighted to what was going on, and
10 we touched upon that briefly earlier. Looking at this 11:31
11 from the practitioner's perspective this is, if you
12 like, the commencement of the MHPS process in your
13 case. It possibly might be regarded as having
14 a somewhat unnatural flow to it or there are
15 irregularities about it. It stops and then it 11:31
16 recommences in a different way in December. But
17 putting those points to one side, where should you have
18 come into it, in your view?

19 A. On the assumption that this is the starting point of
20 a formal or informal investigation using the MHPS 11:32
21 Framework?

22 93 Q. Yes.

23 A. At this time, obviously I would have thought - and
24 particularly with NCAS support. I think, actually,
25 possibly, I think the Trust needed external input into 11:32
26 an attempt to address these concerns. I think,
27 perhaps, to be fair to us all, we didn't have the
28 potential to address it ourselves because, obviously,
29 it hadn't happened and NCAS support would have been

1 very, very helpful, influential and, I believe,
2 successful.

3 94 Q. Now, you've no doubt heard the evidence from various
4 protagonists and notably Mrs. Gishkori around this.
5 Let me turn, first of all, to what emerges from 13th 11:33
6 September and try to take your view on what happens
7 after that.

8
9 The Oversight Group decided that you should be met
10 with, that a letter would issue, there would be 11:33
11 a time-constrained action plan. And Mr. Gibson,
12 I think, suggested that at the meeting with you there
13 would be an opportunity to discuss what assistance, if
14 any, you required. And this was within an informal
15 MHPS approach, although the notion of an informal 11:33
16 investigation couldn't really be explained by him. But
17 if we look at the letter TRU-00026 - that's three
18 zeros, 26.

19 CHAIR: Mr. Wolfe, I'm just wondering, is this an
20 appropriate time to take a short break? 11:34

21 MR. WOLFE KC: If we can just close this section off,
22 I'd be obliged.

23 CHAIR: Very well.

24 95 Q. MR. WOLFE KC: This is the minute. A draft letter,
25 a meeting with you, and this should inform you of the 11:34
26 Trust's intention to proceed with an informal
27 investigation and action plans for a four-week
28 timescale. Just scrolling down. And it's to cover the
29 four main areas that were mentioned in the letter, and

- 1 there's to be input from Mrs. Gishkori, Colin, Ronan
2 and Simon prior to the meeting. would that have been
3 a sensible way forward with you at that time?
- 4 A. Yes. I mean anything would have been better than
5 nothing, obviously. I still am of the view that, as 11:35
6 I've just articulated that NCAS input would have been
7 even additionally helpful. I've no doubt, whatsoever,
8 if this kind of approach had been taken with NCAS
9 input, it would have been successful. It may have been
10 frustrated by my having to go off on sick leave because 11:35
11 I had deferred it for as long as was tolerable, but
12 that's another matter.
- 13 96 Q. Yes. I just want to set -- let's just go to the letter
14 and have any observations you wish to make on that.
15 It's TRU-231450. Conscious, of course, you didn't see 11:36
16 the letter in real-time. Its content is summarised in
17 the minute I just put in front of you. But scrolling
18 down through it we can see an informal approach to
19 consider four areas of your practise, and be
20 time-bound. 11:36
- 21
22 Scrolling on down again. They ask you to complete --
23 they would have been asking you to reduce, by 70
24 patients per month, your review backlog. would that
25 have caused any difficulty with support? 11:36
- 26 A. Well, without support virtually impossible. I'm not
27 going to say impossible, as I have used that term in
28 the past, but unrealistic, of course, without some
29 other kind of support.

1 97 Q. Yes. Moving down to "consultations" etcetera,
2 scrolling down to the bottom:

3

4 "A clinical note review will be undertaken of 20 sets
5 of notes seen by yourself to assess your compliance 11:37
6 with the expectation."

7

8 The expectation, in the first paragraph, is that you
9 "make contemporaneous notes to ensure that your
10 colleagues are aware of the clinical management plans 11:37
11 for any patient." Again, with assistance, would that
12 have been an issue that you could have addressed?

13 A. Yes. It would have taken time, obviously. It would
14 have taken more administrative time, I would imagine.
15 But, yeah, those were all -- these are all issues that 11:37
16 could have been addressed. And I think that over
17 a period of time I would have needed to be relieved of
18 some other activities, such as theatre or whatever.

19 98 Q. I want to, just before the break, take you to
20 Mrs. Gishkori's input. She is part of the Oversight 11:38
21 Committee that agrees this plan, as such. And then
22 she, in the day after the Oversight Committee meeting,
23 meets with Dr. McAllister. This is the product of this
24 meeting, if we can go to TRU-257642. She says - just
25 go to halfway down - she's writing to Richard Wright 11:38
26 and Vivienne Toal. She has spoken to Charlie, as I've
27 said, and:

28

29 "They already have plans, it's reported, to deal with

1 the urology backlog in general and Mr. O'Brien's
2 performance was of course part of that."

3
4 Again, that's not something you were yourself aware of?

5 A. No. 11:39

6 99 Q. She is requesting that the local team be given three
7 calendar months to resolve the issue raised in relation
8 to your performance. So, her concern - and we've yet
9 to finish her evidence - is that if you are, if you
10 like, hit with an MHPS-type process, as suggested in 11:39
11 the letter we've just looked at --

12 A. Yes.

13 100 Q. -- that would be counterproductive because she feared
14 that it would - and this is, in a sense, coming through
15 Mr. Carroll's evidence as well - she feared that it 11:39
16 would be an excessively long process and she wanted to
17 work with you?

18 A. Yes.

19 101 Q. And I think there might have been a fear that you would
20 walk away if confronted with an MHPS process. I think 11:40
21 that's part of her evidence to date.

22
23 There is this sense that MHPS, when put or confronted,
24 if the doctor or the clinician, such as yourself, is
25 confronted with this, it is counterproductive, it leads 11:40
26 to difficulties which could be better managed outwith
27 the strict formalities of that process. Have you any
28 view on that?

29 A. Well, I mean, I'd never heard tell of MHPS until I was

1 introduced to it on 30th December. I don't think that
2 there's anything particularly malign within the
3 Framework or the Trust Guidelines in that regard.
4 There is a staged process here, in my view, going back
5 to the use of common sense or a collaborative process. 11:41
6 It has to be firm. The employer has a right to have an
7 expectation of the employee to engage. We all have our
8 responsibilities. These are concerns. I have said,
9 whether it's legitimate or otherwise, I had my concerns
10 about matters that the Trust may not have had concerns 11:41
11 about. They may have been taken into the mix. That
12 would have been additionally helpful. And whether NCAS
13 was involved, but in my view if they had been involved,
14 it would have been an entirely different story.

15
16 So, I don't think, actually, that I was scared off by,
17 or would have been scared off by being presented with
18 a Framework or the Trust Guidelines. I'd heard of the
19 Trust Guidelines, I'd never read of them. Never heard
20 of MHPS. And, just to clear it up, in case you intend 11:42
21 to ask me, it would have been the last thing ever on my
22 mind to walk away. There was no walking away within
23 me.

24 102 Q. Her motivation, or perhaps informed by Dr. McAllister
25 and others, for suggesting this alternative is set out 11:42
26 in the penultimate paragraph.

27
28 "Given the trust and respect that Mr. O'Brien has won
29 over the years, not to mention his lifelong commitment

1 to the Urology Service, which he built up single
2 handedly, I would like to give my new team the chance
3 to resolve this in context and for good. This, I feel,
4 would be the best outcome all round."

5
6 It might be akin to navel-gazing to ask you to comment
7 on something like that, but there is a theme in the
8 evidence received by the Inquiry to date, sometimes
9 colourfully reflected in the evidence, that you were
10 beyond challenge because of your status. And we saw 11:43
11 yesterday, perhaps, over a period of years, an
12 informality to the challenges directed at you to put
13 your house in order. And here, some might suggest, is
14 another example of this, putting it on a longer finger
15 and a more informal approach than the Oversight 11:43
16 Committee has. I suppose, reducing this to a question:
17 Did you have a sense or did you make it your business
18 to create a sense of untouchability?

19 A. I've been -- no. I've heard people answer you with a
20 short answer. The short answer is no. And I've been 11:44
21 bemused and amused by this deference thing and that I'm
22 unchallengeable, and I hope I haven't come across as
23 being unchallengeable. And irrespective of whether or
24 not people were of that view, these were serious
25 concerns that they did have and they needed to be 11:44
26 addressed, and that can only be done by challenge. But
27 challenge can take place in the kind of collaborative
28 manner that we have already discussed. And I think,
29 actually, that she -- I think her sentiments are

1 perfect because, you know, I did build up the service
2 from scratch, single handedly, and it does -- in that
3 context, and for good, let's address this.

4
5 Now, whether it took two months or four months or 11:45
6 six months was immaterial. Frankly, 189 charts
7 remained forever undictated. But that's, you know --
8 the process that ultimately did take place didn't
9 address all of the issues. So, there was a better way
10 of doing it and I agree with her sentiments. But it 11:45
11 doesn't infer for one moment that I was not
12 challengeable.

13 103 Q. Just one final point to take us to the break. And
14 I précis quite a lot of ground here in the interest of
15 time, but we know from this intervention, which we have 11:45
16 on the screen in front of us, Mr. Weir developed
17 a letter that was to go to you. You're aware of that.
18 Mr. Carroll improved upon that letter, in his view.
19 That was 22nd September.

20 11:46
21 Just before that, Dr. Wright and Mrs. Gishkori sat down
22 with the Interim Chief Executive and she, it would
23 appear, sought and obtained his support for this
24 different approach - different to the Oversight
25 Committee. You've heard all of that in the evidence, 11:46
26 haven't you?

27 A. I've heard all of that in the evidence. But the thing
28 that's missing from the Oversight Committee minutes is
29 any reference to NCAS.

1 104 Q. Oh, yes. And that's a given.

2

3

4

5

6

7

what I wanted to bring you to was this: Mr. Weir, as we saw, and Mr. Carroll worked up this letter. It was dated 22nd September. Again, you weren't approached by anyone to discuss either the Oversight Committee's plan or the alternative? 11:47

8

A. By no one.

9 105 Q. No. And I sense, in what you've written, a frustration around that, that if this discussion or engagement with you had happened, matters might have taken a different path. 11:47

10

11

12

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19

Could I bring to you just this point before the break. AOB-01079. And the Oversight Committee met on 12th October. And at the bottom of the page it's reflected that you were going for planned surgery in November. 11:47

20

21

22

23

24

25

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29

"Likely to be off a considerable period of time." 11:48

Mrs. Gishkori explains that a plan was in place to deal with the backlogs during your absence, and Mrs. Gishkori gave an assurance that when you returned from sick leave, the administrative practise issues identified by the Oversight Committee would be formally discussed with you to ensure that there was an appropriate change in behaviour. 11:48

1 So, this seems to be the motivation, your imminent,
2 albeit you're five or six weeks down the road medical
3 appointment. First of all, do you accept that that is
4 the motivation for not approaching you?

5 A. Well, it's an explanation. I mean I wondered what was 11:49
6 the motivation. I think it may not have been
7 particularly pleasant going off for surgery, and that
8 was very, very kind. But, I mean this is just another
9 milestone in a process where nothing is really
10 happening and I'm not engaged with it. 11:49

11
12 I know, for example, it was also that "a plan was in
13 place to deal with the range of backlogs within
14 Mr. O'Brien's practice during his absence." I just
15 think that's fantasy. I don't know where that comes 11:50
16 from.

17 106 Q. That's not something you're aware of?

18 A. Not at all. And when I went off on sick leave I gave
19 to or emailed, or by some means to Martina a list of
20 ten people whom I felt needed most urgent review and 11:50
21 ten people whom I felt needed to be operated on most
22 urgently. Two of the people who needed surgery were
23 done by the time I came back in February.

24
25 It's so nebulous, isn't it? I can't make any further 11:50
26 comment upon it.

27 107 Q. Paternalism may be the wrong word here but as an
28 exercise in ease of your imminent medical treatment,
29 that may well be the explanation for the stopping of

1 the process. But from your perspective, do you regard
2 it as an unnecessary and ultimately unhelpful pausing
3 of the process in light of what was to happen?

4 A. Frankly, it was -- almost to paraphrase Dr. McAllister,
5 he said the boat had left the harbour. This was too 11:51
6 late at this stage. I mean, if this had have been
7 addressed, even in September, we could have been making
8 some progress by the time I went off in November and it
9 may have been stalled and frustrated to some extent by
10 then. But I would have liked very, very much to have 11:51
11 been able to address these issues myself. It did
12 require me to be relieved of some other duties.
13 There's no doubt about that. It couldn't be done
14 through additionality on one's own. And I think that
15 NCAS advice would have been critical. I still have 11:52
16 grave doubts as to whether the NCAS advice was ever
17 discussed at the earlier September because, if it had
18 been, I don't think there was a requirement for
19 a McAllister/Mr. Weir plan, which is very, very similar
20 to the NCAS advice. 11:52

21 MR. WOLFE KC: well, that's ultimately a matter for the
22 Panel to resolve. They've received evidence on that.
23 We'll take a break now.

24 CHAIR: 12:10 then.

25
26 THE INQUIRY ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

27
28 CHAIR: Mr. Wolfe, are you ready?

29 MR. WOLFE KC: Thank you. Yes, indeed.

1 MR. AIDAN O'BRIEN CONTINUED TO BE EXAMINED BY MR. WOLFE
2 KC AS FOLLOWS:

3
4 108 Q. MR. WOLFE KC: Mr. O'Brien, if I could just take you
5 back to a point I was raising with you, 20 minutes or 12:09
6 so before the break and it concerned what you'd said in
7 your letter to -- I think it was the grievance in
8 respect of NCAS. You'd a particular concern that it
9 was being -- you thought it was being suggested, at
10 least in terms of how I read your letter, you thought 12:09
11 it was being suggested to NCAS by Mr. Gibson that you
12 weren't seeing patients and that clearly upset you. It
13 is set out in bold, as we'll see, AOB-02036. If we go
14 to the bottom of the page, please.

15
16 The sentence that I was interested in was:

17
18 "Additionally, Mr. Gibson was stating that I was not
19 taking on patient consultations."

20
21 Upon consideration, is there potentially a typo in that
22 sentence?

23 A. Where are you suggesting?

24 109 Q. Let me put it specifically. Could it be that the
25 grievance you have here is that Mr. Gibson was stating 12:10
26 that you were not note taking on patient consultations?

27 A. Ah! Absolutely. That explains it. And that is what
28 I made reference to earlier. Absolutely. That's it.

29

- 1 I was concerned that there was an allegation being
 2 made, a serious allegation if it had -- you know, that
 3 I was not making notes at patient consultations.
 4 That's it.
- 5 110 Q. So the linkage then between that concern and the advice 12:11
 6 from NCAS is -- if we go to AOB-01049 and if we go
 7 down, to the bottom of that page. It's recorded that
 8 "you told me" - if we go to the end of the sentence -
 9 "on occasions there are no records of consultations."
 10 Is that the point you were concerned about? 12:12
- 11 A. Yes. You can see the genesis of that and you can see
 12 in the earlier clause of that sentence "you told me
 13 that his note taking" as opposed to what turned out,
 14 not taking. That explains it. I'm relieved.
- 15 111 Q. Thank you. Now, we ended just before the break and the 12:12
 16 broad thrust of what you were saying was there was
 17 a missed opportunity here to sit down and talk to me,
 18 bring NCAS into the equation, and sort this out. The
 19 starting point for our discussion this morning was the
 20 opportunity on your part, available to you, to respond 12:13
 21 to the March letter and move the process forward, as
 22 appears to have been expected by the Medical Director
 23 and people down from that. And it was in the context
 24 of your failure to engage the Trust appears to be
 25 saying, through its witnesses, that it then led to the 12:13
 26 escalation of events into September and thereafter; is
 27 that a fair way of looking at it?
- 28 A. No, I think it's a rather one-sided way of looking at
 29 it. It required all of us to be engaged in a process.

1 If the events of whatever date that 23rd March letter
2 was given to me was supposedly the starting point of
3 a process that would successfully address these issues,
4 it didn't get off to a good start on anybody's part.
5 So, if we had to do it over again and with the benefit 12:14
6 of hindsight and the wisdom that comes from the
7 experience since then, I could have gone back to my
8 office and after a day other two said, 'I can't do
9 this, I can't do that,' and replied to whoever, or
10 communicated with whoever in that regard. I didn't do 12:14
11 that. I didn't for one moment see an expectation that
12 I would do so. I responded as I saw best fit and
13 I worked my socks off in doing that until, literally,
14 you know, for my own health, I shouldn't have been
15 there for that long at all. 12:15

16
17 I deferred my surgery because I was providing back-up
18 for another colleague and when he notified me at the
19 end of September that he was taking up a new post in
20 Ipswich at the end of October I said, I took my chance, 12:15
21 'this is it,' and to go for it.

22 112 Q. Wherever the blame lies - if blame is the right word -
23 for this failure to engage and resolve, whether that's
24 part you, part the Trust or whatever it is, the
25 Inquiry's interest in it, at least in part, is that 12:15
26 with every passing day where your practise isn't
27 changing, there is a risk that patients in relation to
28 these administrative-type issues - and administrative
29 may again not be quite the entirely right word - are at

1 risk of being harmed.

2

3 If I can just look at TRU-00677. At the bottom of the
4 page - this is Dr. Chada's report, just to orientate
5 you. She's talking about what she described as 12:16
6 "urology red flag outcomes and delays." So, there you
7 have the five patients that were to form part of the
8 SAI that was initiated in 2017. And we can see down
9 the second column of that document that these are, if
10 we put to one side the first patient, the following 12:17
11 four are referrals that came into the Trust after the
12 March 2016 letter and the March 2016 meeting. And
13 those patients remained untriaged, they were added to
14 the default waiting list system. Isn't that,
15 I suppose, a concrete illustration of the consequences 12:17
16 of not grappling with this problem?

17 A. Absolutely, yes. That's true.

18 113 Q. You've said that you retained a copy of the referral
19 and that when time allowed you looked at them, I think
20 you said chronologically, to see whether the patient 12:18
21 had otherwise been placed on the waiting list or
22 received an outpatient's appointment, or what have you.
23 Plainly, these recent triages within the context of mid
24 to late 2016 hadn't been reviewed by you adopting that
25 process? 12:18

26 A. That's right.

27 114 Q. A further illustration, I suppose, of a number of the
28 points we've been discussing, including failure of
29 triage and communication perhaps emerges from what I'm

1 about to put to you.

2

3 Patient 93, if we go to TRU-274751. And if we scroll
4 down the page, please. Just below that again. Keep
5 going down, sorry. Scroll on down further. And on
6 down, please. I'll tell you when to stop.

12:19

7

8 This is a patient we called Patient 93. Mr. Haynes is
9 writing in to Martina Corrigan, 31st August 2016, and
10 sets out the history there.

12:20

11

12 "GP referral as routine. Notwithstanding repeat PSA
13 figures of 34 and 30 respectively."

14

15 It appears that the referral comes to you for triaging
16 and isn't done and it comes back into the system in
17 August with "metastatic disease from the prostate
18 primary", as it's described there.

12:20

19

20 "As a result of no triage, there is a delay in
21 treatment of 3.5 months. Mr. Haynes's view is it
22 wouldn't change the outcome."

12:21

23

24 Now, if we scroll down to the bottom of a long email
25 trail but you may take it from me that this goes back
26 to Mrs. Corrigan, to Dr. McAllister, to Mr. Young, and
27 I think possibly at some later point to Mr. Weir.

12:21

28

29

1 Is this case ever discussed with you?

2 A. No.

3 115 Q. Should circumstances like this, should events like
4 this, in your view, be discussed with the clinician,
5 assuming it was you who failed to refer or failed to 12:21
6 triage?

7 A. Yes, of course.

8 116 Q. Or should it just simply go into the IR System, the
9 Incident Report System, and screened for SAI without
10 reference to you? 12:22

11 A. I should have been engaged with this and about it. I'd
12 only be repeating my earlier comments on such matters
13 going around in circles, with me in the middle
14 somewhere, if I was the person with no engagement.

15 117 Q. This is a relative small department, perhaps by United 12:22
16 Kingdom standards, just a small number of --

17 A. Consultants.

18 118 Q. -- consultant urologists.

19 A. Mmm.

20 119 Q. Can you diagnose, for us, at least from your 12:22
21 perspective, the problem here? Did you not get on with
22 each other? Was it silo working? What was it?

23 A. Not at all. I thought we got on very, very well. And
24 I had, I thought, very positive relations and
25 supportive relations with all of them. 12:23
26

27 I used a phrase earlier on -- one of the biggest
28 changes I've seen in my career is the displacement of
29 purpose by process. We have listened now for months

1 about escalation up and down and no direct dealing with
2 things. If I had a concern, I wouldn't have been
3 filling in an IR1 form or been escalating, I dealt with
4 it directly in a manner which I thought was most
5 appropriate and for which there is every good guidance. 12:23
6 I earnestly believe, at the end of my long career,
7 where I have seen changes over the decades, I don't
8 think it can be underestimated the extent to which the
9 replacement of purpose by process has impacted upon how
10 things are dealt with and how common sense is not used. 12:24
11 Yes. That's my best explanation. And I think it's not
12 fully appreciated that that is a very, very real issue.

13 120 Q. Although the value of any communication that
14 hypothetically might have emerged from another case
15 like this - and I say another case because we know we 12:24
16 have the five that made it into the subsequent SAI
17 investigation - this one, for reasons that the Inquiry
18 is interested in didn't merit an SAI, albeit it doesn't
19 look materially different from the five cases that were
20 examined; would you agree with that? 12:25

21 A. Absolutely. And in fact this is the strongest case of
22 all. This wouldn't have changed -- this order of delay
23 wouldn't have changed the outcome. I tend to agree
24 with that. Though, you know, with a PSA of 34 and with
25 metastatic disease, we don't know the location of that 12:25
26 metastatic disease, that patient could have been at
27 risk of vertical collapse or a bony fracture as a
28 consequence.

29 121 Q. I think it was leg.

1 A. There you are. So, it's not without risk. I don't
2 think it was -- and thankfully, presumably, it didn't
3 change the outcome by the delay in the initiation of
4 managing deprivation, I presume, but I don't have any
5 further detail for me to comment on it. 12:26

6 122 Q. But I think the point I'm making is that if there is to
7 be engagement, it has to be engagement, in this
8 particular context, about the problem that you're
9 facing?

10 A. Yes. 12:26

11 123 Q. The impossibility of triage needs to be articulated in
12 terms of I'm not doing it and I can't do it, and there
13 needs to be an investigation of a solution. And that
14 might mean you working in a different way. But, as
15 we know, that conversation never takes place? 12:26

16 A. That's right.

17 124 Q. Now, you go on sick leave. On the eve of that I think
18 or just shortly into it you write to Martina Corrigan,
19 and you've alluded to this. Pull up the email place,
20 AOB-01226. This is 14th November. You say that you 12:27
21 "expect to be well enough to dictate correspondence
22 concerning patients and have the charts delivered to
23 Noleen's office for typing. I would greatly appreciate
24 if I could be afforded this opportunity to have all
25 charts returned in this manner." 12:27
26

27 So, you're going off on sick leave, maybe just started
28 sick leave, you expect to be well enough after your
29 procedure to commence work from home. And if we scroll

1 up the page, please. Mrs. Corrigan wishes you well and
 2 says that she's more than happy with this plan, and
 3 "please let me know if there's anything I can do to
 4 assist."

5
 6 So, that indicates that she's aware that you've notes
 7 at home - maybe that's not a surprising thing to say.
 8 She knows you're going to be working from home to
 9 attempt to work into the backlog, and she's giving her
 10 blessing for that arrangement. Is there anything else
 11 on that that you wish to say?

12 A. No. I just -- I wish I had achieved more progress and
 13 had it cleared completely by 30th December.

14 125 Q. Into December then, and we know that the Oversight
 15 Committee met on 22nd December. But prior to that,
 16 I want to take your own view on this because I think
 17 you've expressed some scepticism as to whether the
 18 emerging findings from the Patient 10 SAI were the true
 19 triggering reason for the decision to exclude you from
 20 work and to conduct a formal MHPS investigation. Let
 21 me take you through some of this.

22
 23 If we could look at TRU-251827. Here, Esther Gishkori,
 24 if you scroll down, please, is confirming your absence
 25 on sick leave. She says:

26
 27 "The SAI Review continues and will no doubt produce its
 28 own recommendations".
 29

1 She says:

2

3 "I've been having conversations in relation to
4 Mr. O'Brien's return-to-work interview. We thought
5 that this would be a good time to set out the ground 12:30
6 rules from the start."

7

8 Top of the page, please. Dr. Wright thinks that's very
9 reasonable.

10

11 So, it appears that that's an entrenchment of the 12:30
12 position adopted at the 10th October Oversight
13 Committee meeting. You're going off on sick leave.
14 It's being put on the long finger till you return, and
15 that seems to repeat that sentiment. Do you agree? 12:31

16 A. Yes.

17 126 Q. Into the system then, in the middle of December,
18 comes -- if we put up on the screen, please, AOB-01248.
19 This is what we have -- sorry. Another rogue
20 references. Let me see if I can address that. It's 12:31
21 AOB-01245. This is the "Dear Tracey letter",
22 Tracey Boyce being written to by Mr. Glackin, setting
23 out the preliminary findings of the SAI Review.

24

25 Scrolling down on to the next page, he sets out three 12:32
26 factors or three issues which -- just scrolling down on
27 to the next page, thank you. Down one more. He sets
28 out three themes that have concerned the SAI Panel.

29

1 And then, Mr. O'Brien, Dr. Wright sends an email
2 several days later. So, the picture emerging on the
3 evidence so far received appears to be a build-up of
4 concern around this SAI and certainly conversations and
5 correspondence about it leading to, if you like, 12:33
6 additional investigations around the amount of triage
7 outstanding, the amount of dictation outstanding. And
8 Dr. Wright -- if I can pull up WIT-41585, just at the
9 bottom of the page, please. So, he is writing on 21st
10 December to Simon Gibson. He says: 12:34

11
12 "Esther rang me regarding worrying developments, Aidan
13 O'Brien and lost notes. Ronan is to report tomorrow
14 with preliminary findings. I will come in tomorrow.
15 If you are about could we set up a possible meeting 12:34
16 with Ronan and, if possible, Mark Haynes to consider
17 findings and next steps. I don't think we can wait for
18 formal completion of the SAI".

19
20 So, they then have their meeting on 22nd December that 12:34
21 results in your exclusion. What is it about the
22 developments that caused you to express in your
23 grievance a view that this SAI isn't to be regarded as
24 the triggering of the process?

25 A. Well, the initial findings or impressions about the SAI 12:35
26 were very premature. The SAI hadn't even reported.
27 I think the final draft report came in early January,
28 to which I responded later that month. What notes were
29 lost that were not lost before or not missing before?

1 what really had changed in this period of time?
2 I thought it was -- the entire response was a knee-jerk
3 reaction, I thought, which was over the top. And once
4 again, even at this stage, no communication with me.

5 127 Q. Yes. They're all disparate points, if I may say so. 12:36
6 But, the point we're focused on is, yes, the SAI hadn't
7 been signed off - and, indeed, you were to give your
8 view on it in January or early February of the next
9 year, so there were extra steps to be taken through.
10 But as appears from the sequence I showed you, nothing 12:36
11 is to be done until this man comes back from sick
12 leave. But what changes is Mr. Glackin writing in
13 with, let's call them preliminary findings of the SAI
14 which show that the patient, Patient 10, was placed at
15 risk of harm, if not had been harmed. And spinning out 12:37
16 of that investigation were concerns which perhaps,
17 arguably, ought to have been realised back in the
18 autumn, that triage causes these kind of difficulties
19 for patients. But, do you not accept that there was an
20 intention on the part of the Trust not to do anything 12:37
21 vis-à-vis you and then the dynamic changed with the
22 arrival of the draft SAI Report, which was before the
23 Oversight Committee on 22nd December?

24 A. Was it?

25 128 Q. I think it was. If we -- in servicing the needs of the 12:37
26 Oversight Committee, if we bring up TRU-01393. So,
27 Tracey Boyce writing on 22nd September, which is the
28 day of the Oversight Committee meeting, is attaching
29 the final draft SAI Report for discussions today. Also

1 including the spreadsheet of the outstanding triage.
 2 And the SAI Report is to be found further in that
 3 sequence at TRU-01402. So it's clear, is it not, that
 4 this is a fresh piece of information which the
 5 Oversight Committee clearly hadn't before them in 12:39
 6 September or October? Whether it was a good reason for
 7 an MHPS investigation or not, this appears to be the
 8 triggering factor.

9 A. I accept that, yes.

10 129 Q. You accept that. You make the point, Mr. O'Brien, in 12:39
 11 your remarks to Dr. Khan that it's clear from the
 12 record of the Oversight Committee that they did not
 13 consider any alternatives to exclusion. If we just
 14 bring up the record of the meeting, please. We can
 15 find that at AOB-01280. Scroll down, please, to the 12:40
 16 second page.

17
 18 Sorry, just before we go to the second page, just back
 19 up a little, please. Just down a little. No, sorry,
 20 bring it down the page, please. And further down. 12:41

21
 22 So, this is the consideration of the Oversight
 23 Committee. They say that there's the strong
 24 possibility that your administrative practises have led
 25 patients -- sorry, I'll read it as it appears: 12:41

26
 27 "It was agreed by the Oversight Committee that
 28 Dr. O'Brien's administrative practises have led to the
 29 strong possibility that patients may have come to

1 harm."

2

3 In the context of triage there's nothing wrong with

4 that conclusion, is there?

5 A. There's a strong possibility that patients may have 12:42

6 come to harm. There's nothing wrong with that sentence

7 grammatically. It's conditional.

8 130 Q. Well, it's pointing to, in real terms, a risk that if

9 triage isn't done --

10 A. Of course. 12:42

11 131 Q. -- patients may come to harm. And you accept?

12 A. Yes.

13 132 Q. It says:

14

15 "Should Dr. O'Brien return to work, the potential that 12:42

16 his continuing administrative practices could continue

17 to harm patients would still exist."

18

19 Again, if you continued the way you were working, that

20 risk would pertain? 12:43

21 A. Yes. There's a potential there. There's still

22 conditionality in that, yes.

23 133 Q. For those reasons, it appears, it was agreed to exclude

24 you, albeit it's made subject to contacting NCAS to

25 seek confirmation of that approach. 12:43

26

27 As I say, you've made the point that this Committee

28 failed to consider alternatives to exclusion.

29

1 In the context in which they were working, findings
2 emerging from the SAI, concern about how Patient 10 had
3 been treated, risk to other patients, and that's even
4 leaving aside the other aspects of your practise that
5 they were concerned about, was exclusion, in those 12:44
6 circumstances, not a reasonable option to pursue?

7 A. To pursue, no. I mean, it was an option, it could have
8 been considered. I mean, the reason I came to the
9 conclusion, possibly wrongly, that other options
10 weren't considered was because there was no record in 12:44
11 the note of the meeting that other options were
12 considered. It doesn't necessarily mean that other
13 options were not considered. I'm rereading that second
14 sentence of that first paragraph:

15 12:44
16 "Should Dr. O'Brien return to work, the potential that
17 his continuing administrative practises could continue
18 to harm patients would still exist."

19
20 Now, it hadn't been yet established whether risk had 12:45
21 translated into harm.

22 134 Q. That might be a reasonable point to make but this is
23 about managing risk. Plainly, there were other ways to
24 manage risk when we get to the meeting of the case
25 conference, as it became known, on 26th January, an 12:45
26 alternative, that is the monitoring of your practise
27 was the direction of travel. But at that time, with
28 your return to work thought to be imminent on
29 3rd January, do you still disagree with the decision

1 that was taken?

2 A. Completely.

3 135 Q. What was the alternative for them sitting here,
4 22nd December, with perhaps not a complete picture but
5 a worrying picture emerging from the SAI with, 12:46
6 obviously, as a Trust owing a duty to its patients to
7 keep them safe?

8 A. I'm so sorry to smile because, you know, therein lies
9 the bottom line. It was the Trust's duty to keep
10 people safe. But the Trust hasn't, has failed to keep 12:46
11 patients safe, for all the reasons that we've discussed
12 in the last day and a half. But I, honestly, sitting
13 here today and ever since 30th December, I have never
14 been able to understand why my exclusion was required.
15 What purpose it served. I cannot think of any purpose 12:47
16 that it served. In fact, actually, it did nothing
17 other than increase the risk to increasing numbers of
18 patients, my exclusion.

19 136 Q. The NCAS adviser spoke with the Trust on 28th December
20 in relation to this issue. And she appears to have 12:47
21 corrected the Trust away from the path of excluding for
22 the duration of the investigation, which seems to have
23 been the initial decision, at least in principle.

24
25 If we could look at AOB-01328. Two-thirds of the way 12:47
26 down the page, please. She points them in the
27 direction of the option of an interim immediate
28 exclusion for a period of maximum four weeks. And she
29 suggests to them, by way of advice, factors that might

1 inform the appropriateness of exclusion to allow for
2 further information to be collated before deciding that
3 there's a case to answer. There's also a concern which
4 she has been told about, about notes or records
5 arriving back, described as mysteriously on your 12:48
6 secretary's desk, albeit that's, I think, the product
7 of your further dictation while on leave.

8
9 So, as the decision is ultimately articulated to you by
10 Dr. Wright in his letter to you on 6th January, you 12:49
11 were to be excluded for four weeks pending the scoping
12 of the exercise in the interests of you so that no
13 further allegations could be made about you, and to
14 protect the integrity of the process.

15
16 The exclusion, you say, has the effect of impacting on 12:49
17 patients?

18 A. Yes. Well, in answering your question I take you back
19 to the previous question because, actually, I'd
20 overlooked the fact that the decision that was made on 12:50
21 22nd December was, indeed, formal exclusion for the
22 duration of a formal investigation.

23 137 Q. Yes.

24 A. Now, we know how long that did take. It may have been
25 shorter, maybe 50 percent shorter. I mean, here's a 12:50
26 Trust actually struggling. People at this stage
27 waiting four years for emergency surgery. And it
28 wouldn't cost them a thought, actually, in the pursuit
29 of process, quoting the usual three reasons that is

1 cited in the MHPS Framework for exclusion, it wouldn't
2 cost them a thought, actually, to have excluded me for
3 a month, six months, nine months, a year, year and a
4 half, doesn't matter. What impact that would have on
5 patients was not a concern.

12:51

6 138 Q. Well, plainly they were dissuaded from that course --

7 A. Thankfully.

8 139 Q. -- having taken advice. We'll leave the issue of
9 exclusion to one side.

10

12:51

11 Your meeting with Dr. Wright on 30th December, you've
12 described the impact of that on you in your statement.
13 There was a dispute after that meeting, or at least you
14 disputed the record that you had been sent, isn't that
15 right?

12:51

16 A. Yes.

17 140 Q. And you wrote on 21st February to contest that record.
18 You set out a note. If we could go to AOB-01443. You
19 set out a number of concerns about the note, factual
20 errors, and omissions. And the final detail of that
21 isn't terribly important for our purposes.

12:52

22

23 Could I just ask you this: There's a letter on the
24 Inquiry bundle which suggests that you received
25 a response to this letter. Is it your recommendation
26 that you didn't receive a response?

12:52

27 A. It's definitely our recollection that we did not
28 receive a response. The record that you're looking at
29 is a letter, whether in draft form or final form, to be

1 sent by Dr. Wright to us. It was unsigned. I do not
2 know whether it was ever sent, but certainly it was
3 never received.

4 141 Q. This is the letter, WIT-14950. Letter dated, in light
5 of your last point, 13th March 2017. Scroll down, 12:53
6 please. So it's responding to your letter of
7 21st February, which we just had up on the screen,
8 concerning the notes of meeting on 30th December. And
9 the content of this document indicates that he's taking
10 on board the points that you've made about the record 12:54
11 of the meeting save -- he says in the second paragraph:

12
13 "Whilst written notes taken at the meeting would
14 disagree with what you have written, I am happy to make
15 the requested amendments in the interests of moving 12:54
16 forward."

17
18 He gives one exception to that in respect of the job
19 plan. He says:

20
21 "I do clearly recall that when I asked if your job plan
22 was unrealistic, your initial response was to state
23 that it was okay." Etcetera.

24
25 Just scrolling down. As you say, I think this letter 12:55
26 isn't signed. Next page, please. It's not signed.
27 There's a copy of the same letter on the bundle of
28 documents that your solicitor has sent the Inquiry.
29 It's a AOB-01475. Just bring it up on the screen

- 1 please. It does appear to be an identical letter.
2 when did that come into your hands?
- 3 A. I think that came into our hands - I can't recall - as
4 part of information that we had requested in late 2018
5 or '19 after the investigation had been concluded. 12:56
- 6 142 Q. So, perhaps as part of the grievance?
- 7 A. Subsequent to that. That's my understanding. Because,
8 in fact, I think we have -- there's documentary
9 evidence where I have repeatedly requested that letter
10 and did not receive it. 12:56
- 11 143 Q. It appears that you were able to make, with a confident
12 tone, your comments in relation to the transcript of
13 the 30th December meeting because you had recorded the
14 meeting.
- 15 A. Well, I hadn't recorded it but my wife had recorded it. 12:56
16 I didn't know that it was being recorded. And my wife
17 recorded it because she does have impaired hearing,
18 which probably wasn't as bad then as it was now. Now,
19 it's to an extent that she is more confident in
20 declaring it, which has been an issue for her here in 12:57
21 this chamber. But back then --
- 22 144 Q. Sorry, to cut across you. She attended with you at the
23 meeting of 30th December?
- 24 A. Yes. That's right. She did.
- 25 145 Q. She probably could see that Dr. Wright was accompanied 12:57
26 by Ms. Hainey?
- 27 A. Hainey, that's right.
- 28 146 Q. And she was making a note of the meeting?
- 29 A. Yes.

1 147 Q. Your wife, Mrs. O'Brien, had decided to record it?
2 A. Yes.

3 148 Q. That wasn't brought to the attention of Dr. Wright, is
4 that fair?
5 A. That's right. 12:58

6 149 Q. Had it been brought to your attention --
7 A. No.

8 150 Q. -- in advance of the meeting, 'I've a hearing problem,
9 Aidan, I'm going to need to record it'?
10 A. No. I didn't even know it is possible. I'm not an IT 12:58
11 geek. So, I didn't know it was possible on
12 a smartphone to do so.

13 151 Q. When was it revealed to you that it had been recorded?
14 A. Maybe two hours after we got home that day.

15 152 Q. And you sat and listened to it? 12:58
16 A. Not for several days after. I was -- I wasn't in
17 a state to listen to anything, really.

18 153 Q. And we know that you have provided the Inquiry with,
19 I think, 26 such recordings, and transcripts have been
20 made. Is that all of the recordings that you have? 12:59
21 A. Yes.

22 154 Q. The second recording that we're aware of your wife
23 wasn't in attendance on 9th January when you met with
24 Martina Corrigan, I think in her car?
25 A. In my car. 12:59

26 155 Q. You don't have a hearing impediment?
27 A. No.

28 156 Q. So, you didn't need it recorded but it was recorded?
29 A. It was.

- 1 157 Q. And, again, recorded without Mrs. Corrigan's knowledge
2 or permission?
- 3 A. That's right.
- 4 158 Q. Is there any good reason for recording a private
5 conversation? 13:00
- 6 A. The only reason I had was that my wife had simply
7 asked, you know, 'could you record it so I know what
8 you've said or what questions you've asked or what has
9 been said in return?' I don't know how many of the
10 adult males in this room will identify with this, but, 13:00
11 you know, I don't always remember the detail of
12 conversations. So, like what did he say and -- it
13 wasn't done with any malign intent, it wasn't done with
14 any intent other than to be able to let her know what
15 the conversation was. 13:00
- 16 159 Q. So you do appreciate, however, that people like
17 Mrs. Corrigan, Mr. Weir, have regarded this recording
18 as a gross violation --
- 19 A. Yes, I do appreciate that.
- 20 160 Q. -- having found themselves upset by it? 13:01
- 21 A. Yes.
- 22 161 Q. Thereafter, what was the reason for recording
23 conversations and meetings? Because, for example, you
24 had Mr. Michael O'Brien in attendance with you at many
25 of these meetings. So, in terms of an ability to 13:01
26 report back to Mrs. O'Brien what was going on,
27 you didn't need to covertly record conversations for
28 that reason?
- 29 A. That's true. So what was the reason? So we got on,

1 I think on 18th January, the note of the meeting of
2 30th December with Ms. Hainey and Dr. Wright. And, you
3 know, even though Dr. Wright described her as
4 a professional notetaker, we saw that there were
5 inaccuracies and on first hearing me say that anyone 13:02
6 might consider is it not just a little bit of
7 nitpicking, but the one thing that really offended us
8 both was this note that on 30th December my wife had
9 said, in quotes, that "at the end of a long career,
10 that this is how you are repaid". And that was not 13:02
11 said. So, I came to appreciate that no matter who's
12 there, it is the convenor who produces the note. And
13 the note cannot be depended upon.

14
15 Now, I do appreciate the sense of intrusion and 13:03
16 violation that can be felt by anybody at the receiving
17 end and I wish it proved not to be necessary to do so.
18 However, when it comes to my meeting with
19 Martina Corrigan, I have read the transcript of that
20 meeting many times where I have gone over again and 13:03
21 again and again how it is recorded that the majority of
22 the 668 have been processed, the outcomes have been
23 done. In fact, very often not only has the outcome
24 been registered, but the operation that was the outcome
25 may already have been done. All of that. So, I found, 13:04
26 actually, that I had very, very good reason,
27 ultimately, to have a reliable record. In fact, when
28 I look back I very, very much wish that I had a record
29 or a recording of the meeting of March '16.

1 162 Q. At no stage did you seek permission from --
2 A. No.
3 163 Q. -- anyone, whether that's a formal meeting such as the
4 meetings you had with Dr. Wright, Dr. Khan or Mr. Weir
5 or the more informal, private conversations such as you 13:04
6 had with Mr. Weir.
7
8 The conversation with Mr. Weir, for example,
9 in October 2018, and that was recorded and from it
10 we looked at the point this morning about who was it 13:05
11 who asked him to step aside?
12 A. Yes. Yes.
13 CHAIR: Was that with Mr. Wilkinson?
14 MR. WOLFE KC: It was a meeting with Mr. Weir.
15 THE WITNESS: Mr. Weir. 13:05
16 164 Q. MR. WOLFE KC: That meeting was then reported into your
17 grievance, isn't that right?
18 A. Yes.
19 165 Q. Was that, plain and simply, an information-gathering
20 exercise for your grievance? 13:05
21 A. Well, the meeting, actually, was to find out whether or
22 not he had been spoken to by someone not to engage with
23 me back in September '16. That was the purpose of the
24 meeting. I think, actually, I was gathering two bits
25 of information. That's one of them. And whether I had 13:05
26 been allocated more administrative time than my
27 colleagues, which had been repeatedly reported. So,
28 it's just a recording of the information that was
29 gathered.

1 166 Q. Could I ask you to take a look at the following
2 document, AOB-56500. This is a meeting attended along
3 with Michael O'Brien on July 20th. If we go into the
4 first page, please, towards the bottom. Down to the
5 bottom of the next page. Thanks. 13:06
6
7 At the bottom of the page the speaker, Ms. Young, is
8 saying:
9
10 "The other things that we have checked, our phones are 13:07
11 off. Obviously, this is not the end of the world if
12 your phone is not off, but it might distract you from
13 what we are doing. So long as we don't distract you,
14 that would be the main thing. Okay?"
15 13:07
16 Ms. Young then says:
17
18 "We are taking our own notes and I want to make sure,
19 to let you know, we are not recording and I am asking
20 that you are not recording it either." 13:07
21
22 And Michael O'Brien answers "no". She then says:
23
24 "Because if you were, as long as you let us know,
25 that's fine." 13:07
26
27 Over the page:
28
29 "So we are here today in relation to this stage..."

1 etcetera.

2

3 Did Michael O'Brien know that you were recording?

4 A. No.

5 167 Q. He had, by this stage, attended some seven meetings 13:08
6 that had been recorded. This was the eighth, at least
7 by my count. Was he completely in the dark as to the
8 fact that you'd previously recorded meetings?

9 A. I can't recall -- I cannot answer that question
10 definitively. But, he was entirely unaware that I was 13:08
11 going to record this one. And, I should add, if he had
12 been aware previously that I had covertly recorded, he
13 was disapproving of it, he was uncomfortable about it,
14 for which reason -- it was another reason why I didn't
15 tell him I was going to record this. 13:08

16 168 Q. I didn't fully follow the sense of that, what you've
17 just said. Was he aware and was he disapproving of it?

18 A. Yes.

19 169 Q. So, he was aware of prior recordings?

20 A. Yes. 13:09

21 170 Q. He wasn't aware of this one?

22 A. No, let's be clear. I can't recall when Michael became
23 aware that we had recorded any meetings. I cannot
24 recall. What I certainly can recall is that when he
25 became aware he was uncomfortable and disapproving of 13:09
26 it. He would have preferred it hadn't happened.
27 I didn't advise him that I was recording this meeting.
28 Whether I didn't advise him of that because of his
29 previous awareness, if he was aware previously,

- 1 I cannot recall.
- 2 171 Q. why did you not intervene - you're sitting beside him -
3 and tell Mrs. Young, 'my son has answered no but in
4 fact the answer is yes, I am recording'?
- 5 A. well, I felt it wasn't an issue for her because she 13:10
6 said it was fine. So, I didn't think it was an issue.
7 And I didn't ever, ever anticipate that any of these
8 recordings would enter into an arena or forum like
9 this. They weren't even kept for any litigious or
10 other reason, I can assure you. So, it happened. 13:10
11 I was so thankful, on a number of occasions, that it
12 did happen because we were able to make significant
13 corrections, such as, like, Mr. Carroll stated that he
14 had never met me, whereas in fact we had a meeting.
15 Important things. And I know that it has been said 13:10
16 that it was the fact that it was being recorded that
17 had me steer the discussions that took place in some
18 meetings, but that's not the case at all. I was just
19 recording them. We had found it very, very useful to
20 be able to listen to them, to hear what people did 13:11
21 actually say. It enabled us, actually, to offer
22 corrections, and we became disappointed and despondent
23 at the fact that the corrections that we were able to
24 offer were not always amended.
- 25 172 Q. Could I ask you to reflect upon the integrity of the 13:11
26 first part of the answer you've just given me?
- 27 A. Mmm.
- 28 173 Q. The questioner says to you: Are you recording?
29 A. Mm-hmm.

1 174 Q. It's not something I will disagree with. But I need to
2 be told. And you have explained that your thought
3 process was, 'well, I didn't tell her but she doesn't
4 appear to mind and that justifies me not telling her,'
5 notwithstanding the clear question she placed in front 13:12
6 of you and your son?

7 A. What is the first part of the sentence at the bottom?

8 175 Q. Roll back up, please. She says:
9
10 "We're taking our own notes. I want to make sure, to 13:12
11 let you know, we are not recording and I am asking that
12 you are not recording it either because, if you were,
13 so long as you let us know, that's fine."
14

15 A. Well, I had intended to record it for the reasons that 13:12
16 I have given. I remember this exchange but I don't
17 remember in my mind the exact words, but we can read
18 them because of the recording. I was aware that
19 Michael wasn't aware of it. I felt uncomfortable him
20 saying no and I was going to record anyhow. And I felt 13:13
21 that they weren't particularly concerned about there
22 being a recording, that it wasn't going to impact upon
23 the content of our discussions. And we thought that
24 these were going to be very, very long meetings and
25 these were important, it was part of the grievance 13:13
26 hearing. And I only could be accompanied by one person
27 and my wife, in particular, who has been very, very
28 affected by all of this experience, it has been going
29 on for years, you know, just wanted to listen to what

1 was said. So, I'm not so sure that in any of the
2 previous meetings I would have necessarily been able to
3 advise people that I would like to record it, I want to
4 record it, I insist upon its recording, and that they
5 would have agreed. I don't think that that would have 13:14
6 happened. So, I've hopefully answered as fully as
7 I can.

8 MR. WOLFE KC: We have your evidence on that. Thank
9 you, Mr. O'Brien. I have slightly overshot.

10 CHAIR: It's quarter past one now. 13:14

11 MR. WOLFE KC: Quarter past two?

12 CHAIR: Quarter past two.

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

15
16 CHAIR: Good afternoon, everyone. Mr. wolfe. 13:14

17 MR. WOLFE KC: Good afternoon, Chair.

18
19 MR. AIDAN O'BRIEN CONTINUED TO BE EXAMINED BY MR. WOLFE
20 KC AS FOLLOWS: 14:14

- 21
22 176 Q. MR. WOLFE KC: Good afternoon, Mr. O'Brien.
23 Just a few of the developments that happened after 30th
24 December when you met with Dr. Wright. You met with
25 Mrs. Corrigan to bring back the charts. You directed 14:15
26 her to the referrals that were kept in a cabinet in
27 your office. Outcome sheets, they weren't returned
28 with the patient charts?
29 A. That's correct. Just to correct you. I didn't meet

- 1 with Martina Corrigan to return the charts, I returned
2 the charts to my office, I think, on 1st and
3 2nd January. So, yes, I didn't return the outcome
4 sheets with the charts.
- 5 177 Q. Had you a particular intention in retaining them? 14:16
- 6 A. Not particularly. I mean I retained copies of them
7 anyhow when I had them requested. So just as an
8 interesting point, you know, outcome sheets, in any
9 case, should not be returned with charts. The whole
10 purpose of outcome sheets, following clinics, is that 14:16
11 they should be returned to the secretary separately and
12 apart from charts, whether before charts are returned
13 in the normal course of events but, in any case,
14 separately. That was the purpose of their introduction
15 in the first instance. 14:16
- 16 178 Q. But these charts remained with you notwithstanding the
17 direction to -- sorry, these outcome sheets remained
18 with you. Did you not understand that they should go
19 back at the same time as the charts?
- 20 A. No. And they should, in my view, not have gone back at 14:17
21 the same time as the charts and should have been
22 returned separately.
- 23 179 Q. And why didn't you return them separately?
- 24 A. I wasn't asked to. There was no difficulty in
25 returning them, and for which purpose I arranged to 14:17
26 meet with her.
- 27 180 Q. Now, on 6th January, as I mentioned briefly this
28 morning, Dr. Wright wrote to you. Just briefly look at
29 that letter, if we can, please. AOB-01355. Scroll up

1 to the top of the letter.

2

3 So, he is writing to you 6th January to recount on the
4 meeting that you had with him.

5

14:18

6 Just scrolling down, please, just go to the next page,
7 I think. He was explaining that for the reasons set
8 out a formal investigation would be undertaken.

9

10 Scrolling down to the bottom, it's explained to you
11 that for the reasons explained at the meeting there
12 would be an exclusion, described as a precautionary
13 measure. And he sets out the reasons for that which
14 I think I laboured somewhat to articulate just before
15 lunch. Those are the reasons ultimately given. And he
16 explains that the exclusion will be up to no more than
17 four weeks. 14:18

18

19 "The Case Manager will make contact with you as soon as
20 possible in relation to the progression of the process. 14:19
21 In the meantime, contact will be made to arrange
22 a meeting during the four-week period of immediate
23 exclusion to allow you to state your case and propose
24 alternatives to the exclusion. "

25

14:19

26 That's the meeting that took place on 24th January;
27 isn't that right? And he's explaining the four-week
28 exclusion should allow a sufficient time to determine
29 a clear course of action.

1 scrolling down. He deals with the notes issue and he
2 provides for you some information in relation to the
3 availability of the services within Occupational Health
4 or the Care Call services.

5
6 In terms of outlining the procedure for you and the
7 various steps, that's a fairly clear indication that
8 matters would take, I suppose, some four weeks before
9 they would get moving properly. That was, I suppose,
10 transparently explained to you.

11 A. Do I agree? I mean, just in passing, I'm scrolling
12 down, and if you scroll back up, for example this
13 letter states that the decision was made at the meeting
14 that I would be immediately excluded. In fact,
15 actually, the decision was made at the meeting of
16 22nd December that I would be formally excluded.
17 Having brought home the Trust Guidelines and the MHPS
18 Framework, and having been told on 30th December that
19 I was to be subjected to formal investigation and
20 immediate exclusion for a period of four weeks,
21 I understood, in reading the Trust Guidelines, that the
22 investigation must be completed within a period of four
23 weeks.

24
25 So, have I answered your question adequately?

26 181 Q. I suppose the question is you explain in your statement
27 that - it's actually in your grievance - that:

28
29 "Apart from this notification I heard nothing from the

1 Trust for over two weeks."

2 A. Mmm.

3 182 Q. And this experience was profoundly traumatic for
4 yourself and your family?

5 A. Mmm.

14:22

6 183 Q. You agree with that. What I invite you to consider is
7 that in terms of the process that Dr. Wright is setting
8 out for you, I suppose, you ought not to expect too
9 much progress too soon. There's a period of
10 evaluation, there's a scoping period to take place, and 14:23
11 he's telling you within the four weeks you will have an
12 opportunity to speak to the issue of exclusion and
13 speak to whether you have a case to answer, as such.

14

15 Inevitably processes of this kind are going to be 14:23
16 stressful and traumatic whether you agree or disagree
17 with the merits for the exclusion and the need for an
18 investigation or not. The Inquiry is interested, in
19 general, in whether the early stages of an MHPS process
20 can be better managed and from the perspective of the 14:23
21 practitioner, is there anything more that could have
22 been done through your experience to provide support,
23 whether emotional or practical or in any other sense,
24 to assist you with what is always going to be
25 a difficult process? 14:24

26 A. Well, I mean the contents of this letter didn't tally,
27 as far as I was concerned, with the Trust Guidelines.
28 I've read the Trust Guidelines and the formal
29 investigation must be completed within four weeks. And

1 by the time it came to 16th January, if that's what
2 you want me to speak to --

3 184 Q. To the?

4 A. 16th January.

5 185 Q. Okay.

14:24

6 A. -- I had no further communication with regard to any
7 search meeting. That caused me on that date to contact
8 the case investigator. The case investigator told me
9 that he would find out, or had found out, the identity
10 of the person from Human Resources who would be
11 assisting him. And he rang me back on 19th January to
12 advise me that a meeting was going to be organised to
13 meet with her, not with me, on 26th January '17 and
14 that they would -- the intent was that there would be
15 a meeting with me subsequent to that. Meanwhile, I'm
16 reading the Trust Guidelines that says the formal
17 investigation must be completed by 27th January '17.
18 And that was hugely stressful, in addition to
19 exclusion.

14:25

14:25

20 186 Q. Did you read the MHPS Guidelines that provide that the
21 four-week time limit is in certain circumstances to be
22 subject to extension? In other words, it's a flexible
23 time limit?

14:26

24 A. Again, I read that, but to my mind, having read the
25 Trust Guidelines, the Trust Guidelines were more
26 restrictive or constrictive in that regard and the
27 Trust Guidelines were the vehicle that was used which
28 obliged of the employer to enable it to use the MHPS
29 Framework.

14:26

1 So, I received this letter. It sets out, as you have
2 stated, the intent. Meanwhile, I'm halfway through the
3 four-week period. I've no further communication in
4 this regard. This is ten days after this letter. And
5 I have to take the steps myself to move things on. 14:27

6 187 Q. I don't intend to have a debate with you in relation to
7 whether four weeks is a contractual impediment or
8 contractual requirement. Plainly, the Inquiry can
9 reflect upon the length of time this investigation
10 took. What I was interested in with my question is in 14:27
11 circumstances where I've said this is inevitably
12 a traumatic and stressful process, whether you think,
13 with the benefit of your experience, anything could be
14 done - apart from hurrying up maybe and getting on with
15 it - to support or assist a practitioner, such as 14:28
16 yourself, through it?

17 A. Yeah, I think that more could have been done. I think
18 that there needed to be more person-to-person contact.
19 I don't want to reiterate my reservations about the
20 process leading up to 30th December 16th but there was 14:28
21 an interval of eight days between 22nd and 30th
22 December '16 when communication -- I could have been
23 met at that interval to discuss how to go forward,
24 whether any form of exclusion was required, which
25 I maintain was not required at all. And even at that 14:29
26 late stage, there could have been options considered to
27 deal with it. So, that apparently not having been
28 done, and certainly it didn't involve me, then you have
29 exclusion which was the most traumatic experience I had

1 had in my entire lifetime. And it's saying something
2 when it's more traumatic than family bereavement. This
3 was -- I was facing the prospect of the end of my - I'm
4 going to use the word vocation rather than career
5 because career is kind of a businesslike label. So, 14:29
6 this was the most traumatic experience I had. I was in
7 a catatonic state, both physically and mentally.
8 I couldn't sleep, and when I did sleep it was even
9 worse because the nightmares were worse than the
10 reality. So, yes, more could have been done. 14:30

11 188 Q. We all appreciate that, I think, from a human
12 perspective, leaving aside the merits of the reasons
13 for the investigation. So, at that level what specific
14 things should be built in to the employer's response
15 to, if you like, your welfare considerations? 14:30

16 A. If I could draw a clinical analogy. If I sat for half
17 an hour or , 40 minutes giving someone "bad news",
18 I routinely would have telephoned the person that
19 evening to make sure they're okay, is there anything
20 else I can add, is there any further support I can 14:31
21 give? But I'd nothing like that. That's the kind of,
22 at a human level, could have been done. But there was
23 nothing. You go home -- as I said, it was such
24 a traumatic experience, I can't remember how many days
25 went by, I think it was well into January before 14:31
26 I picked up the courage to listen to that recording.
27 And I don't think that I've listened to it since
28 because that was re-traumatizing.
29

1 So, more could have been done. I'm not a Human
2 Resources expert as to what could have been done but on
3 a human or perhaps a clinical level, yes, more could
4 have been done.

5 189 Q. As you say, you wrote on, I think it was 16th January 14:31
6 to Mr. Weir, I think it was. In any event, that seemed
7 to generate a flurry of activity. You met with
8 Mr. Weir on 24th January and, as I think we saw
9 yesterday, you spoke to him about various things,
10 including the reasons why you felt you could return to 14:32
11 work safely. And you gave certain undertakings in that
12 respect.

13
14 In terms of the meeting, Mr. Weir was attended by
15 Mrs. Hynds and she has told the Inquiry that 14:32
16 unexpectedly Mrs. Brownlee brought you to that meeting
17 or was present on the edges of that meeting and made
18 the introductions before departing. Is that your
19 memory of it?

20 A. Yeah. I'm not sure if you're familiar with the layout 14:33
21 of the Trust Headquarters but we were scheduled to
22 meet -- I think we met in either the Medical Director's
23 office or perhaps, actually, in the office of the
24 Director of Human Resources. I cannot recall now. It
25 doesn't really matter. But Michael and I -- you can 14:33
26 enter at the end of that corridor from the carpark. We
27 were walking up the corridor. Out from her office
28 comes Roberta Brownlee and says: 'what are you doing
29 here?' And even more importantly to Michael: 'what

1 are you doing here?' So we briefly explained to her
2 the reason for us meeting. Roberta, being the kind and
3 courteous person she is, she thought, 'well, I'll
4 accompany you and show you where the office is,'
5 because we didn't know exactly where it was, and 14:34
6 introduced us and left. That was it.

7 190 Q. So, she didn't know in advance of your --

8 A. Not at all.

9 191 Q. -- of your planned appointment with Mr. Weir?

10 A. Not at all. No. 14:34

11 192 Q. And you hadn't discussed that with her?

12 A. Not at all.

13 193 Q. And you paint the picture of not being sure where the
14 Medical Director's meeting room is?

15 A. Even though I had been to it, yeah. 14:34

16 194 Q. Well, I don't know, I'm asking you. Were you not
17 familiar with the corridor and the layout?

18 A. No, it's not a corridor -- it's a long corridor with
19 identical offices. And I think, actually, we did
20 meet -- that meeting, I think, was held in 14:34
21 Vivienne Toal's office but I can't be certain of that.
22 And I can tell you, after having the meeting of 30th
23 December, it could have been on planet Mars as far as
24 I was concerned because I couldn't have brought myself
25 back to it because of the nature of that meeting and 14:35
26 the impact it had on me.

27 195 Q. Yes. And up to that point had you had any interaction
28 with Mrs. Brownlee about the fact that you were
29 excluded?

- 1 A. I don't recall, no.
- 2 196 Q. And the subject of investigation?
- 3 A. No, I don't recall.
- 4 197 Q. At any point during the process did you have such
5 interaction with her? 14:35
- 6 A. She called at our house on one occasion after I had
7 been informed of the identity of the Non-Executive
8 Director, just to re-assure me that, you know,
9 John Wilkinson was a person who she had a great regard
10 for. And I had the impression, you know, that it was a 14:35
11 kind of area in his other fields of activity that
12 he would have had a familiarity with, and that was it.
- 13 198 Q. Your connection to Mrs. Brownlee, I think you
14 highlighted that she is a neighbour?
- 15 A. Yeah, she lives about one to one and a half miles away. 14:36
- 16 199 Q. Right, a neighbour in the rural sense.
- 17 A. In the countryside.
- 18 200 Q. Yes.
- 19 A. Do you know, they live on a farm, her husband's
20 a farmer. And when we meet we're much more likely to 14:36
21 be talking about the price of cattle than matters
22 urological, I can assure you.
- 23 201 Q. Sometimes they're connected!
- 24 A. Sometimes!
- 25 202 Q. And she was a Director on CURE for some time, is that 14:36
26 right?
- 27 A. She was. She was more than a director. She is the
28 person who established CURE. She established it,
29 because I was there and she had been my patient, and

1 we established CURE in about '95, '96. She drew
2 together sort of a launching committee of people who
3 knew what they were doing. It was chaired by a man
4 called Michael Murphy who had been the director of the
5 Western Education and Library Board. He is since 14:37
6 deceased. And some others, including someone from
7 a legal background as well to set up the structure as
8 well as fundraising. So, we stood at street corners
9 and shopping centres raising funds. Then, over
10 a period of time we had grand gala balls and other 14:37
11 fundraising activities like fashion shows, you name it.
12 Roberta's an expert in all of that.

13
14 So, over a period of years we would have raised
15 probably something of the order of between a quarter 14:38
16 and a half million pounds. And that funded, that
17 enabled us to fund research and, much more importantly,
18 when I was considering the title of CURE, it was,
19 actually, initially, to fund research. And I thought
20 how do you make it catchy. I didn't want Craigavon 14:38
21 Urological Research Foundation-type thing, so I stuck
22 an E on the end of it. I thought, 'mmm, that's good.'
23 And "E" was for education. The most successful aspect
24 of it has been nurse education, which I have detailed
25 and made some reference to in my witness statement. 14:38
26 The most important thing of all of that is that it was
27 through all of that that the world has the
28 International Journal of Urological Nursing, which was
29 launched in 2007. And just two weeks ago we agreed --

1 Michael Young and I are still directors of CURE. So,
2 we agreed to fund the conversion of the website of the
3 British Association of Urological Nursing into an
4 interactive educational website, and we fund other
5 activities of theirs. So, those are ongoing 14:39
6 activities.

7 203 Q. Just so that we're clear, this is not a commercial
8 company, it's a --

9 A. It's a registered --

10 204 Q. -- registered charity? 14:39

11 A. It's a registered charity and it is registered with
12 Companies House. It's a company with --

13 205 Q. Yes.

14 A. Whatever.

15 206 Q. Could I bring up on the screen WIT-90902. This is 14:39
16 Mrs. Brownlee's statement to the Inquiry. She said:
17

18 "I had no formal contact made to me by Mr. O'Brien or
19 any family member that I can recall, and I never met
20 with Mr. O'Brien to discuss this investigation. I do 14:40
21 remember Mr. O'Brien (or possibly his wife, my PA was
22 in her adjoining office to me) phoning the office and
23 speaking with me about the long drawn out process and
24 the Trust not meeting its timescales as outlined in the
25 policies. I then informed John Wilkinson of this. On 14:40
26 the call Mr. O'Brien was upset and I think his wife may
27 have been listening in and she said how stressful and
28 upsetting this lengthy process was."
29

1 Do you remember making a phone call to her?

2 A. I do not remember making a phone call because I did not
3 make a phone call. It may have been my wife that made
4 that phone call because they are good friends and she
5 was very, very upset about it. I so, did not make any 14:41
6 phone call because it would have been entirely improper
7 for it to be made.

8
9 I don't think that -- you know, I mean, I have already
10 articulated the reasons why I would not have done so. 14:41

11 And in any case, I don't think, actually, that
12 Roberta Brownlee was in a position to be doing
13 anything, even if it was possible and proper. So,
14 I didn't. I was very, very particular about that.

15 207 Q. You will note the last sentence, her specific memory of 14:41
16 you being on the call, whether or not it was your wife
17 who initiated it, but she has a recollection of you
18 being upset on the call.

19 A. Mmm. I don't have any recall of that or of being
20 present at it. I didn't make the call. 14:42

21 MR. WOLFE KC: Sorry, I'm overhearing somebody speaking
22 extremely loudly, albeit intended, perhaps, as
23 a whisper. I would ask, through you, Chair --

24 CHAIR: Yes. If people have to make a conversation, if
25 they could take it outside if they need to speak to 14:42
26 anyone, because we need to hear what the witness says
27 without interruption, please. Thank you.

28 208 Q. MR. WOLFE KC: Now, Mr. Wilkinson recalls Mrs. Brownlee
29 speaking to him after an interaction. Let me just put

1 to you what he says about it. WIT-26095. And at
2 paragraph 19 he recalls on 2nd March 2019 Mrs. Brownlee
3 telephoned him and expressed her concerns about case
4 the progression and timescales.

5
6 "She stated that Mr. O'Brien was a highly skilled
7 surgeon who had built up the Urology Department and was
8 well respected by service users. She further expressed
9 concerns about the handling of the case by Human
10 Resources. Mrs. Brownlee pointed out that the case was 14:43
11 having an adverse effect on Mr. O'Brien and his wife
12 and she asked me to contact Mr. O'Brien."

13
14 So, that seems to have a close correlation to what
15 Mrs. Brownlee is explaining. 14:44

16 A. Mmm.

17 209 Q. We'll come back to that in a moment.

18
19 If we scroll down to page 99 in the sequence,
20 WIT-26099. And at the bottom of the page, please, 14:44
21 paragraph 38. So he recalls on 11th September 2018 he
22 received a phone call from Mr. O'Brien at 12:18 but he
23 was working in a school. He responded as soon as he
24 could, and the call lasted 40 minutes or so. He was
25 unsure as to the reason for the call but he was able to 14:44
26 distil the following and made a contemporaneous note.

27
28 If we can scroll down, please. He recalls, at (e) that
29 you were going to meet up with Roberta Brownlee, and

1 you'd mentioned to Mr. wilkinson a previous meeting
2 with her.

3 A. Mm-hmm.

4 210 Q. So, dealing with these matters in reverse, do
5 you recall telling Mr. wilkinson that you intended
6 meeting with Mrs. Brownlee in the context of this
7 investigation?

14:45

8 A. No. No.

9 211 Q. You don't recall telling him that?

10 A. I don't recall telling him that.

14:45

11 212 Q. And whether or not you recall telling him that, were
12 you meeting with Mrs. Brownlee, here it's suggesting
13 more than once?

14 A. Is it not that he just suggested a previous meeting?

15 213 Q. Yes, a previous meeting and you were going to meet
16 again.

14:46

17 A. No, I didn't meet her again. And the only previous
18 meeting that I had with her was when she called at our
19 home well after he had been appointed, just to
20 re-assure me of the nature of the person who had been
21 appointed.

14:46

22 214 Q. Mr. wilkinson has given evidence that it was his
23 perception, and you might feel it unfair to ask you to
24 comment on this, but if I can ask it in this way: It's
25 his perception that is Mrs. Brownlee was attempting to
26 influence him in this process. First of all, were you
27 seeking or was your wife seeking to prevail upon
28 Mrs. Brownlee to advocate on your behalf?

14:46

29 A. No.

- 1 215 Q. Do you recognise that if she is speaking to
2 Mr. wilkinson in the terms that are mentioned on
3 2nd March, if that was the case, that that is
4 advocating on your behalf?
- 5 A. What happened, which 2nd March. 14:47
- 6 216 Q. On 2nd March, sorry. If we go back to what he says at
7 paragraph 19, if we scroll back, 26095. At
8 paragraph 19 he's saying that she is describing your
9 attributes as a surgeon, well-respected, setting up the
10 Urological Service, expressing concern about the 14:47
11 handling of the case and asking wilkinson to make
12 contact with you.
- 13 A. So the question, sorry, is?
- 14 217 Q. Would you accept that's advocating on your behalf?
- 15 A. I don't know. I mean, I can't be inside 14:48
16 Roberta Brownlee's mind and her intentions, or
17 whatever, at that point in time. What I can certainly
18 state categorically is that I didn't request any such
19 advocacy. I thought that would have been highly
20 improper and I never sought it. She would have had, by 14:48
21 this stage, an awareness of the adverse effect that it
22 was having on us as a family. And if she asked him to
23 contact me, that was fine, but whether that amounts to
24 advocacy of some kind, I do not know.
- 25 14:48
- 26 Part of his role was liaise with me or for me to be
27 able to liaise with him and to make representations.
28 So, I had a person appointed to do that, why would
29 I seek another person to press upon them? It

1 just didn't happen.

2 218 Q. Could I ask you about one final matter in this context.

3 If we turn to AOB-56363. So, this is a record of
4 a meeting which you weren't present at, I understand,
5 it was just between Dr. Wright and Mrs. O'Brien, takes 14:50
6 place on 14th September of 2018. If we just scroll
7 about halfway down the page, please. The discussion is
8 around the role of Mr. Wilkinson. Mrs. O'Brien says:

9

10 "I mean, that's been a complete disappointment as well, 14:51
11 the non-executive person."

12

13 She goes on to say something about that. Skipping
14 a couple of lines, just before (g) on the left hand
15 margin. 14:51

16

17 "But do you see when it would have come to March 1, as
18 the non -- I've been saying this to Roberta, I would
19 have been saying -- I would have been going down to
20 whoever it be. We have to call a halt to this. This 14:51
21 is illegal. This is a breach of his employee's terms
22 and conditions of employment."

23

24 Your wife, Mr. O'Brien, appears seems to be alluding to
25 go a conversation with Mrs. Brownlee protesting, I 14:52
26 suppose, the adequacy of Mr. Wilkinson's input or role.
27 Fortunately, we have this. Is it not obvious that
28 there are conversations ongoing with Mrs. Brownlee
29 about this investigation? She's being kept in touch

1 with your concerns about it?

2 A. Well, I have to say, not by me. You know, I can't
3 account for every conversation that my wife and Roberta
4 would have if they met for a coffee or something. But
5 I just emphasise, as I'm the main character here, that 14:52
6 this is something that I didn't enter into or
7 participate in.

8 219 Q. If we go to AOB-56461 and go to the bottom of the page,
9 please. This is a discussion that you're conducting
10 with Dr. Lynn on 25th October 2018. It's fair to put 14:53
11 this into the evidential mix as well, obviously, as I'm
12 testing your evidence on this. It says:

13

14 "I know the Chair of the Board personally, you know.
15 This is one of my problems. The Chair of the Board and 14:53
16 her husband, David, and my wife and I, we have been on
17 holiday together. But I am cautious about involving
18 her in a process about which she should be somewhat
19 apart to date anyhow."

20

14:54

21 Does that reflect your approach to this, you recognise
22 that Mrs. Brownlee, notwithstanding your friendship
23 with her, should be kept out of this and you didn't
24 take any improper steps?

25 A. I would restate it more robustly: I think that she 14:54
26 should be somewhat apart to date anyhow. I'm cautious
27 about involving her. I simply didn't involve her,
28 I wouldn't have done that. And we had been abroad --
29 I've forgotten which wedding that was, at the wedding

1 of a child of a mutual friend, and I think we were in
2 Spain. And it is quite remarkable I can remember,
3 actually, that we spent days touring around and
4 we never once mentioned anything pertaining to this
5 matter.

14:55

6 220 Q. The introduction to this subject matter was your
7 meeting with Mr. Weir on 24th January and, as you've
8 acknowledged, you said:

9
10 "Purely accidentally I bumped into Mrs. Brownlee and
11 she took us to the room."

14:55

12
13 So, in terms of the meeting itself, it's to be found at
14 AOB-01378. It's the previous page, just to orientate
15 yourself.

14:56

16
17 Was that meeting properly conducted by Mr. Weir from
18 your perspective?

19 A. Yes, it was. I mean the only caveat to that is that
20 when I was informed by him on 19th January that this
21 meeting would be taking place, and I had read the
22 Guidelines, I had read the MHPS Framework, and I had an
23 uncertainty as to what stating my case was, what case
24 was I stating? Was I to go there with my entire case?
25 Was it a case against exclusion of various kinds? And
26 he said, 'no, no, it's not, you don't have to state
27 your case.' And I remember actually ringing him back
28 just to clarify that. And I think it's a reasonable
29 thing to state that this was a procedure that was quite

14:56

14:56

1 new to Mr. Weir as well; it was totally new to me. And
2 I think, you know, being fair and generous, he was
3 finding his way with it.

4
5 So, I went to a meeting, not entirely certain as to 14:57
6 what it was, what was the purpose of the meeting,
7 rather than to get some kind of update, and yet I found
8 myself making the case. So, the meeting evolved
9 without me having a clear and comprehensive view or
10 agenda for the meeting. 14:57

11 221 Q. One of the things raised with you at the meeting and
12 for the first time was the issue of private patients.
13 We see that one page down at page 8, if you scroll
14 down. He outlines the up-to-date position. Scroll
15 down, please. Then, he says: 14:58

16
17 "The fourth issue of concern identified during the
18 initial scoping exercise relates to Mr. O'Brien's
19 private patients. A review of Mr. O'Brien's TURP
20 patients identified nine who had been seen privately as 14:58
21 outpatients, then had their procedure within the NHS."

22
23 It says:

24
25 The waiting times for these patients are significantly 14:58
26 less than for other patients. Further investigations
27 are ongoing."

28
29 I suppose the point might be made, Mr. O'Brien, that

1 while you've made the case that it looks at best
2 suspicious, that they moved from the nine TURP cases
3 and bought it into other diagnostic and surgical
4 procedures, and we'll maybe look at that in due course.
5 It's clear that this was, at least as portrayed to you, 14:58
6 a situation which was in the early course of
7 investigation and investigations are ongoing, they
8 hadn't reached a final view on it at that point. Is
9 that a fair point to make?

10 A. Yes, it is. Yes. 14:59

11 222 Q. And I think as we saw earlier yesterday, we were able
12 to see how you made representations on your own behalf
13 to have the exclusion lifted. I don't think I need to
14 go to the case conference meeting but at the case
15 conference meeting the exclusion was lifted. That 14:59
16 reflects, does it not, that the Trust was listening to
17 your representations? You'd be deaf not to sense that
18 you were less than happy with the process, particularly
19 around exclusion, but that suggests that they listened
20 to your representations and saw an alternative to 15:00
21 exclusion; is that fair?

22 A. It is fair. But they could have done it previously and
23 they could have done it between 22nd and 30th December.
24 I think that the fact that they listened and found that
25 it was not necessary to continue with it, there was no 15:00
26 good reason for it in the first instance, and it did
27 have a negative impact on a lot of patients.
28
29

1 I should add as well, you know, that the day before, I
 2 think it was, I was advised of these 13 sets of notes
 3 that were tracked to me and I had to deal with that.
 4 And I had just completed on the 20th -- no, I'm
 5 actually wrong. I was actually in the course of 15:00
 6 completing my response to the Patient 10 SAI, I think
 7 I'm right in saying that?

8 223 Q. Yes.

9 A. So there was a lot going on. It was a very stressful
 10 time. 15:01

11 224 Q. You make the point in your grievance, a procedural
 12 point, and I want to just take your view on it. You
 13 make the point in your grievance, if we bring it up at
 14 AOB-02047, at paragraph 4. You say:

15 15:01
 16 "The case conference also considered a report from the
 17 case investigator and determined that you had a case to
 18 answer in respect of all four concerns and that
 19 a formal investigation of the issues was required.
 20 A decision had already been made by the Oversight 15:02
 21 Committee to launch a formal investigation and that was
 22 ongoing. It is not at all clear what the purpose of
 23 this decision was intended to be. There is no part of
 24 the Trust Guidelines that mandate this decision."

25 15:02
 26 would you accept that there was a part of the Trust's
 27 process within its Guidelines that did require this
 28 stage to be undertaken?

29 A. Well we have -- you have dealt with this with other

1 witnesses in great detail, that the decision to
2 formally investigate should have been made by a Case
3 Manager. As far as I was concerned, I was informed of
4 a formal investigation that had started on 30th
5 December. I've listened to the arguments and the views 15:02
6 of various people as to whether that was properly
7 determined on that date. And now, after a period of
8 four weeks during which I was excluded, and you've
9 listened to my views on that matter, we now have it
10 that I have a case to answer. And it seemed to be 15:03
11 a stage process with overlapping, indeterminate,
12 blurred dates of decision as to when formal
13 investigation started. It seemed that this four weeks
14 period was being portrayed as a further period for
15 scoping, which seemed to me had been done previously in 15:03
16 any case. It seemed to me to be a mess, if I could put
17 it generously.

18 225 Q. Let me just contextualise this with the process in
19 front of us. It's at TRU-21047. I suppose, it's right
20 to say that during your meeting on 24th January with 15:04
21 Mr. Weir, at least so far as the record of that meeting
22 suggests, he's explaining to you that there is going to
23 be the meeting on the 26th?

24 A. That's right.

25 226 Q. In that sense it isn't a surprise. But if we scroll 15:04
26 down then it says that:

27

28 "The Case Investigator, if appointed, produces
29 a preliminary report for the case conference to enable

1 the Case Manager to decide on the appropriate next
2 steps. "

3
4 So, Mr. Weir, Case Investigator at a time, subsequently
5 to be replaced by Chada, Dr. Chada, is meeting with 15:05
6 you, produces a preliminary report, goes to this case
7 conference then. And we can see that:

8
9 "The report should include sufficient information for
10 the Case Manager to determine if the allegation appears 15:05
11 unfounded, is it a misconduct issue, etcetera,
12 etcetera. "

13
14 Then the big box:

15 15:05
16 "Case Manager, HR Case Manager, Medical Director and HR
17 Director convene a case conference to determine if it
18 is reasonably proper to formally exclude the
19 practitioner. "

20 15:05
21 So, plainly, it refers to the need for the Chief
22 Executive to be present if the practitioner is at
23 consultant level.

24
25 Perhaps you haven't concerned yourself as to where this 15:06
26 all comes from. No doubt more important people than us
27 have drafted this procedure and it's designed to fulfil
28 a procedural purpose. You have said the decision had
29 already been taken, 22nd December, I think you mean by

1 that?

2 A. Yes.

3 227 Q. 'Why are they doing this again'?

4 A. Yes.

5 228 Q. It's a separate and different process after certain 15:06
6 stages have gone through. Let's put that to one side.
7

8 In terms of the impact, if any, on the practitioner; do
9 you just perceive this as taking up more time, more
10 steps that are lengthening the day when you will 15:06
11 finally see a conclusion to this, or is your concern
12 more specific than that?

13 A. I think I've already articulated my concerns in that
14 I think that the Trust Guidelines and the Trust policy
15 is important. And I know that we're not going to get 15:07
16 into a debate about the relationship between the Trust
17 Guidelines and the MHPS Framework and contractual
18 issues. To my mind - and you probably are aware of it
19 - it was very much settled in the High Court in England
20 in 2018 in the case of Jain -v- The University of 15:07
21 Manchester NHS Trust. So, basically you have
22 a situation here where, IN 2005, the Department of
23 Health in England and then at a later date - I don't
24 know by what mechanism, by Ministerial Order or
25 whatever - it is transferred into Northern Ireland. 15:08
26 Employers are obliged to draw up a policy of their own
27 to deal with doctors' and dentists' performance or
28 doctors' and dentists' performance, or doctors and
29 dentists in trouble. And they must do that in order to

1 facilitate the application of the MHPS Framework.

2
3 So, on looking at this, and irrespective of this
4 whether you use the Trust Guidelines or the Framework,
5 but, particularly, in my view, with the primacy of the 15:08
6 Trust Guidelines in the policy, the investigation must
7 be completed within four weeks.

8 229 Q. Just so that the Inquiry know what you're talking about
9 in that respect. If we go to WIT-18505. And allow me
10 just a moment. So, this is the MHPS document at 15:09
11 paragraph 37 which says:

12
13 "The Case Investigator should, other than in
14 exceptional circumstances, complete the investigation
15 within four weeks of appointment and then submit their 15:10
16 report to the Case Manager within a further five days."

17
18 You then point to the Guidelines. The Guidelines are
19 to be found at TRU-83685. Scroll down two pages,
20 please. And 1.8 provides that: 15:11

21
22 "The guidance should be read in conjunction with the
23 following documents, including MHPS, the Framework."

24
25 what I think you have in mind when you -- referrals to 15:11
26 the four-week stipulation within the Guidelines is to
27 be found at WIT-83694 of this sequence. If we scroll
28 down two or three pages, please.

29

1 So the last box there on the left-hand side:

2

3 "The Case Investigator must complete the investigation
4 within four weeks and submit to the Case Manager within
5 a further five days."

15:11

6

7 Is that what you're relying on?

8 A. Yes.

9 230 Q. And your concern is that that is a strict requirement
10 and that's the one that binds the employer?

15:12

11 A. Yes.

12 231 Q. You will recognise, I think, that in the real world
13 there was no mission of this investigation ever being
14 completed within four weeks, having regarded to all of
15 its complications, not least the parallel
16 investigations into the backlog which, from the Trust's
17 perspective, your shortcomings had created, and the
18 need to establish facts around that; is that fair?

15:12

19 A. No, because -- there are two points I would make.

20 I think, actually, you may have asked Dr. Wright when
21 he was giving his evidence, you know, it was well
22 established that there was a failure to triage. It was
23 well established there were charts at home. It as well
24 established that a patient wasn't always done. What
25 were you investigating?

15:12

15:13

26

27 The second point is that -- I've forgotten my second
28 point. Your question again, if I may ask?

29 232 Q. Is it not fair to accept that there is no realistic --

- 1 A. Yes. I know -- the second point I was going to make
2 was, you made reference to the backlog, the review
3 backlog, but the review backlog was not part of the
4 Terms of Reference. It wasn't an issue. It had fallen
5 away, presumably on the grounds -- 15:13
- 6 233 Q. What I meant by the backlog is the parallel
7 investigation into the implications of the triage
8 shortcoming, the implications of the dictation
9 shortcoming, and obviously then there was investigation
10 on the private patient issue, etcetera. 15:14
- 11 A. Yeah.
- 12 234 Q. So, your concern is that this wasn't done in four
13 weeks?
- 14 A. I was just pointing out the fact that this wasn't done
15 in four weeks; that the Trust wasn't complying with its 15:14
16 own policy. I thought it was reasonable to do so.
17 I felt it was bound to do so. And I still feel it was
18 bound to do so. If they had found, over a period of
19 six years or seven years ago by this stage, that they
20 couldn't usually meet compliance with their own policy, 15:14
21 the policy, the policy should have long since been
22 rewritten.
- 23 235 Q. It is, if we look at this more generally, not
24 necessarily your case, but it's said of these cases
25 generally that it's extremely difficult to bring them 15:15
26 it to a conclusion where they have any complexity,
27 within a timeframe of four weeks. Take, for example,
28 your own circumstances; you were left with a task to
29 perform after you met with Dr. Chada on 3rd November --

1 6th November?

2 A. 6th November.

3 236 Q. You couldn't complete those tasks immediately because
4 you had your own professional business to attend to
5 around your appraisal. Let's park that issue. I want 15:15
6 to ask you about your relationship with Mr. wilkinson.

7 A. Yes.

8 237 Q. We can see from the MHPS Framework -- if we go to
9 WIT-18499. If we scroll to the bottom of the page
10 please. So, the role of Mr. wilkinson, as defined 15:16
11 here, is:

12

13 "To oversee the case to ensure that momentum is
14 maintained and to consider any representations from the
15 practitioner about his or her exclusion or any 15:16
16 representations about the investigations."

17

18 Let's have a look at the Trust Guidelines in this at
19 TRU-83702. It's set out there. If we scroll down,
20 please. Thank you. 15:17

21

22 He's appointed by the Trust Chair.

23

24 "The Member must ensure that the investigation is
25 completed in a fair and transparent way in line 15:17
26 with Trust procedures and the MHPS Framework."

27

28 And when he reports back on the findings to the Board.

29

1 AOB-56461. If we just go down the page a little,
2 halfway down. So, your view of the designated Board
3 Member, as expressed to Dr. Lynn, is "absolutely
4 useless". What was your difficulty with Mr. Wilkinson?

5 A. Well, Mr. Wilkinson, when I met him on two occasions, 15:18
6 I found him to be a very, very nice man. And that's
7 not a patronising thing to say. I don't intend it to
8 sound like that. I found that he wanted to be helpful
9 as possible but I was very, very disillusioned with
10 what appeared to me to be a lack of autonomy on his 15:19
11 part, a lack of an ability to oversee to ensure that
12 momentum was maintained. And, when we made
13 representations, I was looking forward to responses
14 from him rather than responses from a Case Manager or
15 whoever else they came from. I just thought that his 15:19
16 role proved to be ineffective. And I know that has
17 been discussed here.

18 238 Q. Well, it's important to have your perspective of it
19 because as the role is designed, it contemplates
20 a degree of interaction with you, the receipt of 15:20
21 representations from the likes of you, the
22 practitioner, to him for consideration, is the language
23 used. A responsibility to try to ensure the momentum
24 of the process.

25
26 I wonder is your criticism on the page here a criticism 15:20
27 of the role or a criticism of him?

28 A. Oh, of the role rather than the person. I felt --
29 we have heard him give his own evidence and I felt his

1 own evidence to the Inquiry very, very much chimed with
2 my view of it. He didn't know how, effectively, to
3 carry out his role and, even if he did know, I don't
4 think that he was necessarily being permitted by others
5 to do so, in terms of maintaining momentum. 15:21

6
7 So, irrespective of the reasons why it proved to be
8 ineffective, it was ineffective from my point of view.

9 239 Q. Well, much might depend upon the understanding of the
10 role, of course, is the other element of whether 15:21
11 a person is equipped and/or allowed to pursue that
12 role?

13 A. Mmm.

14 240 Q. Let's look at an example of what you thought he should
15 be doing. You met with him on 7th February. You 15:22
16 provided him with a list of questions. If we could
17 just look at that, TRU-01248. And you're raising
18 concerns around the investigation process. And it --
19 just scrolling down slowly -- it starts back with the
20 23rd March letter. It notes, for example, Mr. Mackle's 15:22
21 role in respect of that. Scrolling down. And then you
22 say the letter of 23rd March gives rise to a number of
23 questions, and you set them out, starting with:

24
25 "What was the nature of the complaint which led to this 15:23
26 letter being issued? What investigation occurred? Who
27 completed this investigation."

28
29 The letter runs to several pages. A series of very

1 intense, detailed questions seeking to enquire into the
2 procedural aspects of how you got from March '16 to
3 a decision to have a formal MHPS investigation.
4

5 Did you really think that Mr. Wilkinson, in his role as 15:24
6 defined in the Guidelines, was the appropriate person
7 to direct those to?

8 A. I did, because we didn't have any other person to whom
9 they should not be directed.

10 241 Q. Did you expect him to conduct a shadow or parallel 15:24
11 investigation into those matters?

12 A. I expected him to ask the questions of the people who
13 could provide the answers and to return to me with the
14 answers to the questions insofar as they were answered.

15 242 Q. And while know doubt the Guidelines or the MHPS 15:24
16 Framework talk about providing him with representations
17 and him receiving them, you interpreted those
18 Guidelines to mean that he would be the proper
19 recipient of questions such as this and the appropriate
20 person then to go and gather that information? 15:25

21 A. I did at that time because we're speaking of
22 early February. I still -- I think, is this
23 7th February? In fact this is two days before I had
24 a review with Occupational Health and the meeting with
25 regard to the Return to Work Action Plan. Having gone 15:25
26 through a very, very traumatic experience, with loads
27 of questions in my mind as to how did it come to this
28 point from a letter of 23rd March, given to me a week
29 later, on 30th March, to this terrible experience. And

1 having been provided with the only person that I was
2 aware of, and I haven't read the Guidelines, who was a
3 conduit to try to find answers to questions which I was
4 desperate to ask and have answers to. Perhaps, it may
5 be regarded that it was unreasonable for me to be 15:26
6 asking this person to answer those questions but it's
7 the only person that I could ask who I assumed had
8 a degree of independence of the other personnel who had
9 taken these executive decisions in December and again
10 in January. 15:26

11 243 Q. You were provided with answers on 24th February through
12 Dr. Khan and you have written -- if we bring up
13 AOB-01464 just down the bottom of the page, please.
14 You've by this stage received Dr. Khan's -- no -- yes,
15 you've by this stage received Dr. Khan's answers. And 15:27
16 you say, middle of the page:

17
18 "I was entirely taken aback on this point and that the
19 response should come from the Case Manager. That it
20 did imply to me that your role on my behalf does not 15:27
21 enjoy an autonomy."

22
23 Does that suggest that you regarded him, in some sense,
24 or you hoped that he might be or you understood the
25 Guidelines as providing for an advocate on your behalf 15:28
26 or somebody who would push your concerns or arguments
27 and raise enquiries about them?

28 A. Actually, autonomy far more so than advocacy. So, he's
29 the only person that was presented to me in the

1 Guidelines and MHPS Framework who seemed -- it seemed
2 to me that the purpose of the appointment of
3 a Non-Executive Director was, indeed, to act somewhat
4 independently, if not totally independently of the
5 investigative process. And it's the person to whom 15:28
6 I could make representations. I understood entirely
7 that that person could make representations on my
8 behalf.

9
10 I have to say, actually, that you were asking earlier 15:29
11 about support mechanisms that could have been put in
12 place psychologically. I found meeting with
13 John Wilkinson fulfilled that to a great degree.
14 I found him a wonderful person but I found that
15 he didn't enjoy -- I was gravely disappointed that the 15:29
16 expectation of autonomy was disappointed.

17 244 Q. would you accept that his role in receiving
18 representations from you doesn't suggest that he ought
19 to be the one to be autonomously investigating them, or
20 independently investigating them on your behalf? It 15:29
21 should be enough, within the terms of those Guidelines,
22 to be passing your representations on and perhaps
23 making the representation on your behalf that these
24 questions demand answers, and you got answers?

25 A. I expected -- it was my expectation at the time, 15:30
26 whether it was proper and reasonable and otherwise in
27 the view of others, that I would get the reply from him
28 rather than getting a reply from the Case Manager or,
29 indeed, anybody else.

- 1 245 Q. So, do your answers suggest that even now you see
2 a roll for a non-exec, or perhaps somebody else
3 adjacent to this process to receive expressions of
4 concern from you and that that person should be enabled
5 by the process to independently investigate them or 15:30
6 demand answers for you?
- 7 A. Yes. I think that would be very, very helpful in terms
8 of building that into the kind of framework or
9 structure or process of any such investigation. That
10 a person on the receiving end does have some kind of 15:31
11 conduit, some independently-appointed person,
12 a Non-Executive Director seems to be to be a very
13 appropriate person to fulfil the role because they do
14 have an accountability to the Trust Board.
15 15:31
- 16 But, I do accept, indeed, that they need to have the
17 skill set to do so. It's not an easy task to be such
18 a person. Having been a kind of Non-Executive Director
19 as a trustee of a school and governor, and so forth,
20 I appreciate how important it is to have skill sets as 15:32
21 an individuals in order to fulfil certain roles as
22 governors and trustees and so forth. I do think it's
23 very, very important.
- 24
25 If you have a person who is as disenchanted and 15:32
26 disappointed and annoyed and angry about this whole
27 process by this point in time, I thought it was really
28 crucial to have someone who could inquire, investigate,
29 and provide answers to me freely. You know, he did --

1 he should have been able to say to me by response:
2 'I asked this question but frankly I haven't got an
3 answer yet. I find that unsatisfactory.' If you know
4 what I mean?

5 246 Q. what he was able to do was, 'I've asked these questions 15:32
6 and I've managed to prevail upon the appropriate person
7 to write back to you.' But you make the case where
8 somebody akin to a well-qualified bystander to assist
9 you through the process.

10 A. Mmm. 15:33

11 247 Q. It has to be remembered, of course, that these
12 processes are subject to legal requirements as well and
13 exist, I suppose, in a broader legal framework where
14 there's a requirement for procedural propriety and you
15 could, at any point, have had recourse to legal 15:33
16 representation or legal advice if you felt that the
17 processes were not treating you fairly.

18 A. Mmm.

19 MR. WOLFE KC: Chair, it's 25 to 4. A short break and
20 we can maybe take it up to -- 15:33
21 CHAIR: Yes, 10 to 4.

22

23 THE INQUIRY ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

24

25 CHAIR: Last session of the afternoon then. 15:51
26
27
28
29

1 MR. AIDAN O'BRIEN CONTINUED TO BE EXAMINED BY MR. WOLFE
2 KC AS FOLLOWS:
3

- 4 248 Q. MR. WOLFE KC: Mr. O'Brien, I was asking you, about
5 30 minutes before our break there, about your 15:51
6 engagement with Mrs. Brownlee as various points. Just
7 one factual point I should check with you. You
8 mentioned being abroad with her at a wedding, and her
9 family. When was that, approximately?
- 10 A. I'll have to consult with the authority. I can't 15:52
11 recall. We were abroad -- I can give you the details.
- 12 249 Q. Can I just ask it in this way: Was it during the
13 currency of the life of the MHPS investigation?
- 14 A. I would have to check that as well.
- 15 250 Q. If you could check then, after you've finished giving 15:52
16 evidence, so after you've come off oath and we can
17 receive that information through your legal team.
- 18 A. Yes.
- 19 251 Q. Very well. Thank you. I just want to, in the time
20 left with us, this afternoon - and regrettably we'll 15:52
21 have to go into tomorrow morning - ask you about the
22 steps taken after you returned to work.
- 23 A. Yes.
- 24 252 Q. If I could have up on the screen, please, TRU-00039.
25 This is the record of the case conference that took 15:53
26 place on 26th January 2017. This is the second page of
27 it. If we just scroll down, please, towards the
28 bottom. So, the first thing to note was that the case
29 conference decided that you could return to work but

1 they would wish to have you monitored and so there was
 2 a requirement for Esther Gishkori and Ronan Carroll to
 3 develop a monitoring plan.

4
 5 If we then scroll down the page, maybe over to the top 15:54
 6 of the next page. Thank you, yes. And it's noted at
 7 the top of the page that you had identified workload
 8 pressures as one of the reasons you had not completed
 9 all of your administrative tasks.

10 15:54
 11 "There was consideration about whether there was
 12 a process for him..." that's you "...highlighting
 13 unsustainable workload."

14
 15 It was agreed that an urgent review of your job plan 15:54
 16 was required, and that was to be actioned by Mr. Weir.
 17 Then it said that:

18
 19 "Any review would need to ensure that there was a
 20 comparable workload activity within the job plan 15:54
 21 sessions." Taking into account yourself and your
 22 peers.

23
 24 Could I ask you this: Did you receive a copy of the
 25 minutes of this meeting at the time? 15:55

26 A. Of 26th January?

27 253 Q. Yes.

28 A. No.

29 254 Q. In terms of either element of this, starting with

1 a review of comparable workload activity, do you recall
2 being asked to engage in anything resembling that?

3 A. No.

4 255 Q. We're going to come on and look at a meeting which you
5 attended with, I think it was Mr. Weir and
6 Mrs. Corrigan, at the start of March, there was some
7 discussion around backlog.

15:55

8 A. Yes.

9 256 Q. We'll look at that. But are you aware of any formal
10 exercise, put it in those terms, which involved
11 a comparison of your workload activity with others?

15:55

12 A. No.

13 257 Q. Job planning, I'm going to come to, was the
14 responsibility of Mr. Weir. We have evidence from him
15 in that respect.

15:56

16
17 Could I ask you this question: You're returning to
18 work after a period of sick leave. You're returning on
19 a phased basis, is that right?

20 A. Yes. Yes.

15:56

21 258 Q. And, obviously, the MHPS investigation is about to
22 swing into action in terms of its investigative phase.
23 You have, and we've observed the difficulties -- you've
24 acknowledged and we've observed the difficulties around
25 your administrative practise, which you put down
26 largely to workload pressures, meaning you couldn't do
27 all that was required of you, and you've frankly
28 acknowledged that. Did you get any sense, upon
29 returning to work, that, if you like, there was going

15:56

1 to be or this was some reproachment in the sense of
 2 let's draw a line under the past, we need to carefully
 3 work out what's doable in your practice and make
 4 changes to accommodate that?

5 A. Not really. In fact, when you look at the transcript 15:57
 6 of the recording of the meeting that we did have with
 7 Dr. Khan and Mrs. Hynds on 9th February, it appeared to
 8 be very much, much more anticipating, like, we could
 9 reduce the numbers of patients attending clinics to
 10 provide you with an hour's dictation or whatever it may 15:58
 11 be. That kind of thing. And then when I met with
 12 Mr. Weir and Mrs. Corrigan, there was a greater
 13 emphasis on being seen to have a similar workload to my
 14 peers and those two things came into conflict somewhat.
 15 I may have contributed to that to a degree myself 15:58
 16 because I think Mr. Weir did question, for various
 17 reasons, the continuation of the clinic at Southwest
 18 Acute Hospital but I felt that that was a very valuable
 19 service to the people who receive it, not just me from
 20 me but from my colleague as well, and I didn't want to 15:58
 21 discontinue that.

22

23 But to answer your question in the sense in which you
 24 ask it, no, there was no, like, drawing of the line and
 25 now we start afresh with a blank sheet type thing. 15:59

26 259 Q. There was nothing, no, if you like, fundamental --
 27 A. Re-evaluations, no.

28 260 Q. -- project to look at this?
 29 A. No.

1 261 Q. Briefly open the Monitoring Plan, if we can. It's
2 TRU-00732. And, as you said, you were met with
3 Dr. Khan to go through this.

4
5 The opening -- I think it is the second paragraph. If 15:59
6 we scroll down. Yes, this Monitoring Plan is, as
7 I assume the case conference anticipated from the
8 record of that case conference, placed in the context
9 of a need or an urgent job plan review to be undertaken
10 to consider any workload pressures to ensure 16:00
11 appropriate supports can be put in place.

12
13 We heard from Mr. Weir. He was the job planner, if you
14 like, appointed to work with you and to finalise a job
15 plan. Can I just take your view on what he has said. 16:00
16 In a nutshell, I suppose, by October 2018, when he went
17 off on sick leave himself, a job plan hadn't been
18 signed off or resolved. A process, which I think he
19 had in mind to start with you back as far as
20 September 2016. I didn't open those emails to you this 16:01
21 morning and hopefully there's no need to go back there.
22 But he had -- I think there was email communication
23 between you in early October 2016 before he went on
24 sick leave the following month. Did meetings take
25 place at that time to engage in job plan discussions? 16:01

26 A. In 2016?

27 262 Q. Yes.

28 A. I don't recall. I don't recall at this moment in time.

29 263 Q. It's not terribly important. What I want to do is take

1 you to what he says at the other end of the time period
2 and take your views on that. So, if we go to
3 WIT-19948. He says on 5th October -- this is me
4 bringing you back to where I said I wasn't going to
5 start. But let's just take the whole journey. He says 16:02
6 on 5th October he started email discussions with you,
7 and the Inquiry has seen them, regarding job plans, and
8 had a telephone discussion. There was a record on the
9 Circadian System - I'll call that the system - that
10 tracks dates and times of signoff and it was completely 16:03
11 written and waiting doctor agreement. On 10th
12 October '16 this job plan is then cancelled. And a
13 further written job plan placed on the system was
14 published on 7th November, but this too was cancelled
15 in February 2017, rewritten in April 2017, cancelled 16:03
16 again in August.

17
18 Down the page, please. There was a further review of
19 job planning in April 2018 but the start date
20 retrospectively was to be February 2017. A lengthy 16:03
21 email from you in September '18 regarding changes you
22 wished to make. Further correspondence in October and
23 December '18 regarding job plan, but he was unable to
24 respond. Then his responsibility for urology stopped.
25 By the time of the commencement of his own sick leave 16:03
26 in mid objecting through to December 2018, the job plan
27 was not finalised, resolved or signed off on the
28 system. What's your reflections on job planning? The
29 case conference anticipated an urgent attack on this

- 1 issue to get it resolved because it was seen as
2 important, I suppose, to get to grips with the
3 pressures that you were feeling as regards aspects of
4 your role and to make your return to work, I suppose,
5 as patient safe as possible, and as administratively 16:04
6 compliant as possible. That seemed to be the thinking.
7 why did it not reach a conclusion?
- 8 A. Well, I think the first meeting in -- is it February
9 '17? No, sorry. Do you see the job plans that are
10 published, as the say, on Zircadian, their time, they 16:05
11 expire off.
- 12 264 Q. Yes. Do you want to scroll back?
- 13 A. Yes, October '16 and of course then I go off.
- 14 265 Q. Yes. So back to the bottom of the next page.
- 15 A. But the important one then is, when did we first meet 16:05
16 on my return from --
- 17 266 Q. You met upon your return with Mr. Weir and
18 Mrs. Corrigan On 9th March. Now, that was a more
19 general meeting, it seems.
- 20 A. It was a return to work meeting essentially. That's 16:05
21 right, yes.
- 22 267 Q. Yes. I don't wish to descend into the weeds on this,
23 but do you have a general reflection on why job
24 planning wasn't brought to a conclusion,
25 notwithstanding the efforts, apparently, made by 16:05
26 Mr. Weir? Was it a case that you couldn't agree with
27 what was being offered?
- 28 A. Well, yes, by definition that is the case. If I recall,
29 when we met for the second time - and is that in 2018?

1 268 Q. I think so yes, if you scroll down.

2 A. I believe it is, because it says it was rewritten in
3 April '18, though, in fact -- we had a further review
4 of job planning in April '18 but the start date was
5 retrospectively in February '17. I thought actually 16:06
6 that we -- I though we had a further meeting, which was
7 a very, very constructive meeting, and it was running
8 concurrently in late '18 with us trying to get meetings
9 with senior management in the Trust to sort out some
10 issues that remained of concern to all of us, not least 16:06
11 triaging and the relationship with urologist of the
12 week, and the long waiting list and how we're going to
13 address all of those global issues.

14
15 So, I think, actually, job planning alone was not going 16:07
16 to adequately address -- it wasn't -- job planning
17 alone was not going to enable Mr. Weir to draw a line
18 under the past and start off with a fresh sheet. And
19 the Zircadian system is very, very complex. It's
20 typically the case that when a job planner makes every 16:07
21 best effort that they can to navigate their way around
22 it, annualising some activities, and it's best done,
23 actually, by email correspondence because you're
24 presented with a plan which is sometimes very, very
25 difficult to comprehend. There are things missing, 16:08
26 things on the wrong day, and so forth.

27 269 Q. He refers to an email you sent in September 2018, just
28 before he went off.

29 A. Mmm.

1 270 Q. If we go to TRU-258903. Just scroll down, please.
2 I trust this is the email he's taking us to. You're
3 informally updating him on two issues which, as you
4 recall, were being discussed at Departmental
5 meetings -- 16:09

6 A. Mmm.

7 271 Q. -- in relation to the UOW role. And one issue was the
8 undertaking of ward rounds at the weekend --

9 A. Mm -- hmm.

10 272 Q. -- and a second issue was triage. The ward round issue 16:09
11 seems to have been readily resolved or resolvable, but
12 as you say the triage issue was more complicated. Then
13 scrolling down, you can see different views reflected
14 in relation to the time commitment to triage, that when
15 urologist of the week there's a variation in terms of 16:10
16 how it's done and how long it would take to be done,
17 I suppose, from Mark Haynes and Michael Young at one
18 end of the spectrum taking, in Young's case at least
19 six hours. That's an off-the-cuff remark, it's
20 recorded by you. 16:10

21

22 "Mark Haynes at least six hours but he did not have
23 a more accurate assessment of the time required."
24

25 And you say 20 to 24 hours when conducting advanced 16:10
26 triage and you were doing that in your own time over
27 the weekend after UOW.
28
29

1 Just scrolling back up in the direction we've come,
2 you're feeding that into the mix, two years after this
3 process is tentatively commenced in October 2016.
4 Mr. Weir is saying later that same morning, 27th
5 September:

16:11

6
7 "I have your job plan completed on Monday. I think it
8 is a fair reflection of all the discussions and
9 complexities of your working pattern we discussed."

16:11

10
11 He says:

12
13 "If triage is to be increased from six hours, that will
14 have to be for all and done on an equal basis. I can't
15 pay someone more for taking much longer for the same
16 number of triages. That, therefore, will need an
17 agreed position from all urologists..." etcetera.
18 "I can't see the 24 hours for triaging would be
19 sanctioned."

16:11

20
21 And he talks then about the ward rounds. And he says
22 if this was discussed on Monday, then he awaits
23 confirmation and he expects it will require reopening
24 of all job plans.

16:11

25
26 So that is, I suppose, a snapshot in time and it maybe
27 gives a hint at the difficulties at resolving this job
28 plan. He has a job plan which he thinks is a fair
29 reflection of difficulties and discussions to date and

16:12

1 then you'd come in earlier that morning with this issue
2 about triage, which was no doubt part of your
3 discussions up to then.
4

5 I just need to be clear: Did you ever sign off on 16:12
6 a job plan before your employment ended in 2020?

7 A. No.

8 273 Q. And was that because you you considered that what was
9 being proposed was not a fair reflection of what was
10 required to do the job? 16:13

11 A. Well, that's one way of putting it. I mean, at this
12 time, in lat of 2018, I believe that -- and my
13 colleagues, we collectively believed that we were in
14 the process of getting agreement with the Trust on
15 various issues including, for example, something as 16:13
16 relatively simply as having ward rounds on Saturday and
17 Sunday mornings regarded as predictable when on call
18 and having them acknowledged in a ward round -- in
19 a job plan. But not everybody was happy to be tied
20 down by a job plan to do a ward round, particularly on 16:13
21 a Sunday morning. And a compromise was, you know, one
22 ward round per weekend on call. But we were -- it was
23 an ongoing discussion at that time and, of course,
24 we had then planned to meet with senior management the
25 first Monday of December '18 but that was cancelled as 16:14
26 well. And then I think by then he was on sick leave.

27 274 Q. Yes. So never resolved. An adjunct to this was
28 the question as posed at the case conference about
29 whether you were being listened to in terms of the

1 pressures that you faced and whether this was
2 comparable pressures to peers. There's an element of
3 that discussed when you met in March 2017. If we can
4 go to that, please. TRU-267952. I think you earlier
5 described this as a return-to-work meeting and we can 16:15
6 see from the opening paragraph that that is how it's
7 framed.

8
9 A number of matters to take out of this discussion of
10 the Enniskillen Clinics. As you said earlier, you 16:15
11 reiterated a wish to go to the clinics on a monthly
12 basis. There was discussion, was there, about whether
13 you should stop going?

14 A. It was a suggestion from Mr. Weir. But, you know, if
15 it was considered something worth -- a positive move, 16:16
16 actually, to reduce clinic numbers per week, the one in
17 the Southwest Acute Hospital would have been the last I
18 would have sacrificed, for the reasons that appear
19 there.

20 16:16
21 There are people who live in Fermanagh, some people
22 consider it not a long distance from here, but for some
23 people travel is a crucial issue; it's critical to
24 their healthcare, which I felt it was really important
25 to go there. Michael Young and I felt that the service 16:16
26 that we provided there, which was the first time there
27 was actually a urological service of any kind provided
28 in Co. Fermanagh when we started there no January '13.
29 So it was something I didn't want to sacrifice.

- 1 275 Q. Is it fair to frame that discussion in terms of
2 Mr. Weir exploring with you --
- 3 A. Absolutely. Yes.
- 4 276 Q. -- whether the valve which is containing the pressure
5 on your practice could be released in some shape or 16:17
6 form?
- 7 A. Yes. In some shape or form, yes.
- 8 277 Q. And you thought that would be an inappropriate starting
9 point?
- 10 A. Yes. In fact I think, actually, when I have read the 16:17
11 transcript of that meeting, I'd have been much happier
12 to have sacrificed the one in Armagh Community Hospital
13 because people can travel from Armagh to Craigavon,
14 whereas distance is a big issue for Co. Fermanagh.
- 15 278 Q. Just scrolling down the page, there's a discussion 16:17
16 about dictation which was obviously a concern. I hope
17 I get this right but, in essence, they were to ensure
18 that the IT facilities at SWAH would enable you to
19 dictate promptly after the clinic?
- 20 A. That never really worked out. They made every attempt 16:18
21 from our Southern Trust point of view to make it work.
22 There was some attempt on the SWAH end as well, but,
23 ultimately, neither Michael nor I were employees of the
24 Western Trust and we couldn't really use their system
25 to do digital dictation that would link in with the 16:18
26 Southern Trust. I brought my own Trust laptop to dock
27 in. We tried lots of things. Michael Young continued
28 until the SWAH clinics ended at the start of lockdown
29 in 2020, he continued to use tapes for his patients.

- 1 I gave up out of frustration, and that was known to
2 Martina Corrigan. So I brought them, ultimately, back
3 home and I dictated on them at home.
- 4 279 Q. If we scroll down, it was agreed that you would see
5 16 patients - eight morning, eight afternoon - and 16:19
6 would get one hour to dictate at the end of the clinic.
7 You agreed to this and said that you would not release
8 files until all the charts had been dictated on. Did
9 that become academic because of the failure of the IT
10 system? 16:19
- 11 A. It did.
- 12 280 Q. Can this be framed as another attempt, with Mr. Weir's
13 intervention, to assist you upon your return to work --
- 14 A. Yes. Yes.
- 15 281 Q. -- to get more efficient with this? 16:20
- 16 A. Yes.
- 17 282 Q. If we scroll down then to the next page, the issue of
18 new outpatient clinics is discussed.
- 19 A. Yes.
- 20 283 Q. And you, is it fair to say, made a pitch for being 16:20
21 absolved from seeing any new outpatients --
- 22 A. Yes.
- 23 284 Q. -- at least until you got caught up with your backlog?
24 Is that the way to frame that?
- 25 A. Yes. 16:20
- 26 285 Q. You felt - tell me if this is right - it's recorded
27 here that you felt that you had the most patients
28 waiting to be operated on with the longest waiting
29 times and it wasn't fair to keep adding to your list?

1 A. Yes.

2 286 Q. Now, did Mrs. Corrigan, in what she is recorded as
3 saying here, did she correctly describe the situation
4 that other clinicians had similar problems to face?

5 A. Yes.

16:21

6 287 Q. Mr. Young had 228 patients but the latest of them is
7 162 weeks, your latest is 152. The figures between you
8 and Mr. Young, I suppose, are much of a muchness, are
9 they?

10 A. They are, but I think, actually, either I was missing
11 the point or they were missing the point. The point
12 I was making, actually, is this would have been
13 a relieving issue. So, if you think that three months
14 previously probably the most difficult issue to crack
15 was the review backlog. Surely one way of doing it is
16 to no longer see new patients. I know that system is
17 used by one of my colleagues in Birmingham, but even
18 prior to lockdown they're ceiling, their limit was
19 18 weeks, even for a review. So, they have some
20 computerised system and appointments where if some
21 consultant breaches the 18-week limit, there are no
22 more new patients appointed until that is brought back
23 into line. So, that was the point I was trying to
24 make. But that wasn't accepted.

16:21

16:22

16:22

25

16:22

26 There was a fear -- you know, there was a fear of not
27 being seen to -- there was a concern, I think, about
28 I couldn't be treated differently and being treated
29 differently might have meant that there was some

- 1 increased pressure on my colleagues as a consequence.
2 So, that was described to me and it was a non-runner,
3 regrettably, because I think that would have been
4 helpful and it would have made sense in any case in
5 order to plan some day the end of one's employment. 16:23
- 6 288 Q. If one then goes to another issue by way of example of
7 discussions around your work pressures at page 56 in
8 this sequence - three pages further on, please - and
9 you, I think I'm right in saying, were contemplating
10 giving up the rotating chair role for MDT; is that 16:24
11 right?
- 12 A. What I was not prepared to do was to continue operating
13 until 8 o'clock in the evening and going home and
14 having a first meal of the day, on a Wednesday, and
15 then to preview the next day's MDM, as I had done for 16:24
16 the previous years. So I -- I'm reading it as I --
- 17 289 Q. Scroll up so we can see the full entry. No, sorry,
18 scroll down?
- 19 A. Scroll down, yes.
- 20 290 Q. So what you're saying is, you're reflecting that 16:24
21 Wednesday was a long operating day and you were
22 advising Martina Corrigan that you hadn't quite made up
23 your mind of that you're going to continue with the
24 chairing role, but if you did, then you wouldn't be
25 coming into work on the Thursday morning, the time 16:24
26 would be spent previewing for the MDT?
- 27 A. Yeah. Well, in any case, I think at that time, having
28 introduced a rota involving three of us back in
29 September 2014, I took the opportunity then of

1 increasing that from 3 to 4 by the inclusion of
2 Mr. O'Donoghue, and I continued to rotate, because of
3 course the MDMS was a big enough issue without
4 withdrawing from it all together.

5 291 Q. One of the solutions that came forward after 16:25
6 discussions, if we can scroll down slightly. Thank
7 you.

8
9 "Mrs. Corrigan spoke with Mr. Young." It's recorded.

10 16:25
11 "She felt that if Mr. O'Brien wants to continue to
12 chair then he should drop his theatre session once per
13 month and give it to a locum."

14
15 And that would allow you some time for MDT preparation. 16:26

16 A. Mmm.

17 292 Q. It is, I think you would see accept, possible to
18 imagine various solutions with goodwill and thinking
19 outside the box, perhaps, to address issues in
20 a practice. 16:26

21
22 Going forward from March 2017, did you think that you
23 had better support and/or understanding from the Trust
24 in terms of the pressures you felt in your practice?
25 Had any of these discussions borne fruit? 16:26

26 A. Well, yes, I think there was a greater appreciation and
27 the personnel who were involved were, I think, very,
28 very helpful and well intentioned, including
29 Mr. McNaboe who came later. And, you know, for

1 example, how that was resolved was instead of
2 a wednesday morning MDM preview, I did it on Thursday
3 morning instead because we didn't actually get the list
4 until wednesday morning at lunchtime.

5
6 Yes, people were being constructive, people were being
7 prepared to be helpful. And you know, in some ways, to
8 be honest with you as well, there's always a tendency
9 for a person like me to be, at times, be my own worst
10 enemy in that regard, you know, because of the concerns 16:27
11 that one does have about patients, basically, in
12 a global sense.

13 293 Q. There were to be a number of concerns expressed as to
14 whether they were deviations from the Monitoring Plan.

15 A. Mmm. 16:27

16 MR. WOLFE KC: I'll take your view on that tomorrow.
17 we'll work through a couple of incidents. And in the
18 course of the morning, then, eventually reach the
19 promised land of the investigation report itself and
20 take your views on that before we finish. With that in 16:28
21 mind, 10 o'clock tomorrow?

22 CHAIR: Yes, 10 o'clock in the morning. Thank you
23 everyone.

24
25 THE INQUIRY WAS THEN ADJOURNED UNTIL FRIDAY, 21ST APRIL 16:28
26 2023 AT 10:00 A.M.