Urology Services Inquiry

Oral Hearing

Day 34 – Wednesday, 29th March 2023

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

Held at: Bradford Court, Belfast

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

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1 THE INQUIRY RESUMED ON WEDNESDAY, 29TH DAY OF
2 MARCH, 2023 AS FOLLOWS:
3
4 Dr. Neta Chada continued to be examined by Mr. Wolfe
5 as follows: 09:52
6 CHAIR: Morning, everyone. I see my colleagues on the
7 screen. I feel a little less lonely today.
8
9 Welcome back, Dr. Chada. Mr. Wolfe.
10 MR. WOLFE KC: 10:02
11 1 Q. Good morning, Dr. Chada. This is a continuation of
12 Dr. Chada's evidence from the 21st March 2023. Just
13 a piece of housekeeping before we start into the
14 substance, Dr. Chada. You have kindly, since your last
15 visit, provided a further addendum statement to clarify 10:02
16 a number of matters. If we just have that up on the
17 screen in the usual fashion. WIT-91939, the two-page
18 addendum. Nothing terribly controversial about its
19 content, I wouldn't have thought, clarifying a point
20 about Mr. Young's position. He was Clinical Lead, not 10:03
21 Clinical Director.
22
23 Paragraph 3, you are clarifying, with greater precision
24 perhaps, your knowledge of the circumstances in which
25 Mr. O'Brien returned to work. Scrolling down to your 10:03
26 signature at the bottom of that page. Do you wish to
27 adopt that addendum as part of your evidence?
28 A. Yes, I do.
29 2 Q. Thank you. Now, we finished on the last occasion by

1 looking at the circumstances leading up to the writing
2 of your investigation report and we looked in
3 particular at the circumstances that led to some delay,
4 particularly in the period between your November
5 interview of Mr. O'Brien and the April period when he 10:04
6 wrote to you. Can we get up on the screen, please,
7 Mr. O'Brien's e-mail to you of the 2nd April. It's
8 TRU-284061. Thank you.
9
10 Now, you'll recall that, as I have said earlier, 10:05
11 Mr. O'Brien was interviewed in November and he was
12 provided with a draft statement for his comments by you
13 or Mrs. Hynds at the start of March. This is him
14 coming back to you with what he wished to put into the
15 mix, if you like, for consideration by your 10:05
16 investigation. So he is telling you that -- he is
17 thanking you for the draft respondent statement, that's
18 his statement; he has attached comments concerning both
19 of his statements, the August statement and the
20 November statement. He's also attaching comments 10:06
21 relating to the statements of witnesses, and he is
22 reminding you about various requests for notes that he
23 has raised with you previously.
24
25 Now, I just want to take a look at what he's sending 10:06
26 you with this e-mail. If we scroll down to the next
27 page, please. These are his comments concerning the
28 statement which had been prepared for him arising out
29 of the 6th November interview. Do you remember

1 receiving this?
2 A. Yes.
3 3 Q. It goes on for a couple of pages providing comments on
4 what should be included in his statement, and he is
5 providing clarification. If we just scroll down 10:07
6 through that, please, and go to the next document at
7 284065, three pages further down. This is his comments
8 regarding his August statement. Again, a similar
9 format, he is working through the draft August
10 statement and providing clarification on a number of 10:07
11 issues. Take, for example, if we go down the page to
12 page 66 in this series. Just to the bottom of that
13 page. If you hold it there. He is providing
14 clarification, you can see in these bullet points, in
15 relation to the precise numbers of undictated clinics 10:08
16 which were outstanding, and we will come back to that
17 point in a few minutes. Again, you can see the format.
18 This is him clarifying what is his view of his
19 statements and he is suggesting amendments. Is that
20 how you interpreted this? 10:08
21 A. Yes.
22 4 Q. The third document that he sent through to you on the
23 2nd April - if we can go down a page to the next page -
24 is his comments concerning witness statements.
25 TRU-284067 runs through for another several pages. 10:09
26
27 Now, amongst that series of documents, I am going to
28 ask you whether you included all of them as appendices
29 to your report?

1 A. I believe they were included as appendices.
2 5 Q. And that was your intention?
3 A. Yes.
4 6 Q. If we just go to the report, TRU-00663. If we scroll
5 down, Appendix 10 is Mr. O'Brien's comments on witness 10:09
6 statements. If we could go to that, TRU-00738, what we
7 find appended is the third in the series of documents
8 which I have just taken you through of the 2nd April,
9 and if we just scroll through that just to the end of
10 it. Perhaps take it from me that the other two 10:10
11 documents don't sit behind that on any version which
12 the Inquiry is aware of, nor can we find among any of
13 the other appendices relevant to Mr. O'Brien the other
14 two documents to which I refer.
15 10:10
16 If we just go back to TRU-00663. At Appendix 10, just
17 scrolling down, we have seen what lies at Appendix 10.
18 Appendix 25 is Mr. O'Brien's statement of the 3rd
19 August. Again, there was a document to clarify that
20 statement; it doesn't sit behind that statement. 10:11
21 Appendix 26 is his November statement; he provided his,
22 as we have seen, clarification on that statement but
23 that document isn't behind it. Then at Appendix 35, we
24 can see that you've included Mr. O'Brien's response to
25 the private patients concerned. 10:12
26
27 Could I ask you to help us with this: Can you say why
28 the two documents I have referred to concerning the
29 August and November statements weren't appended to this

1 report, so far as we can see?
2 A. Yes, I believed it was. Can you scroll up, please?
3 Appendix 26, Respondent Statement Mr. O'Brien and
4 Comments, I believed that that included Mr. O'Brien's
5 comments in relation to those. I believed that. I 10:12
6 mean, I saw his comments. I suppose one of the
7 difficulties with this is that I saw his comments, I
8 had asked them for them to be appended and I assumed
9 that they were. I thought they were appended --
10 I thought they were added under Appendix 26, and then 10:13
11 I knew there was a later one which included his
12 response in relation to private patients, which he was
13 particularly exercised about, but I believed that they
14 were appended.
15 7 Q. Perhaps it's our fault and we have missed it. We will 10:13
16 go back and check that. You certainly believe that
17 they ought to have been appended and were appended?
18 A. It was certainly intended that they would be appended.
19 In fact, I believe I wrote to Mr. O'Brien and said they
20 would be appended. I said his comments would be 10:13
21 included.
22 8 Q. I suppose one of the administrative or clerical issues
23 around this report is that it doesn't write the
24 appendix numbers on the report for whatever reason, so
25 it's a little difficult to trace it through. But he 10:13
26 will check that.
27 A. We didn't have any clerical support. I think
28 I mentioned that to the Inquiry the last time.
29 9 Q. Yes. It's not too difficult to write Appendix 1 on the

1 top of a page.
2
3 Other matters, other materials that were sent to you by
4 Mr. O'Brien, I think you would accept weren't included.
5 If we go to TRU-00826, he explains that he provided 10:14
6 a folder in terms of the additionality of his work in
7 terms of clinics that were over and above his
8 requirements. We can find that additionality document
9 at AOB-10653. If we just scroll down. So, Mr. O'Brien
10 obviously - if we can see the first page please - he 10:15
11 has set out in this document the additional work he was
12 performing for elective surgery. You can see his job
13 plan, 70 sections in 2013, and he actually performed
14 113. We can see the additionality with each of those
15 years. 10:15
16
17 Also within this document he is explaining his
18 commitments to the Urology MDT and MDM. He is putting
19 this to you as a context for the work which he is doing
20 and by way of explaining how there weren't enough hours 10:16
21 in the day to do the work, all of the work that was
22 expected of him. Do you accept that this wasn't
23 appended to your report?
24 A. Yes, it wasn't appended.
25 10 Q. And it wasn't otherwise referred to in your report? 10:16
26 A. Well, the document isn't referred to but the
27 additionality of his work is referred to in the report.
28 11 Q. In what way?
29 A. In his respondent statement that I think we just

1 referred to there, Mr. O'Brien indicated that he was
2 doing significant additionality in relation to his
3 work, and was doing extra clinic -- extra theatre
4 sessions.
5 12 Q. Yes. That was his statement where it's referred to? 10:16
6 A. Yes.
7 13 Q. Why didn't you append the evidence, this example of
8 evidence provided by Mr. O'Brien to your report?
9 A. Because I think -- I felt that including it in the
10 statement, that this was the mitigation that he was 10:17
11 putting forward, was sufficient. I didn't feel that it
12 was -- I felt the point of mitigation that he was
13 making was something that can be made to the Case
14 Manager, it wasn't one of the Terms of Reference.
15 Therefore, my view was it wasn't necessary for that to 10:17
16 be appended. There were, as far as I knew, lots of
17 appendices as it was already, so I didn't feel that it
18 was necessary.
19 14 Q. You are describing a conscious thought process to
20 deliberately leave this out of -- 10:17
21 A. Yes. I didn't include it. I didn't feel it was
22 necessary to include it.
23 15 Q. So, Mr. O'Brien is setting out mitigation for the
24 alleged shortcomings in which he is working, and of all
25 of the evidential pieces that you are provided and you 10:18
26 append to your report, you decide to leave this one out
27 of account?
28 A. I think there were other pieces of evidence that
29 Mr. O'Brien provided in relation to some of his private

1 patients, for example, that I just felt it wasn't
2 necessary. It was included in his statement that he
3 was doing a lot of additionality. I felt that doing
4 additionality, whilst I understand why he did it, it
5 was still my view that he had a responsibility to do 10:18
6 the job that he was asked to do.
7 16 Q. Is there anything in your report that suggests that you
8 took into account the content of this document?
9 A. I considered Mr. O'Brien was a very busy man who opted
10 to do surgery rather than do his administration. The 10:19
11 issue in relation to most of the Terms of Reference
12 were in relation to the administration of his -- in
13 relation to his work.
14 17 Q. You didn't consider it to be unfair not to include this
15 evidence? 10:19
16 A. I did not.
17 18 Q. Appendix 12 was a paper he provided you with in
18 November, I understand. If I can bring it up on the
19 screen, AOB-01890. Scroll back up to the top of the
20 document, please. It's an 11-page document. If we go 10:20
21 to AOB-10671, apologies for that. AOB-10671. Scroll
22 down through this document. He is providing here his
23 account of the clinics for the patients that were left
24 undictated. Again, you received this document?
25 A. Yes. 10:21
26 19 Q. And you didn't append it to your report?
27 A. The information in it was included in Mr. O'Brien's
28 statement.
29 20 Q. Why didn't you provide this as an appendix to your

1 report?
2 A. Because I felt the information in it was included in
3 Mr. O'Brien's appendix. Sorry, his statement;
4 apologies.
5 21 Q. Did you, within your report, analyse the content of 10:21
6 this document?
7 A. I considered the content of the document, yes.
8 22 Q. You don't think it fair to leave it out of account when
9 attaching the evidence for consideration by the Case
10 Manager? 10:22
11 A. No. I think the evidence that I gave to the Panel on
12 the last occasion that I was here was that, to my mind,
13 whether it was 41 undictated clinics or 26 undictated
14 clinics really didn't matter. Whilst I appreciate
15 that's an issue for Mr. O'Brien, we had already spent 10:22
16 a lot of time gathering information, we had employed
17 a lot of resources in terms of administration staff and
18 managers and doctors, and I really felt that given
19 Mr. O'Brien was conceding that there were undictated
20 clinics, the exact figures to my mind weren't the 10:22
21 issue.
22 23 Q. Would it not have been appropriate to draw out the fact
23 that there was controversy around the precise number
24 rather than, as we will see later this morning, making
25 a finding in favour of the higher figure as opposed to 10:23
26 the lower figure?
27 A. There were 41 undictated clinics reported by
28 Mr. O'Brien. The review found 66. To my mind, it
29 didn't matter if there was 41 or 66 -- it wouldn't have

1 mattered if it was 41 patients or 66, anything more
2 than a handful is unacceptable. Therefore, to my mind,
3 the figures, I'm afraid, weren't that important.
4 24 Q. Now, in terms of the 2nd April e-mail that was sent in
5 by Mr. O'Brien, it was the subject of a response from 10:23
6 Mrs. Hynds on the 10th June. We will just look at her
7 response, it's at AOB-03961. Just scroll down, please.
8 Thank you. He is writing again to her because he
9 hasn't had a response to the 2nd April e-mail. If we
10 scroll up to see her response, she apologises for not 10:24
11 responding and she says:
12
13 "Your e-mail is a response to a number of e-mails that"
14 she had sent requesting his comments.
15 10:25
16 She makes the point that despite a number of e-mails to
17 him which notified him of the fact that the report was
18 being finalised, he hadn't responded to her requests
19 within any of the time scales. She says as a result
20 the case investigator proceeded to write the 10:25
21 investigation report
22
23 "... as I received your comments after I had notified
24 you of the drafting report. Rather than delay any
25 further, your comments have been appended in full to 10:25
26 the final report for the Case Manager to consider.
27 This was done in the interests of moving the matter
28 forward as I have been requesting your comments as far
29 back as November. The Case Investigator report is

1 completed and a meeting is being held with the Case
2 Manager this week. It will be for the Case Manager to
3 share the report with you for comments and factual
4 accuracy once he has time to consider it".
5 10:26
6 Does that e-mail reflect the position that, although
7 these documents came in to you on 2nd April, they were
8 simply appended or you intended to have them appended,
9 and they weren't taken into account?
10 A. Well, I read them but I didn't include them in the 10:26
11 report. I appended them as I felt -- well, I had
12 thought they were appended, and that's what was
13 certainly intended. My view was the Case Manager would
14 then have the opportunity to read my report and read
15 Mr. O'Brien's comments as well. 10:26
16 25 Q. He put his comments in on the 2nd April.
17 A. Mm-hmm.
18 26 Q. It says here that the report is completed; it's the
19 10th June. In fact, it wasn't completed, as we can
20 see, until the 12th June, which is more than two months 10:27
21 after Mr. O'Brien had put all of this information on
22 paper for you, which was three weeks after he had
23 received his receipt from you, his draft November
24 statement. So, in the ten or so weeks that followed
25 prior to the completion of the report, why couldn't you 10:27
26 have taken into account more fully, rather than simply
27 read, his submissions?
28 A. I had indicated that the information that was being
29 gathered for the investigation would be closed at

1 a certain point. That point was moved for a variety of
2 reasons. I really felt that anything that was provided
3 beyond a certain date would not be included.
4 Mr. O'Brien was told that. I did, however, say that
5 anything that was sent beyond that time would be 10:28
6 appended, and that was my intention. I read the
7 comments that Mr. O'Brien had and, as I say, I felt
8 that -- I felt the Case Manager could consider all of
9 the information in the manner that applied. I didn't
10 feel that we could continue just shifting timeframes. 10:28
11 As I think I mentioned to the Panel the last time, we
12 had very busy jobs. This was an Inquiry, not an
13 adversarial process or a cross-examination; we were
14 trying to gather information. Mr. O'Brien was anxious
15 about the time it was taking and I really felt I'm 10:28
16 going to have a draw a line under it somewhere, so
17 I did.
18 27 Q. You realise he did reply to this on the 2nd April,
19 which was three, perhaps three-and-a-half/four weeks
20 after you had sent him his November statement? 10:29
21 A. Yes.
22 28 Q. Which was more than three months after you had
23 interviewed him?
24 A. Yes.
25 29 Q. You do realise that you allowed some witnesses up to 10:29
26 six months before they signed off on their statements?
27 A. Time was passing by. As it turns out, Mr. O'Brien in
28 fact had that on transcript, so I really felt we had to
29 push on.

1 30 Q. Yes. In terms of the drafting of the report, was it
2 Mrs. Hynds who did the drafting primarily and forwarded
3 it to you for approval?
4 A. Oh no. Mrs. Hynds and I would have had meetings and
5 lengthy conversations; she would have taken notes about 10:30
6 what we wanted to put in and how I wanted it set out.
7 Mrs. Hynds used a sort of format that she had used
8 formal previously so we used sort of a template, if you
9 like, and the information was set into that.
10 Mrs. Hynds certainly would have set in the information 10:30
11 and would have put together, for example, the list of
12 appendices and would have put in the order. The
13 information that went into the report would have been
14 from me apart from, as I say, the information gathered
15 from audit or... the numbers of notes and things like 10:30
16 that, that information that Mrs. Hynds had received,
17 she would have said, look, I've got this information
18 and I would have said yes, will you set that in and
19 we'll put that through Terms of Reference 3 or
20 whatever. So, in fact -- 10:31
21 31 Q. Just so we can understand how that worked, if we could
22 go to TRU-20474. She's writing to you on the 23rd May
23 and she is saying:
24
25 "I am unfortunately still not complete with this. 10:31
26 There is some investigation findings and conclusions
27 which need to be finished. However, could you make
28 a start with this version and let me know what you're
29 happy with and not happy with. Anything you want to

1 change or amend, please feel free", and you can see the
2 rest of that.
3
4 Am I right in saying that she drafts and over a period
5 of time brings versions of it to you for your approval? 10:32
6 A. Yes. So we would have a meeting either face-to-face or
7 by phone and we would discuss what I would like in the
8 report. She will do, as I have indicated and I am
9 sorry to harp on about this, but Mrs. Hynds was typing
10 this; I didn't have secretarial support to assist with 10:32
11 this. So Mrs. Hynds would take notes and then she
12 would type it up. We sort of -- once I felt that we
13 got a certain amount that could be set into a report,
14 I said look, go ahead with that. So she sent it to me
15 and said this is as far as I got, if you want to make 10:32
16 further changes or whatever, go on ahead. Then it went
17 back and forth a bit probably beyond that.
18
19 This is probably the original sort of version after the
20 discussion that we'd had about how things needed to be 10:33
21 set into it.
22 32 Q. Yes, and the Inquiry has within its bundle various
23 iterations of it.
24 A. Different versions, I am sure.
25 33 Q. Leading up to the 12th June when you draft -- I think 10:33
26 your final act was to draft a piece in relation to
27 Mr. O'Brien's insight, or lack of insight as you have
28 it in the report, and we will maybe look at that later
29 this morning.

1
2 Let's turn to the report proper. We can see it at
3 TRU-00661. Obviously it runs to 43 pages with 36
4 appendices. I suppose in the interests of time and
5 hopefully not creating any unfairness, I am going to 10:33
6 assume the report is as read. If we need to go back to
7 any of your findings as I ask questions, we can do so.
8 Hopefully that is an approach you are comfortable with.
9
10 On the triage issue, if we can think about that, I 10:34
11 suppose the headlines, Dr. Chada, are that you found
12 that Mr. O'Brien only triaged red flag referrals, he
13 didn't triage urgent or routine referrals. Isn't that
14 right?
15 A. That's what Mr. O'Brien told me. 10:34
16 34 Q. Yes. You noted that a number of personnel within the
17 Trust were aware of the triage failures over a number
18 of years, and a default process had been introduced?
19 A. Yes.
20 35 Q. In statistical terms, again the information provided to 10:35
21 you was that there were 783 un-triaged referrals which
22 were discovered upon investigation; isn't that right?
23 A. I don't know the exact figure off the top of my head,
24 I apologise. Whatever was in the report is what I was
25 told. 10:35
26 36 Q. That is information that was provided for you and
27 I think, as we established the last time, you were
28 dependent on what was provided to you, you didn't have
29 opportunity or resource to confirm one way or the other

1 the veracity of that?
2 A. Well, I would like to have had the opportunity.
3 I certainly didn't have the resource, so I didn't.
4 37 Q. You have said in your report - if you can bring up
5 TRU-00693 - that Mr. O'Brien didn't actually make it 10:36
6 clear that he wasn't doing triage but you make the
7 point that as an experienced consultant, it was his
8 responsibility to make it clear to his managers that he
9 wasn't doing it and that assistance was required. Now,
10 isn't it the case that management, although they were 10:37
11 telling you they weren't aware of the extent of the
12 problem and although Mr. O'Brien hadn't made it clear
13 that he wasn't doing it, that the reality was
14 management ought to have known the extent of it and had
15 opportunity to grasp the extent of it had they asked 10:37
16 the appropriate questions?
17 A. It was my impression that once the default system
18 kicked in, that actually made it very difficult to
19 know, because the default system automatically put
20 things onto the waiting list at the time that the GP 10:38
21 had -- at the level that the GP had indicated in terms
22 of whether it was routine or whether it was not
23 routine, and then the red flags were being triaged.
24 So, my impression of what I was being told was that
25 there wasn't then a clear way of knowing the extent of 10:38
26 the problem beyond that because of the default system
27 that had been set into place.
28 38 Q. Just help us with that. As the Inquiry understands the
29 system, in the main, referral letters come through the

1 centre and go out to the Consultant of the Week. There
2 is opportunity, is there not, to count them in and
3 count them out? In other words, if 100 triage go out
4 from the centre and only 50 come back, then they
5 should? 10:39
6 A. Yeah. Well, I don't -- I really can't understand --
7 I really can't answer that because I'm not sure. I
8 mean, I suppose Mr. O'Brien indicated, and I think some
9 of the other consultants indicated, that occasionally
10 there would have been referrals directly to 10:39
11 a consultant. Certainly that would have happened with
12 Mr. O'Brien, he was a well-known consultant in the area
13 and a very senior consultant, so he would have received
14 some referrals directly that had his name on them. The
15 rest of them went through booking and triage. I'm not 10:40
16 quite sure of the system, about whether they scan them
17 on and send on paper copies or whatever, so I'm not
18 sure. I imagine that you're going to speak to people
19 who do this and they will probably be in a better
20 position to answer that question. As I say, my 10:40
21 understanding from the people I spoke to was that once
22 the default system kicked into place, these triage --
23 these referrals were all coming back through the
24 default system and therefore they were receiving them
25 all again, if you see what I mean? That's what 10:40
26 I understood was happening.
27 39 Q. Yes. If we go to this. Just scroll down, if I can
28 find the quote. Scroll down further. Yes, you say at
29 the top of the page that:

1

2 "It would appear..."

3

4 Into the second paragraph:

5 10:41

6 "It would appear that when this letter was issued" -

7 this is the March letter of 2016 - "the extent of the

8 issues of concern had not been assessed. Most

9 witnesses described an awareness of the concern,

10 described shock at the actual extent of un-triaged 10:41

11 referrals discovered in December '16."

12

13 You describe this as a missed opportunity by managers

14 to fully review and understand the extent of the

15 issues. So that was, I assume, a critical noise 10:42

16 directed towards management?

17 A. Yes.

18 40 Q. What would you have expected of them at that time?

19 A. I would have expected that once they realised the

20 extent of the issue, once they realised that it was 10:42

21 a significant issue, that they should have done more to

22 go and trace these and to find out what they were and

23 what was happening to them.

24 41 Q. Did you get any sense from the witnesses you spoke to -

25 you spoke to, for example, Anita Carroll, Catherine 10:42

26 Robinson, about the triage problem. They were

27 obviously operational management. Did you get a sense

28 that they appreciated the jeopardy patients were being

29 placed in by the failure to triage?

1 A. I did not get a sense that they were aware of the
2 potential implications. As I have indicated, red flags
3 were being triaged, but I think they felt that it was
4 an administrative process that Mr. O'Brien didn't
5 engage in. 10:43
6 42 Q. Did you get a sense that anyone on the medical side
7 fully appreciated the potential harm that derives from
8 a failure to triage?
9 A. A number of the doctors that I spoke to agreed with
10 Mr. O'Brien that triage is not something that should be 10:44
11 carried out by a consultant. Nonetheless, I think
12 certainly -- certainly I think two of them said if it's
13 supposed to be done by us and people expect it's to be
14 done by us, then that raises concerns and issues if
15 it's then not completed. 10:44
16 43 Q. Two of the operational managers, as I say, Robinson and
17 Carroll, drew your attention to the introduction of the
18 default system at some date. It doesn't appear to have
19 been very clearly specified but some date in 2015. Did
20 you get a sense that the introduction of the default 10:44
21 arrangement by which the referral, if left un-triaged,
22 went on the waiting list in accordance with the general
23 practitioner or the referrer's designation, did you get
24 a sense that they thought or they considered that this
25 was a cure for the failure to triage or that this took 10:45
26 care of the problem?
27 A. I think it was described to me as a safety net.
28 I thought from the information they were telling me,
29 that was probably an apt description, that it was done

1 quite quickly. If the triage wasn't completed within
2 a certain number of - I think it was only two weeks or
3 something - then it automatically went on at the point
4 where the referral was received and at the GP's level
5 of urgency, so they called it a safety net. 10:45
6 44 Q. So they recognised that it was a plaster rather than
7 a fix?
8 A. Yes.
9 45 Q. The cases that were identified for you as being of
10 particular concern because in circumstances where there 10:46
11 had been a failure to triage, the patients were
12 subsequently to be diagnosed with cancer, can we just
13 look at those? TRU-00677, just four pages down and at
14 the bottom of the page, please. We can see that the
15 first patient is what the Inquiry knows to be the index 10:47
16 case. I think it's Patient 10 on the designation list.
17 The point that I suppose I wish to make to you is if
18 you look at the column second from left, we can see
19 that the letter of referral received into the Trust was
20 various dates after the March '16 letter. So, the 10:47
21 March '16 letter to Mr. O'Brien, as you know,
22 highlighted a problem with his triage, amongst other
23 things, and invited him to provide a plan to address
24 this. As you know, that went unheeded and there was no
25 management intervention during the remainder of that 10:48
26 year.
27
28 As we considered the last time, your report,
29 notwithstanding your term of reference 5, didn't look

1 at the failures of management to grapple with these
2 issues in late 2016, and you have explained that your
3 thinking was that was already the start of the MHPS
4 process; isn't that right?
5 A. Yes. 10:49
6 46 Q. Did it dawn on you as you analysed this that these
7 cases of non-triage leading to patients who were to
8 suffer cancer, did it dawn on you that management, if
9 they had more forcefully grappled with the triage
10 issue, might have prevented this? 10:49
11 A. I indicated in my -- I think the findings of the report
12 were that management knew about this at an earlier
13 stage and should have done something about it, that
14 they missed opportunities. So, yes.
15 47 Q. The second issue that you dealt with in your terms of 10:50
16 reference was the storage of notes by Mr. O'Brien at
17 his home. Again, I am going to assume that we are all
18 familiar with your conclusions around that. You found
19 that it was well-known that he often retained patient
20 notes at home, and you pointed out in your findings 10:50
21 that the Trust had not developed a system for tracking
22 patient notes to practitioners so that, unless they
23 interrogated the system in a manual way, perhaps, they
24 weren't readily able to appreciate that a particular
25 practitioner had gathered so many notes. Is that what 10:51
26 emerged before you?
27 A. Yes. I think I was told that notes are tracked to
28 a particular consultant but that doesn't mean that they
29 are in a consultant's house; that means that they are

1 tracked to that consultant and the assumption is that
2 they are in that consultant's office or his secretary's
3 office; in his possession in the hospital, I suppose,
4 or at a clinic. I think the issue about the numbers --
5 I think I was told that there might have been 10:51
6 a programme that could have been run that could have
7 given you the numbers that were tracked to one
8 particular consultant but they didn't have access to
9 that. I think the Medical Records Manager told me
10 that, so that they had no way of knowing that there 10:52
11 was, for example, 700 or 400 or 300, whatever the
12 number Mr. O'Brien has, were tracked to a specific
13 individual. That was my understanding.
14 48 Q. Again, this was an issue that was raised with him in
15 March and you are concerned in your report that they - 10:52
16 that is management - didn't appear to take any steps to
17 assess the scale of the problem?
18 A. Yes.
19 49 Q. Around these issues, and it's a bit of a theme through
20 aspects of Mr. O'Brien's shortcoming, there's an 10:53
21 appreciation from management that there's something of
22 a problem, but I suppose the refrain that you pick up
23 on and is punctuated through your report is a limited
24 appreciation of the extent of the issue. It's almost
25 we knew there was an issue but, shock, horror, was it 10:53
26 really that bad?
27
28 While we talk about missed opportunities in your
29 report, what were you thinking - even if it's not in

1 your report - what were you thinking about the state of
2 management in terms of the regulation of Mr. O'Brien's
3 practice? Be in a position to know the extent of it?
4 A. I thought that the management struggled to manage
5 Mr. O'Brien. I thought a lot of that had to do with 10:54
6 the type of person that Mr. O'Brien was, his seniority;
7 there were a number of factors. But I thought managers
8 struggle to manage him and I formed the impression that
9 they were afraid of him.
10 50 Q. That is perhaps an odd thing to say for us looking into 10:54
11 this. Did you get any sense of why they were afraid of
12 him?
13 A. Well, I think some of this information, I'm sure, is in
14 the report but the impression that I got was that they
15 had attempted to -- they had attempted to manage 10:55
16 Mr. O'Brien in the past, had not been successful in
17 doing so. Rightly or wrongly or whether it's urban
18 myth, I'm not sure, but the information that I was
19 being given was that they felt that Mr. O'Brien would
20 complain or would go down a legal route or wouldn't pay 10:55
21 a blind bit of attention anyway. So, I got the
22 impression that -- that was my impression, and
23 certainly I appreciate you are going to speak to these
24 witnesses, but my impression was that they felt unable
25 to manage him and they felt restricted in their 10:55
26 attempts to manage him because of how he might react to
27 that.
28 51 Q. Had you concerns about the quality of management and
29 the systems at the disposal of managers to enable them

1 to effectively manage?
2 A. I think the systems were definitely deficient. The
3 fact that you couldn't interrogate a system or that we
4 didn't have the software, whatever it was, to
5 interrogate the system and get correct numbers or 10:56
6 accurate numbers, I think, says there's something wrong
7 with the system. I think over time other systems had
8 developed. I think, for example, I mentioned last time
9 to the Panel that Mr. O'Brien's secretary said look,
10 I knew he wasn't doing the dictation but I thought 10:56
11 everybody knew, so I think part of the issue was what
12 people knew.
13
14 I felt some of the change in management that happened,
15 there was a sort of restructuring of the Trust in 2014, 10:57
16 I'm going to say, something like that, so people moved,
17 and I think part of that probably didn't help because
18 I think having that sort of corporate memory, if you
19 like, is probably helpful. I think the systems
20 certainly didn't help. I think the managers didn't 10:57
21 manage the situation well, but it was my impression
22 that they didn't manage it well because they felt
23 restricted or -- restricted in doing so.
24 52 Q. I suppose one micro aspect of the system relating to
25 patient notes is a cause for scrutiny in the sense that 10:57
26 the information that came out at the start of this
27 process was that Mr. O'Brien was responsible for all of
28 these notes, and then he challenged that in respect of
29 13 sets of notes; the system was saying you have them,

1 he was saying I don't.
2 A. Mm-hmm.
3 53 Q. Ultimately, as we can see at TRU-00704 - if we just
4 have that up, please - you have said, middle paragraph,
5 you've said there were 13 case notes missing but the 10:58
6 Review Team is satisfied with Mr. O'Brien's account
7 that he doesn't have these.
8
9 A small point, perhaps, but this was never bottomed
10 out, to the best of your knowledge; is that right? In 10:59
11 other words, no one was able to provide you with an
12 account of where these notes have gone to, save to say
13 there was satisfaction that Mr. O'Brien, to whom
14 fingers had been pointed, did not have them?
15 A. Yes. No. 10:59
16 54 Q. The disappearance of notes in the grand scheme of
17 things is maybe not the most important aspect of this
18 whole saga but important, nevertheless, that patient
19 notes have been lost. That wasn't the subject of any
20 adverse comment from you in your report, but do you 10:59
21 agree with me that it is a matter of significance that
22 a Trust has apparently mislaid 13 sets of notes?
23 A. I think it's significant and I think the Trust deals
24 with tens of thousands of sets of notes every year.
25 I wasn't advised -- I mean, I was told that they were 11:00
26 satisfied that Mr. O'Brien didn't have this 13-set, at
27 least 13 notes. I mean, I didn't get feedback on
28 whether the sets of notes had been tracked down
29 elsewhere; they were tracked out to Mr. O'Brien and he

1 didn't have them and they accepted that. So I don't
2 know if these notes are still missing, I didn't inquire
3 about that.
4 55 Q. We have looked, at various points, at the issue of
5 undictated clinics and we don't need to go over old 11:01
6 ground. The information put into the mix by
7 Mr. O'Brien challenged what you were being told about
8 the extent of his shortcoming around dictation; do you
9 agree with that?
10 A. Yes. 11:01
11 56 Q. Your view, as articulated several times before the
12 Inquiry, is it doesn't matter whether it's a hundred or
13 500, for the purposes of your report you were focused
14 on identifying the problem and not necessarily a scale
15 or not necessarily its precise scale? 11:02
16 A. Yes.
17 57 Q. Your terms of reference in respect of undictated notes
18 asked you for a finding on whether there was
19 unreasonable delay in dictation and, secondly, whether
20 clinical management plans were delayed. You've 11:02
21 described the impact as affecting communication with
22 general practitioners and that the waiting list for the
23 Trust was not an accurate reflection of the true waits.
24 Was there a difficulty in obtaining evidence in respect
25 of whether clinical management plans were adversely 11:03
26 affected?
27 A. Mr. O'Brien advised me that they weren't affected
28 because he would have arranged investigations. So,
29 even if he didn't dictate on a letter, he would have

1 had the investigation arranged; the person would have
2 been added to the waiting list at the time that they
3 would have been added to the waiting list. And the
4 waiting list -- I mean, a number of people, I think
5 everybody, indicated the waiting list was so lengthy 11:03
6 that, you know, by the time that process went past
7 people waiting on the waiting list, that that had an
8 impact as well. So, I felt it was difficult to draw
9 a firm conclusion on that because I accepted
10 Mr. O'Brien's account that the investigations had been 11:03
11 carried out even if the letter hadn't been dictated.
12 58 Q. The issue of private patients is one which, in terms of
13 your dealings with Mr. O'Brien, you would have
14 appreciated was causing him great upset; is that fair?
15 A. Yes. 11:04
16 59 Q. And he didn't for one minute accept the proposition
17 that he was giving unfair advantage to patients who he
18 had seen privately; isn't that right?
19 A. Yes.
20 60 Q. He made the point to you that, in terms of how this 11:04
21 issue arose, it started for him with an allegation
22 conveyed to him when he met Mr. Weir on the 24th
23 January 2017, it started with an allegation that it was
24 nine TURP patients who had been unfairly advantaged.
25 I just want, for the Inquiry's purposes, to trace that 11:05
26 through for a moment and seek your comments. If we go
27 to the record for the Oversight Group meeting that took
28 place on the 10th January 2017. If we pull up
29 TRU-257703 and just scrolling down. We have on this

1 list, I count eight, eight patients - or eight clinical
2 episodes because I think there might be a duplication
3 or a double encounter, if you like, with a particular
4 patient - but there's eight episodes described here.
5 The patient care number has been redacted but we 11:06
6 understand that they are all TURP patients. The
7 information supplied to you then, and which Mr. O'Brien
8 was invited to address, is set out in a list within
9 your report. It's at TRU-00680. If we go to the
10 bottom of the page, please. You set out in a table, 11:07
11 here the patient numbers aren't redacted. If you go
12 over the page, please. So, 11 patients set out there.
13 On the Inquiry's analysis, only one of the patients who
14 was initially the subject of concern back in 2017, in
15 that earlier table, forms part of this list of formerly 11:07
16 private patients which is causing the Trust concern.
17 Do you understand or do you have an appreciation of how
18 the attention on private patients moved from TURP
19 patients, eight TURP patients, to a set of different
20 patients, with the exception of one, and amongst those 11:08
21 eleven different patients, a different raft of
22 treatments, not just TURP. How did that develop, do
23 you know?
24 A. I don't know. The term of reference that I was
25 provided with as a case investigator was to investigate 11:08
26 whether private patients had been advantaged. There
27 was no mention of TURP patients specifically, it was
28 private patients generally. So, I understood from
29 Mr. O'Brien, because he was very exercised about this,

1 that it had moved from consideration of TURP patients
2 to a wider review of private patients. I don't know
3 who made that decision or why it was made.
4 61 Q. Who did you understand was, if you like, leading the
5 charge in carrying out background research into the 11:09
6 private patient issue and bringing up to the surface
7 cases which were thought to be of concern?
8 A. I don't have a clear answer to that. I thought the
9 screening that had been carried out, and the Oversight
10 Committee were the people who had set the terms of 11:10
11 reference, that having done the screening, the
12 Oversight Committee, I believed that they were the
13 people that were initiating what information would be
14 required by the Case Investigator to assess this, or to
15 assess those terms of reference against. 11:10
16 62 Q. We have looked obviously at the witness statements that
17 you gathered. I think you would accept that none of
18 the witness statements provide any commentary on the 11
19 patients set out here; isn't that right?
20 A. Yes. 11:10
21 63 Q. We derive from that that although - and we know it to
22 be Mr. Young because we looked at this on the last
23 occasion - Mr. Young was asked by the Head of Service,
24 that is Martina Corrigan, to provide comments around
25 these 11 patients, and we have this as the product of 11:11
26 that work, but at no point did you speak to Mr. Young
27 or Mrs. Corrigan about the analysis that was produced?
28 A. No.
29 64 Q. You were dependent upon what they provided you with and

1 you didn't have the qualification or the expertise to
2 second-guess what Mr. Young was producing for you?
3 A. Yes.
4 65 Q. As I have said, you didn't speak to him to challenge or
5 query in any way what had been produced? 11:12
6 A. No.
7 66 Q. We can see that Mr. O'Brien provided a number of pieces
8 of analyses. Let me take you to some of that. If we
9 go to TRU-01090. He takes TURP patients because that's
10 where the problem, as reported to him, was said to have 11:13
11 started, and he works through, as appears from this
12 document, the patients he saw for TURP purposes during
13 2016. As you can see in brackets, for example with the
14 first patient, he annotates his document with the
15 legend that that patient attended privately. This ends 11:13
16 up -- if we just scroll down through it, it sets out
17 the waiting times, et cetera. Just on this page, if we
18 can have the page up in full. So, he performs
19 a comparative analysis, comparing those who have been
20 treated at one time privately and comparing them with 11:14
21 the full list of patients who he had never seen
22 privately. You can see the resulting figures, that for
23 private patients the mean time on the waiting list was
24 202 days, and across a bigger list of patients, 37, the
25 mean time on the waiting list is 219 days. Did you 11:15
26 consider this analysis?
27 A. I believe so. I'm sorry, I can't recall but I believe
28 so.
29 67 Q. He provided, in addition to this, a patient narrative.

1 If we just glance at that, TRU-01093. We don't need to
2 scroll down through it, but you may be familiar with
3 this document, that he provides his own account of not
4 only differing timeframes compared to what Mr. Young
5 assessed but he also provided clinical justification 11:16
6 for why he saw patients, these patients, at the time he
7 did.
8
9 A very straightforward question: Given the sensitivity
10 with which Mr. O'Brien self-evidently regarded this 11:16
11 allegation - he saw it as an attack on his reputation -
12 why did you not take the step of asking Mr. Young to
13 confront this information, and why did you not provide
14 any challenge to what Mr. Young had reported through
15 Mrs. Corrigan to you? 11:17
16 A. I am not sure I understand the first part of the
17 question. Mr. Young --
18 68 Q. The first part of the question is that this was an
19 extremely sensitive area for Mr. O'Brien. If I can
20 boil the question down: You have evidence challenging 11:17
21 Mr. Young's analysis; you have never spoken to
22 Mr. Young about this issue; you had interviewed him
23 previously and there's a statement saying he knew
24 nothing about there being a private patient issue and
25 subsequently he does this analysis for Mrs. Corrigan. 11:18
26 You have been provided with this analysis, you have
27 been provided with a challenge to that. The next step
28 should have been to speak to Mr. Young to query or
29 challenge him in respect of his analysis to see

1 whether, in fact, it was a fair analysis?
2 A. I think one of the issues that Mr. Young raised in his
3 analysis was there was at times difficulty knowing when
4 patients were being added to the waiting list. You
5 know, I think Mr. Young accepted that. I think that 11:19
6 was an issue with the way Mr. O'Brien did things.
7 Mr. Young was asked to comment, as far as I'm aware, on
8 the information that he had from the notes and records,
9 and from when somebody was added to a waiting list and
10 when they had surgery. I didn't ask Mr. Young anything 11:19
11 further about that. In the report, I included
12 Mr. O'Brien's explanation for why he did things at
13 various times. I read the explanation. It was my
14 view, having read some of Mr. O'Brien's explanations,
15 that that they didn't fully -- from a non-urology point 11:19
16 of view, I found it difficult to accept some of his
17 explanations.
18 69 Q. But isn't that the very point, you are not a urologist.
19 I suppose the key witness for the prosecution in this
20 is Mr. Young. He is providing an account, albeit, if 11:20
21 you forgive the impression, on the back of a postage
22 stamp. He is providing you with a series of post-its
23 and then we understand Mrs. Corrigan reduces that to
24 a table, a very simple table. Is it not incumbent upon
25 you, in the interests of fairness, to draw the 11:20
26 competing analysis provided by Mr. O'Brien to Mr. Young
27 to enable you to better understand where the truth
28 lies?
29 A. I put both into the Case Investigator report and

1 provided it to the Case Manager. I would say that
2 whilst I'm not a urologist, some of the explanations
3 were definitely in my field. Some of the explanations
4 were psychological reasons or psychosocial reasons.
5 So, I did review this, I did look at it, and -- 11:21
6 70 Q. Your conclusion, just to assist you, is set out at the
7 top of TRU-00702. You have explained:
8
9 "I am not persuaded by justifications provided by
10 Mr. O'Brien for why the nine private patients 11:21
11 highlighted above were seen in the timeframes outlined.
12 Having concluded these patients seen privately by
13 Mr. O'Brien were scheduled for surgeries earlier than
14 their clinical need dictated, these patients were
15 advantaged over HSC patients with the same clinical 11:21
16 priority."
17
18 And I would underscore you have used the words
19 "clinical" and "clinical priority". As appears from
20 this, you have accepted Mr. Young's evidence over 11:22
21 Mr. O'Brien's in circumstances where you don't even
22 have so much as a statement from Mr. Young, all you
23 have is the quite bare analysis. Is that not fair?
24 A. I accepted Mr. Young's analysis, yes.
25 71 Q. Upon reflection, do you think you went about this 11:22
26 aspect of your terms of reference in the right way?
27 A. I think, on reflection, speaking to Mr. Young about his
28 findings would have been preferable.
29 72 Q. If we could turn then to the fifth aspect of your terms

1 of reference, and that was to determine to what extent
2 any of the four matters were known to line managers
3 within the Trust prior to December 2016, and if so, to
4 determine what actions were taken to manage the
5 concerns. 11:23
6
7 As regards triage and the scale of the case notes
8 retained by Mr. O'Brien at home, broadly you tell us in
9 the report that they were aware of the issues but the
10 scale wasn't known to them. Is that fair? 11:23
11 A. Yes. Yes.
12 73 Q. I think already this morning you've provided some
13 explanation of your understanding of that, that you
14 drew the conclusion, perhaps, that management found it
15 difficult to manage Mr. O'Brien; the systems perhaps 11:24
16 weren't as helpful as they might have been to enable
17 managers to keep a closer eye on this. You have talked
18 about missed opportunities for management around some
19 of these issues. In blunt terms, management could have
20 done a lot better a lot earlier around triage and 11:24
21 around the retention of patient notes at home; is that
22 fair?
23 A. Yes.
24 74 Q. While there may well have been difficulties in
25 managing, did you detect in what you were being told 11:25
26 a failure to adequately challenge Mr. O'Brien and/or
27 a failure to provide him with adequate support at an
28 earlier stage, perhaps several years earlier, based on
29 what you were being told?

1 A. I think there were -- I understood from the witnesses
2 I spoke to that there were attempts to address some of
3 the issues that had been raised and that, for a variety
4 of reasons, those attempts had been unsuccessful and
5 I think that had made it difficult then for the next 11:26
6 person that came along. I think there were attempts
7 and I think that they weren't successful. I think it's
8 my view that there might have been some difficulty in
9 non-medical managers managing medical staff, so I think
10 that was one of the sort of pressures or difficulties 11:26
11 that arose. That was my impression from the witnesses,
12 that some of the non-medical managers felt that this is
13 an issue that was more appropriately addressed by
14 medical colleagues or medical managers. I think that
15 was an issue for them. Again, that's my impression 11:27
16 from what I was told.
17 75 Q. Notwithstanding the terms of reference at number 5
18 which asks you to look at what management knew and what
19 was done, you don't provide a specific timeline or
20 a specific identification of the management concerned 11:27
21 who were perhaps less than effective in the steps that
22 they took. You don't descend into finer detail,
23 perhaps, to describe a missed opportunity on the part
24 of management. Did you see it as your role with regard
25 to term of reference 5 to go deeper, to name 11:28
26 management, to point to the kinds of specific steps
27 that they ought to have taken? Or did you, in the
28 alternative, see your role as simply point out in more
29 general terms that there was a problem here of missed

1 opportunity?
2 A. I didn't feel it was my role to address specific areas
3 of deficits in terms of managers, either medical or
4 non-medical. I felt the term of reference was to
5 address were there opportunities and could things have 11:28
6 been managed better. I felt it was somebody else's
7 role, once they got my report to consider, whether
8 these things needed to be looked at more carefully, or
9 in more detail. This was a complex and lengthy
10 investigation as it was, and I really felt that I was 11:29
11 looking at this in a more general way.
12 76 Q. Hm. Clearly Dr. Khan thought there was a job of work
13 to do in following this up, and we will maybe have an
14 opportunity to look at his determination before the end
15 this morning. But standing back from this in terms of 11:29
16 management behaviours around this and the general
17 shortcomings that you described, did you also think
18 that there was really a need to get into the deep grass
19 around this, from the Trust's perspective, to better
20 understand what had gone wrong here over a period of 11:30
21 years?
22 A. I expected that the outcome on receiving the
23 investigation report was that there would be
24 consideration of what needed to follow beyond it.
25 I thought those were, to my mind, two separate things. 11:30
26 One was in relation to Mr. O'Brien and the
27 administration issues, and one was in relation to the
28 management issues. So, I expected that something
29 would, if you like, fall out of this in terms of having

1 read the report.

2 77 Q. Can I ask you, if you could just turn to the next page
3 of your report. Scroll down to 703. Scroll up a
4 little so we can see it better. You have said:
5 11:31
6 "Senior managers appear not to have known about the
7 undictated letters. Reliance on the medical secretary
8 to flag dictation has not been done is not appropriate
9 or sufficient. This is now appropriately addressed
10 through digital dictation. Likewise, senior managers 11:31
11 also appear not to have known that private patients may
12 have been scheduled with greater priority or sooner
13 outside their own clinical priority in '15 and '16".
14
15 If I just look at those two conclusions with you. 11:31
16 Private patients; if we could go to Mr. Haynes'
17 statement to you. If we could bring up TRU-00787 and
18 scroll down to paragraph 26. He told you that in terms
19 of Mr. O'Brien's private patients:
20 11:32
21 "It seemed to me that private patients appeared not to
22 wait very long. I was aware of patients seen privately
23 who then had their operation out with the time scale
24 for the same problem for an NHS patient. I raised this
25 in an e-mail in June 2015 and also December 2015 to 11:32
26 Michael Young and Martina Corrigan. It was an
27 irritation for me that I had patients waiting much
28 longer for the same problem. His waiting times seemed
29 out of keeping with everyone else's. I believe

1 Mr. Young spoke to him about it. It is difficult to
2 challenge a view and opinion with Mr. O'Brien".
3
4 If we could just look at the e-mails that Mr. Haynes
5 referred to. If we go to TRU-274504 and if we scroll 11:33
6 down, please. So, Mr. Haynes has referred in his
7 statement to a May e-mail - and this is it - his May
8 e-mail to Mr. Young. He obviously appreciated that
9 Mr. Young was Clinical Lead and therefore had
10 a managerial role within Urology Service. Without 11:34
11 going through all of the e-mail, he says that he is:
12
13 "Feeling increasingly uncomfortable discussing the
14 urgent waiting list problem while we turn to a blind
15 eye to a colleague listing patients for surgery out of 11:34
16 date order, usually having been reviewed in a Saturday
17 non-NHS clinic."
18
19 Then scrolling up the page. On up the page, please.
20 Thank you. Mr. Young says: 11:34
21
22 "Point taken. Agree. Play a straight honest game. We
23 are best placed to finding out this but at risk if
24 above comments are not taken on board. Management not
25 playing straight either by resetting patients' prop". 11:35
26
27 He says "Discussion required".
28
29 We can go to the later e-mail as well but I don't think

1 it's necessary. If we can look at what Mr. Young told
2 you. If we go to TRU-00756, and at paragraph -- he
3 says:
4
5 "In respect of TOR 4, I am aware that Mr. O'Brien has 11:35
6 private consultations at home. He doesn't see private
7 patients in the hospital at all to my knowledge.
8 I know this through conversations with Mr. O'Brien".
9
10 Then in paragraph 34: 11:36
11
12 "I can't comment on the placement of private patients
13 in the NHS queue. I don't track Mr. O'Brien's
14 patients. Any concern I heard about private patients
15 were just hearsay", et cetera. 11:36
16
17 In terms of the conclusion that you reached that senior
18 management appear not to have known about the private
19 patients issue, that conclusion, would you accept,
20 doesn't sit well with the evidence that you received? 11:36
21 A. When I wrote that conclusion, I considered what was
22 known, and I think that was -- I have read that
23 conclusion a number of times in preparation for this
24 and reflecting on what the thinking process was at the
25 time. I think the thinking process at the time was 11:37
26 actually exactly what Mr. Young has said in that, that
27 there was a lot of mention of this. When it was raised
28 with Mr. O'Brien, he had a rational explanation. So
29 when Mr. O'Brien had been challenged in the past about

1 private patients, he said oh no, but yes, that is
2 a private patient and they only look as if they have
3 been there for that long but that's because actually
4 I saw them a long time ago and I have added them to...
5 11:37
6 Because he managed his own theatre lists, that made it
7 very difficult to challenge when people were put on and
8 how long they had been waiting. I thought, in
9 fairness, whilst there was hearsay and discussion about
10 it, I wasn't convinced that anybody actually knew if it 11:37
11 was a valid or a reasonable conclusion to come to.
12 That was why I thought that -- that was why - I think
13 Mr. Haynes mentioned it in his witness statement -
14 I spoke to Mrs. Trouton. Mrs. Trouton, I think like
15 Mr. Young, said, look, when it was raised -- I believe 11:38
16 it was Mrs. Trouton said when it was raised, there was
17 a rational explanation forthcoming. I think that was
18 why I thought, on balance, I didn't feel that it was --
19 you know, it had been raised with him. I didn't feel
20 that it had been clearly identified that this was 11:38
21 a definite issue.
22 78 Q. You didn't have Mr. Haynes' e-mails to Mr. Young?
23 A. I did not.
24 79 Q. You didn't gather them, you didn't ask for them to be
25 provided? 11:39
26 A. No.
27 80 Q. Mr. Haynes was obviously a senior clinician within
28 Urology Services, thinking, on two occasions, that this
29 is a serious issue that he needs to draw to the

1 attention of the Clinical Lead. He tells you, through
2 the investigation process that you lead on, that that's
3 what he did. You didn't see fit to draw his evidence
4 to Mr. Young's attention to say, listen, you've put
5 this down to mere hearsay but, in fact, a senior 11:39
6 clinician from your team is able to demonstrate to me
7 that management in the form of you, Mr. Young, did know
8 about this issue and appear not to have provided an
9 effective challenge.
10 A. I'm sorry, I'm not sure if there's a question. 11:40
11 81 Q. The question is why not bottom this out with Mr. Young?
12 Mr. Young is telling you hearsay. In fact, what he
13 received was far from hearsay. He is receiving
14 a formal expression of concern on two occasions from
15 a senior clinician in his team and he is able to pass 11:40
16 this off to you as mere hearsay because he wasn't
17 challenged?
18 A. Mr. Haynes, in his statement, also said to me that
19 Mr. O'Brien's patients were added to the waiting lists
20 or theatre lists haphazardly and in a way that was only 11:41
21 known to Mr. O'Brien. Given that and given a statement
22 from Mrs. Trouton - I think it was Mrs. Trouton, I am
23 not sure if it was Mrs. Trouton or Mrs. Corrigan - that
24 Mr. O'Brien had been challenged about these and had an
25 explanation for them, my view was it was certainly 11:41
26 suspected but, actually, I don't know that it was
27 known. Now, that might be because nobody could work
28 out when people were being added to Mr. O'Brien's
29 waiting lists, and I fully accept that. But the fact

1 is it was my view that it was certainly suspected and
2 had been suspected for some time but that it wasn't
3 actually known, and that was why I drew that
4 conclusion.
5 11:41
6 Having said that, the report itself, my conclusions
7 were that when the information was interrogated, I felt
8 that there was an issue to answer, and we have already
9 discussed that.
10 82 Q. Isn't that the very point? You were convinced, you 11:42
11 tell us, by Mr. Young's analysis performed in 2017,
12 yet, two years earlier, armed with the e-mails that
13 Mr. Haynes sent through, it appears that although he
14 had knowledge as a senior manager, he didn't perform
15 any analysis, and yet you have managed to find your way 11:42
16 to conclude that senior managers appear not to have
17 known if private patients were an issue.
18
19 Is this again, Dr. Chada, a failure on your part to
20 follow this issue through to a proper conclusion and, 11:43
21 in doing so, appearing to reach a conclusion that
22 really wasn't consistent with the evidence that you
23 received?
24 A. I think, as I have said earlier, it was a lengthy and
25 complex investigation with lots of information and 11:43
26 audit sheets and copies of patient lists and a lot of
27 paperwork. I didn't feel that widening that further
28 was necessary because I felt that the information that
29 I had to draw those conclusions -- as I have said,

1 I felt that the information I was being given was that
2 up to this point when it was formally sat down and
3 looked at, that it was more hearsay, that there was an
4 explanation for when patients were moved. I felt there
5 was a lot of confusion about when patients were added. 11:44
6 I felt for those reasons, it was reasonable to accept
7 that the Trust weren't clear and, therefore, that idea
8 of knowledge as opposed to hearsay, that's the
9 difference.
10 83 Q. So -- 11:44
11 A. That's my view. I accept the Inquiry might view that
12 differently.
13 84 Q. So, when you write "Senior managers also appear not to
14 have known that private patients may have been
15 scheduled with greater priority", you are content to 11:44
16 stand over that conclusion, that's a safe conclusion?
17 A. Yes, I think --
18 85 Q. That's a safe conclusion?
19 A. I think they suspected it but they didn't know it.
20 86 Q. On dictation; as you indicated in your report, senior 11:44
21 managers appear not to have known about undictated
22 letters. Mr. Haynes' statement again tells us
23 something about his knowledge of undictated letters.
24 TRU-00786, and paragraph 17.
25 11:45
26 "In respect of term of reference 2 I have completed
27 IR1s in the past because of notes. I recall two
28 patients, both of whom were seen in clinic by
29 Mr. O'Brien, where there was no dictation. I picked up

1 one patient because I was asked by Martina Corrigan.
2 The second was a lady from Omagh seen in clinic who was
3 told she was coming to me. It didn't happen and so the
4 GP sent another referral in. The first referral had
5 not been triaged anyway. And I took her to theatre to 11:46
6 do a nephrectomy. There were no notes. I put an IR1
7 in about that".
8
9 Again, Mr. Haynes is telling you that, in respect of
10 dictation, that there were issues. Martina Corrigan 11:46
11 appears to have known; IR1s were raised. You had
12 evidence before you from Martina Corrigan in her
13 statement that if dictation wasn't done, it would
14 likely get a second referral. Noleen Elliott,
15 Mr. O'Brien's secretary, told you everyone knew what 11:47
16 was happening.
17
18 Again, would you accept that management were aware of
19 the failure to dictate, whereas your conclusion rather
20 suggests the opposite? 11:47
21 A. Yes, I would accept that that's something that I've
22 missed. That paragraph 17 from Mr. Haynes, "IR1s were
23 completed in the past because of notes" and the last
24 line I put an "IR1 because there were no notes ",
25 I thought he was referring to the physical notes, but 11:47
26 he does mention that there was no dictation and I have
27 missed that, I have missed that line. Mr. O'Brien's
28 secretary told me that there was no dictation being
29 done and she believed that people knew about that

1 because when she arrived, that's how it had always
2 been. That was her belief as opposed to knowledge,
3 I felt.
4
5 I think one of the other senior managers advised me 11:48
6 that she wasn't aware that there were undictated
7 letters. So I have missed that line from Mr. Haynes,
8 I absolutely accept that. I think had I registered
9 that, and when I went back to look at that.
10 11:48
11 Mrs. Corrigan said she was aware of undictated letters,
12 Mrs. Trouton and other people said -- well, I think it
13 was Mrs. Trouton, said she wasn't aware. The secretary
14 said well, I didn't raise it because I thought
15 everybody knew. So, it was a balance issue and had I 11:48
16 -- had I considered that line from Mr. Haynes, I would
17 have concluded that the Trust was aware.
18 87 Q. Again, looking at your conclusion, "senior managers
19 appear not to have known about the undictated letters",
20 that needs revised, doesn't it? It should be that some 11:49
21 senior managers were indeed aware of undictated
22 letters?
23 A. Yes, it does indeed.
24 88 Q. If we can go back to --
25 CHAIR: Mr. Wolfe, I am just looking at the time, it's 11:49
26 11:50. If we take a short break until five past?
27
28 THE INQUIRY ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:
29

1 CHAIR: Mr. Wolfe.
2 89 Q. MR. WOLFE KC: Dr. Chada, we started this morning by
3 looking at the comments provided by Mr. O'Brien to you
4 on the 2nd April, and I was asking you whether they had
5 been included in the appendices to the report that 12:05
6 issued. You were very clear and pointed out that it
7 had been certainly your intention to include them. We
8 have been able, Chair, in the break - and thanks to
9 Mr. Lunny for this as well - certainly the version of
10 the report disclosed to Mr. O'Brien or disclosed by 12:05
11 Mr. O'Brien back to the Inquiry, includes both of the
12 appendices. That's by contrast with the version
13 disclosed to us, as we understand it, by the Trust.
14 That's just for your note.
15 12:05
16 I will show what I mean by that if you go to AOB-10001.
17 Can I have that up on the screen, please. This is the
18 version sent to Mr. O'Brien. If you go to AOB-10180,
19 this is Appendix 25 setting out Mr. O'Brien's comments
20 on his first statement. Then if we scroll down to 12:06
21 AOB-10188, this is Appendix 26 and it's Mr. O'Brien's
22 comments on his November meeting with Dr. Chada, again
23 as supplied by Mr. O'Brien on the 2nd April. So,
24 certainly this suggests that the version of the report
25 sent out to Mr. O'Brien, as Dr. Chada anticipated, 12:07
26 contained all of the appendices that she intended to --
27 CHAIR: Can we clarify, though, Mr. Wolfe, whether the
28 version that went to the Case Manager had the
29 appropriate appendices?

1 MR. WOLFE KC: We anticipated that and that is
2 obviously an important question. We aren't in
3 a position to bottom it out as we stand here today.
4 CHAIR: But I am sure that can be looked into by
5 Mr. Lunny. 12:08
6 MR. WOLFE KC: Certainly we have been, for the purposes
7 of this module, working off the version contained in
8 the core bundle. I am going to go to another page of
9 that now and it does not appear to contain those
10 appendices. Whether that's just a clerical error on 12:08
11 somebody's part, perhaps the Inquiry, perhaps the
12 Trust, who knows at this stage, or whether, in fact,
13 the version used in-house by, for example the Case
14 Manager, was missing those appendices. We can explore
15 with the Trust in a more relaxed fashion just what 12:08
16 comes of that and we will report back.
17 CHAIR: Yes. This certainly confirms what Dr. Chada
18 has told us, that she intended them to be attached to
19 the report, in any event.
20 MR. WOLFE KC: You can certainly see it in various 12:09
21 points within the body of the report that we have been
22 using. For example TRU-00688, he says there:
23
24 "Given the timing of receipt of this commentary and to
25 avoid further delay, et cetera, the drafted statement 12:09
26 along with Mr. O'Brien's comments have been included at
27 Appendix 26."
28
29 So as Dr. Chada said this morning, that was certainly

1 her intention. We will carry out a little bit more
2 further work on that --
3 CHAIR: Thank you.
4 MR. WOLFE KC: -- with the Trust and report back.
5 CHAIR: Thank you, Mr. Wolfe. 12:09
6 90 Q. MR. WOLFE KC: Now, could I bring you, Dr. Chada, to
7 the conclusions section of your report. It commences
8 at TRU-00703. Scroll to the bottom of the page,
9 please, at the conclusions. You start your conclusions
10 by telling the reader that Mr. O'Brien is an 12:10
11 experienced and highly respected senior colleague,
12 a dedicated doctor. And, scrolling down, explaining
13 that he himself is frustrated by the lengthy waiting
14 time for assessment and treatment of surgery. So you'd
15 no doubt that, notwithstanding the shortcomings you 12:11
16 report in respect of Mr. O'Brien, that the impression
17 that you were forming was that notwithstanding these
18 shortcomings, he was a dedicated doctor?
19 A. That was what I was being told.
20 91 Q. Bottom of TRU-00704. Again, you are being told he is 12:11
21 a skilled and conscientious doctor but, again, that's
22 set aside some criticisms of him from others. I am
23 just anxious to try and characterise your impression of
24 Mr. O'Brien from what you were told. A doctor clearly
25 with many attributes, clearly dedicated and 12:12
26 conscientious as reported to you, but with some flaws
27 that needed to be addressed; is that it in a nutshell?
28 Maybe significant flaws that needed to be addressed?
29 A. Yes, that's it in a nutshell.

1 92 Q. One of the points that you raised in this conclusion --
2 if we go to TRU-00715, it's just the bottom of the next
3 page. You say that:
4
5 "Lastly, during interviews and in correspondence, 12:13
6 Mr. O'Brien has displayed some lack of reflection and
7 insight into the potential seriousness of the above
8 issues. His reflection on the patients with delayed
9 diagnoses was disappointing and is noted above".
10 12:13
11 We will maybe just come back to that point in a moment.
12
13 "He did not seem to accept the importance of
14 administration processes. He did not feel writing to
15 the patient was important, and he does his own thing 12:13
16 about replacing administration time with extra
17 operating lists while at the same time reporting lack
18 of administration time. He felt he couldn't do the
19 triage in the way it was expected but was also clear
20 that he didn't agree with it anyway. I believe it 12:13
21 appropriate and relevant to raise this with the Case
22 Manager".
23
24 Why, in particular, did you feel that that was
25 appropriate to raise with the Case Manager? Did you 12:14
26 have in mind that this was a doctor who presented
27 dangers because of his lack of insight or was it simply
28 an observation that had to be put into the mix?
29 A. I didn't -- I didn't at any time consider that

1 Mr. O'Brien was clinically -- had had any clinical
2 issues. I never considered that for a moment. That
3 wasn't brought to my attention. However, I felt that
4 he displayed some lack of insight, which, for
5 a doctor - and of course I appreciate I'm 12:15
6 a psychiatrist - but I felt that for a doctor whose
7 role is caring for others, his response to some of the
8 findings from the untoward incidents was -- I just felt
9 it lacked insight. I don't know what else -- so I
10 didn't think he was dangerous, sorry, no, but I was 12:15
11 concerned that he lacked insight into how -- into the
12 potential seriousness of the issues.
13 93 Q. I want to ask you just how this conclusion in this
14 particular part developed. Could we have up on the
15 screen TRU-284368. This is Siobhán Hynds writing to 12:15
16 you on the 11th June. She says:
17
18 "He has accepted all final changes and this should be
19 the final document. If you read over it tomorrow
20 morning and want to make any changes, I can change and 12:16
21 print it, et cetera. Otherwise this is a final copy
22 for your records".
23
24 If we go then to the concluding page of the report,
25 it's TRU-284413. This is the conclusion as it stands 12:16
26 at that point. You are saying:
27
28 "Lastly, during interviews and in correspondence,
29 Mr. O'Brien has displayed an apparent lack of

1 reflection and insight into the potential seriousness
2 of the above issues, and I believe it appropriate and
3 relevant to raise this with the Case Manager."
4
5 Obviously, that's a less well-defined and perhaps 12:17
6 milder version of the conclusion that was to be
7 developed.
8
9 Let's look then at how this develops. If we go to
10 TRU-284414, this is your e-mail to Siobhán Hynds on the 12:17
11 12th June. You are referring her to the last
12 paragraph. You are saying, with a triple question mark
13 and then you're saying "too harsh". We can go to how
14 the report now appears, TRU-284459. Just scroll down
15 so we can see the red ink. Is it you who has made this 12:18
16 change in red?
17 A. Yes.
18 94 Q. Your cover e-mail is, is it fair to say, reflecting
19 a hesitation on your part as to whether this conclusion
20 might, in light of all of the evidence, be a little 12:18
21 over-the-top or too harsh?
22 A. I was reflecting on the fact that Mr. O'Brien had found
23 the whole process very difficult. All of those things,
24 all those things that I have drawn out in that
25 paragraph, are included in the report in different 12:18
26 places but I'm highlighting them. I felt it would be
27 something that would be difficult for him to read.
28 95 Q. Were you asking for a steer from Mrs. Hynds as to
29 whether this is too harsh?

1 A. I mean, I didn't feel that any part of the report
2 didn't support this but I was anxious that Mr. O'Brien
3 -- I was concerned that Mr. O'Brien hadn't been well
4 and I felt this might be difficult for him. Mrs. Hynds
5 had more experience of Maintaining High Professional 12:19
6 Standards reports than I had. I'd certainly done
7 a number of investigation reports, many of which have
8 ended up in a referral to the GMC, so I wasn't -- it
9 wasn't that I wasn't used to that situation, but I was
10 conscious that Mr. O'Brien had already indicated to us 12:20
11 that he hadn't been well through a lot of this process
12 and was finding it difficult, and I felt a lot of that
13 was already included, and was drawing attention to it
14 a harsh thing to do.
15 96 Q. Did you discuss with aspect with Mrs. Hynds? 12:20
16 A. I did. Mrs. Hynds came back and said I was the Case
17 Investigator and it was up to me. She said look, if
18 that's -- she said if that's what you think, then you
19 should put it in because that's your role. And I did.
20 97 Q. An aspect of your engagement with Mr. O'Brien touched 12:20
21 upon his view of the implications of the failure to
22 triage, and you draw attention to that in your report.
23 If we just go to TRU-00685. Down at the bottom of the
24 page, you report that Mr. O'Brien -- just on further
25 down. Sorry, it's the top of the next page, I beg your 12:21
26 pardon.
27
28 "On commenting upon the five cases which have confirmed
29 cancer diagnoses, Mr. O'Brien was surprised that there

1 was such a small number upgraded. He advised it was
2 heartening in a number of ways to find two of the cases
3 are at an early stage. He noted the irony that one of
4 the patients may have benefitted from the delay.
5 Mr. O'Brien commented that was really the only one 12:22
6 patient of concern".
7
8 I think in reading your conclusion where you talk about
9 the lack of insight, that this was an ingredient which
10 informed your -- 12:22
11 CHAIR: Sorry, Mr. Wolfe, to interrupt you. You used
12 the initials there for a patient. Now, just to be
13 clear, we will use the ciphers in future. I don't
14 think that it necessarily identifies anyone
15 particularly from what you have said, but just please 12:22
16 be careful.
17 MR. WOLFE KC: Yes. I think we know who that patient
18 is. I can give you the cipher now, if you want.
19 CHAIR: I don't need it but just in future, I think
20 it's preferable if we do use them. 12:23
21 MR. WOLFE KC: Very well.
22 98 Q. So, am I right in suggesting to you that that was a key
23 ingredient when it came to your conclusion around
24 insight?
25 A. I wouldn't use the word "key ingredient" but it was one 12:23
26 of the ingredients. I think it was an overall
27 impression from Mr. O'Brien's responses and some of the
28 -- to this in his witness statement.
29

1 99 Q. If we can just bring up on the page, please, AOB-01893.
2 Just if we can scroll down, please. This is
3 Mr. O'Brien's response to your report when
4 communicating with Dr. Khan. He records that:
5 12:24
6 "The report states that Mr. O'Brien displayed some lack
7 of insight and reflection into the potential
8 seriousness of the above issues. He would completely
9 dispute this contention. He believes that this
10 impression has been gained due to his disbelief at the 12:24
11 lack of insight on the part of the Trust into the harm
12 and risk of harm suffered by patients already on the
13 longest waiting list".
14
15 Was there a sense of confusion on your part in terms of 12:24
16 how he was expressing himself? We can see, for
17 example, that he took the view that the Trust's
18 approach to triage in the context of massive waiting
19 lists was placing in jeopardy those patients who
20 weren't regularly flagged. In other words, those who 12:25
21 were being referred in as routine and urgent who did
22 not have, on the face of it, malign conditions were, in
23 some cases at risk of complications, and it is in that
24 context which he is explaining to you that his failure
25 to triage has to be assessed and analysed? 12:26
26 A. Mr. O'Brien certainly expressed annoyance in relation
27 to exactly that issue, that there were people on the
28 routine waiting list and on the urgent waiting list who
29 had morbidities that may not be cancer but nonetheless

1 were very significant. I mean, he certainly did
2 express that. However, my impression was not based on
3 -- I, mean I understood his disappointment and his
4 disbelief in relation to that. I absolutely understood
5 that but that was not where I think -- I think 12:26
6 Mr. O'Brien's statement that "I believe that this
7 impression has been gained due to my lack of disbelief
8 on insight of part of the Trust", that is not where
9 that impression was gained.
10 100 Q. He was making these broader points, wasn't he, that his 12:27
11 focus necessarily in terms of relieving symptomatology
12 for patients placed an onus on him, encouraged by the
13 Trust perhaps, to operate, be in theatre more regularly
14 than his job plan might otherwise have required of him,
15 and that, because he was giving emphasis to that, other 12:27
16 matters such as the administrative paths associated
17 with his practice were viewed by him as of less
18 importance. But that doesn't seem to come through in
19 your report when you deal with his lack of insight;
20 that balance doesn't seem to be there? 12:28
21 A. I think my report does cover Mr. O'Brien's points, that
22 he replaced admin time with theatre time. In fact,
23 I think I drew attention to the fact that in
24 Mr. O'Brien's statement, I pointed out it wasn't up to
25 him to decide what he wanted to do; that's not what 12:28
26 doctors are required to do. We have a job plan and we
27 are told what the Trust expects of us. So I think
28 I did raise those issues in other parts of the
29 investigation report.

1 101 Q. In terms of Dr. Khan's determination, you were in
2 a sense a stranger to that. You weren't provided with
3 a copy of it, it wasn't discussed with you, you had no
4 input into it for obviously correct reasons. I think
5 you have expressed the view that it might be of some 12:29
6 assistance to know what determination was being reached
7 and the view that has been taken of your report?
8 A. I think I raised that -- I was trying to be helpful to
9 the Inquiry bearing in mind the Inquiry's Terms of
10 Reference, and I have raised that in my Section 21 12:29
11 response. I just think from a learning point of view,
12 you know, doctors audit regularly and we are expected
13 to audit regularly and to consider what it is we do and
14 what the outcomes are. Therefore, if one of your roles
15 is to be a Case Investigator, for example, knowing how 12:30
16 that report has been received and what action has been
17 taken on foot of that report, actually I think is
18 a learning opportunity rather than for any other
19 reason. It's not that I should have any input into the
20 Case Manager's determination, I appreciate that's 12:30
21 completely separate and should be, but it's really
22 about getting that feedback so that, if you are asked
23 to do this again, that you can improve and you can
24 consider the areas that perhaps could have been done
25 better, or if questions are raised at a later stage 12:30
26 about the investigation, that you actually get some
27 feedback about right, okay, you know, I could change
28 that part of my practice. Because it's about
29 improving. So it was an issue about improving

1 performance really, not just for me but for any Case
2 Investigator.
3 102 Q. Thank you. I think it's a matter for the Inquiry Panel
4 obviously. If I detected any disappointment on the
5 part of Dr. Khan with the output of your report, it was 12:31
6 that he wasn't able to understand why there had been
7 managerial shortcomings in the management of
8 Mr. O'Brien. He discerned from your report that there
9 was systemic failings both on the clinical and
10 operational side of management, and that required 12:31
11 a further body of work. You may not agree with that
12 but is that the kind of feedback that would be
13 necessarily useful for future reference?
14 A. I think getting feedback into, yes, deficits or things
15 that could be improved is exactly. I suppose part of 12:31
16 it is understanding what it is you are being asked to
17 do and what the purpose of the investigation is. As
18 I explained earlier in my previous response, my view
19 was the investigation was to get an overview of some of
20 those management issues, and I expected that there 12:32
21 would be something else would follow.
22 103 Q. If I could then bring you to some other reflections
23 that you kindly offered the Inquiry through your
24 Section 21 statement, and briefly. If we go to
25 WIT-23784, I think this is probably a matter you've 12:32
26 touched on in some length towards the start of your
27 evidence. WIT-23784. Back a page, sorry, to 15.1.
28 Thank you.
29

1 This is, I suppose, where you tell us that being asked
2 to deal with complex investigations in the context of
3 the demands on your other time is not necessarily
4 a recipe for success, or certainly not necessarily
5 a recipe for dealing with matters as urgently or 12:33
6 robustly as they might require. Have you any other
7 thoughts to offer around that?
8 A. I suppose whilst it's an investigation, it's exactly
9 that. You know, I mean it's not really an inquiry.
10 You know, you asked earlier about did I not go back to 12:34
11 and speak to Mr. Young; it's also not about
12 cross-examination and you don't really have that
13 opportunity to keep going back and forth because the
14 resources to do that just aren't there. So it's
15 a difficult situation because in some ways it's almost 12:34
16 like - well, it is - it's an investigation but without
17 the sort of depth that if you were a detective or
18 a police person or a lawyer or something, that you
19 might expect to look at.
20 12:34
21 I think doctors aren't particularly good at their use
22 of language as well in terms of being precise in their
23 language. You highlighted that on my last occasion
24 here in terms of one of the days, whether I chose 2018
25 and I meant earlier in the year. These are things that 12:34
26 we learn from. But it's a difficult process to do
27 under the current -- under the current NHS system.
28 I think I indicated the last time, I am not aware that
29 people are doing it now under the current NHS, which

1 I think is quite right. I think time set aside to do
2 this and to build expertise is really very important to
3 make sure that you have robust and fair and equitable
4 outcomes.
5 104 Q. Scroll down to 17.2. If I can get the page number for 12:35
6 you. You have explained that it does seem appropriate
7 to address issues initially informally and then to
8 progress down more formal routes if informal processes
9 don't result in the desired outcome.
10 12:36
11 "I think the NHS process might have been used earlier
12 in this case. However, I am aware of one of
13 Mr. O'Brien's complaints to us that it was being used
14 at all. He believed it was used too soon and without
15 other avenues being exhausted. It seemed to me from 12:36
16 the time this process has started in March 2016, a long
17 period of time passed as the Trust tried to ensure the
18 process was properly adhered to in an effort to prevent
19 any future criticism or threat of legal action. Trust
20 management's level of anxiety about this was clear to 12:36
21 me. Mr. O'Brien had already made complaints and he had
22 accused a previous medical manager, who was trying to
23 address Mr. O'Brien's practice, of harassing him".
24
25 Now, I think you appreciate that that allegation in the 12:37
26 last sentence is disputed by Mr. O'Brien, so putting
27 that to one side and maybe more neutrally describe it
28 as a difficulty between himself and a manager who we
29 know to have been involved in a dispute with him. But

1 more generally you make the point that it should start
2 with informal. The difficulty in this case was that it
3 seems to you that it should have been moved to a formal
4 process at an earlier stage but there was a fear on the
5 part of the Trust in doing so. How did that come 12:37
6 through? Who described that fear to you?
7 A. I think a number of the senior managers expressed
8 anxiety about what had happened previously when there
9 had been attempts to manage Mr. O'Brien. They had felt
10 that -- I think I said earlier that I had the sense 12:38
11 that they were anxious and fearful about progressing
12 things.
13 105 Q. You seem to suggest that there was a fear of legal
14 action. Apart from your knowledge of this difficulty
15 between Mr. O'Brien and, as we now know Mr. Mackle, 12:38
16 where Mr. O'Brien is, as you describe it or as you
17 understood it - and that understanding is not without
18 controversy - but apart from that dispute between
19 Mr. O'Brien and Mr. Mackle, what else, if anything, can
20 you recall specifically was in the background that 12:39
21 might have caused this reluctance or hesitation on the
22 part of the Trust?
23 A. Well, a number of the managers told me that there had
24 been attempts to manage Mr. O'Brien in the past and
25 that had been unsuccessful or thwarted in one way or 12:39
26 another, so that was the impression that I gained.
27 I expect when you are talking to those people, they
28 might be able to clarify that further. That was
29 certainly the impression that I was being given by the

1 people that I spoke to.
2 106 Q. Hm. But just to be absolutely specific, because we are
3 familiar with the statements, and I am pressing you
4 because I am not entirely sure what you're suggesting
5 here when you say that it seemed to you that: 12:40
6
7 "A long period of time passed, as the Trust tried to
8 ensure the process was properly adhered to in an effort
9 to prevent any future criticism or threat of legal
10 action". 12:40
11
12 We know that between March 2016, when, if you like, an
13 informal approach was made, obviously with the letter
14 to Mr. O'Brien, and December 2016, he was completely in
15 the dark as to what was going on behind the scenes 12:40
16 because after the meeting in March, he wasn't
17 approached. So, I'm not entirely sure - and if you
18 can't help us beyond what you have said here, then so
19 be it - where was this fear of future criticism or
20 legal action coming from? 12:41
21 A. That was my impression from the witnesses that I spoke
22 to. That's as much as I can recall. That was my
23 impression, that people were anxious and fearful and
24 that they had attempted to sort things out in the past
25 and felt that they had been thwarted in doing so. 12:41
26 107 Q. In a similar vein, could we scroll down to WIT-23787.
27 At paragraph 18.3, just so we can see the whole
28 paragraph.
29

1 "Whilst I believe a number of different people knew
2 there were issues with Mr. O'Brien's practice, I formed
3 the impression different people knew different things
4 at different times, and the pressures on workload,
5 waiting lists and changes of personnel meant that no 12:42
6 one" - in your opinion - "appeared to be aware of the
7 full extent of the issues".
8
9 That, in part, explains some of the management
10 shortcomings, as you saw it? You say: 12:42
11
12 "Once the extent of the issues became more apparent, it
13 does seem the Trust management system attempted to
14 address those issues with Mr. O'Brien. My impression
15 was that he thwarted them by making complaints, hinting 12:42
16 at legal action and trying to deflect or distract".
17
18 Can we take those three together, complaints, hinting
19 at legal action and trying to defect or distract.
20 Again in specific terms, if you can, what complaints 12:43
21 are we referring to here, hints of legal action and
22 deflection or distraction approaches? What are they in
23 specific terms?
24 A. I was told by non-medical managers - not by medical
25 managers, I don't think, other than Mr. Mackle - I was 12:43
26 told by a number of managers that attempts to raise
27 issues with Mr. O'Brien had been tried before and that
28 one of the previous personnel, Dr. Rankin, who, whilst
29 she is a medically-qualified person was actually in

1 a non-medical management role, had advised people not
2 to progress in their contacts because there were
3 concerns. So, these comments are my impression rather
4 than -- and my impression was gained from the
5 information that I received prior to the investigation, 12:44
6 in terms of the paperwork and from the witness
7 statements. This is a personal impression which
8 I hoped to be helpful to the Inquiry. I absolutely
9 accept that this is a personal impression.
10 108 Q. We will obviously consider the granular detail of the 12:44
11 statements. But can you recall - and I can't so
12 hopefully I am being fair to you - but can you recall
13 any specific suggestion or threat of legal action being
14 conveyed to you from a witness? I mean is what you
15 said there to be found in the witness statements that 12:45
16 you gathered?
17 A. I believe so. I believe so. Certainly, as I say, that
18 was my impression from what people were telling me, so
19 I believe so. I mean, I couldn't take you to that, if
20 that's what you are asking me for. 12:45
21 109 Q. It may well be my frailty of memory but we will look at
22 that, you believe what you are saying you derives from
23 the witness statements.
24 A. I mean, I can't -- I wouldn't have known it otherwise,
25 you know. I suppose that's... I mean I have no 12:45
26 knowledge or experience of working with Mr. O'Brien or
27 on the acute side or on surgical. That's not something
28 that I would have known unless it had been raised with
29 me.

1 110 Q. Certainly generally, the impression from some of the
2 witnesses we would have spoken to was that informal
3 approaches to Mr. O'Brien to mend his ways, such as
4 around triage, for example, were repeated interventions
5 on an informal basis; you would see improvement for 12:46
6 a while and then he would fall away again. Certainly
7 that is a broad impression that you would be entitled
8 to take from what you received?
9 A. Yes.
10 111 Q. Did that, in turn, moving away from Mr. O'Brien, cause 12:46
11 you to consider that medical or operational management
12 wasn't effective?
13 A. Yes. I mean, I've said that the -- I have said in my
14 investigation report that I felt that management were
15 aware and could have and should have taken action 12:46
16 earlier.
17 112 Q. You go on then to say at interview he was arrogant at
18 times; there were subtle attempts to intimidate, for
19 example by bringing along a relative who was
20 a practising barrister, and sending an e-mail inquiring 12:47
21 about your qualifications to lead such an
22 investigation; whether you had revalidated or whether
23 you were up to date with your CPD, et cetera. I think
24 you believe this e-mail was sent to Dr. Khan after the
25 investigation was completed. We will come to the 12:47
26 e-mail in a moment.
27
28 Dealing with your contact with him through interviews,
29 do you accept that he was entitled to bring a person

1 along to interview with him, whether a qualified lawyer
2 or otherwise?
3 A. Yes, of course.
4 113 Q. Why did you interpret that as partly an attempt to
5 intimidate? 12:48
6 A. It was my impression on the day. An impression.
7 114 Q. A fair impression?
8 A. I felt -- a fair, yes. I felt I probably have more
9 contact with legal people and Mrs. Hynds perhaps
10 doesn't. I felt Mrs. Hynds was intimidated by that -- 12:48
11 or at least "affected" by that probably is the better
12 word, but that was my impression on the day.
13 115 Q. I think we do the benefit of a transcript of these
14 interviews.
15 A. Mm-hmm. 12:48
16 116 Q. Is there anything you wish to draw to the Inquiry's
17 attention as example of inappropriate behaviour on the
18 part of the person who accompanied him, or do you
19 accept that the interventions made by the person who
20 accompanied him were entirely appropriate? 12:49
21 A. I thought the interventions were appropriate and the
22 person who accompanied Mr. O'Brien was very pleasant
23 and was trying to be helpful, I think.
24 117 Q. The e-mail you referred to, can I bring up on the
25 screen AOB-02141. I am trying to put a date on it. 12:49
26 This is correspondence sent by Mr. O'Brien on the 12th
27 March 2019. He is requesting from the Trust
28 information in respect of yourself and Dr. Khan and,
29 scrolling down, the titles of all training courses

1 undertaken in the conduct of formal investigations, the
2 date upon which they were taken and copies of their
3 accreditation, the number of investigations that have
4 been conducted by the above persons and their
5 respective roles in each of those investigations. 12:50
6
7 Is this the e-mail that you had in mind? It doesn't go
8 on to deal with validation and issues such as this.
9 This is the only e-mail, I think, between the Inquiry
10 and your representatives that we have been able to turn 12:51
11 up that comes close to this?
12 A. Yeah, it is the e-mail that I have in mind and I didn't
13 have a copy of the e-mail when I was preparing my
14 response. I suppose the word "accreditation" stuck in
15 my mind. To me, accreditation was with the GMC or -- 12:51
16 so, that's where I have got that from. I have
17 obviously forgotten the context of that.
18 118 Q. Mr. O'Brien is obviously at this point in a grievance
19 process with the Trust. Again, he is entitled, is he
20 not, to investigate your credentials to investigate in 12:52
21 circumstances where he is dissatisfied with your
22 report?
23 A. He is, yes.
24 MR. WOLFE KC: Thank you, Chair, I have no further
25 questions. Thank you, Dr. Chada. 12:52
26 CHAIR: Thank you, Mr. Wolfe. Dr. Chada, we are now
27 going to turn to some questions from myself and my
28 colleagues. I'm going to ask Mr. Hanbury, first of
29 all, if he has any questions. Hopefully our system

1 here will work.
2
3 THE WITNESS WAS QUESTIONED BY THE INQUIRY PANEL
4 AS FOLLOWS:
5 12:52
6 CHAIR: Can you see Mr. Hanbury. He may, in fact, be
7 on the screen on the desk in front of you. No, just on
8 the big screen. As long as you can see him all right
9 then.
10 12:52
11 Mr. Hanbury, I just want to check your microphone is
12 working all right so can you speak, please?
13 MR. HANBURY: I am here. Can you hear me?
14 CHAIR: We are on silent at our end. We have you now.
15 MR. HANBURY: Is that all right now? 12:53
16 CHAIR: Yes, thank you.
17 119 Q. MR. HANBURY: Thank you very much, Dr. Chada. You will
18 be pleased to know you have answered a few of my
19 questions already. I just wanted to look at a few
20 clinical aspects with you, if that's appropriate. 12:53
21 Firstly, look at the dictation aspects. I just wanted
22 to remind ourselves how long did the exercise take
23 going through the undictated, seemingly undictated
24 clinics, and how many urology colleagues did it take to
25 do that exercise? Do you recall that, approximately? 12:53
26 A. I don't know the answer to that. I know that
27 Mr. O'Brien had dictated on some of the notes before he
28 brought them back, so they were dictated on in January,
29 I think 2017 or something. So there's quite a large

1 number that Mr. O'Brien had dictated on. Then the rest
2 were sort of shared out between urology colleagues.
3
4 I'm afraid that part of the investigation was being
5 done by other people on the ground. I know it took 12:54
6 quite a long time because we were waiting a long time
7 for information to come back in relation to the
8 undictated letters. I'm afraid I can't assist you any
9 further in that.
10 120 Q. That's several months anyway from -- 12:54
11 A. Yes, yes, indeed.
12 121 Q. Okay. From that analysis --
13 CHAIR: Sorry, Mr Hanbury, just wait a moment,
14 Mr. O'Boyle wishes to say something.
15 MR. BOYLE KC: (Off microphone). 12:54
16 CHAIR: I can assure you that we are reporting and we
17 will be transcribing. I am not sure if there is
18 a difficulty with you seeing the CaseView on the screen
19 and us seeing --
20 MR. BOYLE KC: (Off microphone) part of the evidence 12:55
21 has frozen.
22 CHAIR: It's frozen? Is that the case with everyone?
23 Okay. Can I ask --
24 MR. BOYLE KC: It will be recorded in the transcript
25 (off microphone). 12:55
26 CHAIR: I think that's the case but let me double-check
27 that. Can I ask, Mr. Murphy, could you go and just
28 check the situation if that's all right. I know that
29 we will have a recording, an audible recording - I

1 believe so in any case - from our audiovisual people
2 which means that we will be able to produce
3 a transcript. I am just double-checking that that is
4 the case and we can check what the situation is with
5 CaseView. 12:55
6
7 Can I just check with PI Communications that we do have
8 an audible recording from which we can later get
9 a transcript? So, that meets the case. I am sorry
10 about CaseView. Mr. Murphy has gone to see what the 12:56
11 issue may be and whether it can be resolved. Certainly
12 we will need it resolved this afternoon in any case.
13 If you don't mind, we will continue with Mr. Hanbury.
14
15 Mr. Hanbury, sorry about that. If we can come back to 12:56
16 your questions.
17 122 Q. MR. HANBURY: Just to go back to that analysis, I think
18 you found from those undictated clinics 35 patients who
19 were subsequently added to the waiting list, and three
20 needing urgent appointments. Is it true to say that 12:56
21 those wouldn't have been picked up had you not been
22 doing the analysis?
23 A. Sorry, that they wouldn't have been picked up?
24 123 Q. That's what I'm asking.
25 A. Yes. Yes, I assume that's the case. Mr. O'Brien said 12:56
26 that he -- in his account to us said that he added
27 people to waiting lists and added people to
28 investigation lists regardless of whether he did the
29 dictation or not, but the findings from that review

1 seemed to suggest that there were additional things
2 that needed to be put into place.
3 124 Q. Thank you. In his witness statement, Mr. Haynes that
4 he states, he quotes "You can't run a safe practice
5 without contemporaneous notes". As an active 12:57
6 clinician, would you agree with that?
7 A. Yes.
8 125 Q. Thank you. Really in the same theme, do you think,
9 looking at the surgical side which I accept is not your
10 primary role, do you think it should be standard 12:57
11 practice to dictate not only the results of Outpatient
12 clinics but also small procedures, diagnostic,
13 cystoscopy, day lists and even main lists? Do you
14 think that would be advantageous?
15 A. Yes. 12:58
16 126 Q. Okay. Thank you. I think you have answered the triage
17 thing, thank you. Just a couple of things on the notes
18 in office. When you interviewed Noleen Elliott,
19 Mr. O'Brien's secretary, she mentioned a couple of
20 things. Did she mention anything about Mr. O'Brien and 12:58
21 the reason why she put charts or notes in his office,
22 and the reason for that? Was that a problem that...
23 A. I don't believe she made a specific comment in relation
24 to that. She was aware that there were notes in
25 Mr. O'Brien's office and that he requested notes and 12:58
26 there were notes at home, but I don't recall her making
27 a specific comment in relation to that.
28 127 Q. She didn't say the reason she put it in the office was
29 for a particular task to be done?

1 A. No. She said that -- she was actually talking about
2 notes coming back and was saying that when she asked
3 Mr. O'Brien, when somebody else requested a set of
4 notes or wanted a set of notes, it would have been
5 returned and very quickly, but I don't think she made 12:59
6 -- I don't think she said anything about why notes were
7 being put into the office as such other than
8 Mr. O'Brien required them.
9 128 Q. Okay. Just lastly on Noleen Elliott, she mentioned in
10 her witness statement that she occasionally had phone 12:59
11 calls from patients who seemingly hadn't been put on
12 the waiting list and then she had to do it. Did she
13 explain any more about that as a difficulty?
14 A. She didn't explain anything more about that as
15 a difficulty. Mr. O'Brien, at a later stage, and other 12:59
16 managers, both medical and non-medical, indicated that
17 Mr. O'Brien added people to waiting lists at haphazard
18 times. That, in fact, was one of the issues in
19 relation to the private patient issue, because people
20 might have been seen a long time ago but only added to 13:00
21 the waiting list more recently, but Mr. O'Brien
22 regarded it that the time started from when he first
23 saw the patient. So that seemed to be the issue, that
24 the patient may have been added at a later stage by
25 Mr. O'Brien. 13:00
26 129 Q. Okay. That brings me on to another question about
27 private practice. It wasn't necessarily your terms of
28 reference but having picked up that, did you find out
29 how Mr. O'Brien was sort of circumventing the normal

1 waiting list office process? Is that a fair question?
2 A. My understanding, and I am sure other people will be
3 able to comment on this better, but my understanding is
4 Mr. O'Brien managed his own waiting list. In terms of
5 theatre, Mr. O'Brien made up his own theatre list. He 13:01
6 phoned the people individually himself and arranged
7 their times and their appointments and where they would
8 be in the list. I think that in itself, I felt, was an
9 area of criticism and I raised that at the time of the
10 investigation, because nobody had any idea how and when 13:01
11 people were being added to this waiting list, or why,
12 with that level of -- well, I was going to say level of
13 urgency. Actually that was the other issue, there was
14 no level of urgency indicated on the waiting list. So
15 it was a difficult -- I think the theatre list was 13:01
16 a particularly difficult area to try and unpick.
17 130 Q. Thank you. That brings me nicely on to my last
18 question about that prioritisation thing you said.
19 Obviously there were problems with long waiters and all
20 surgeons hate cancelling things, and I guess one thing 13:02
21 about allocating someone of routine priority when you
22 running out of theatre time because they are the ones
23 that potentially may get cancelled. If I bring you to
24 one of Mr. Carroll's statements; his statement said, to
25 quote Mr. O'Brien, "My patients are all urgent and they 13:02
26 will all be done". So that said something to me. What
27 do you think about that as a comment? Did that raise
28 a red flag with you or a question with you?
29 A. It didn't raise a red flag, it just reflected what

1 Mr. O'Brien had said himself, and other people had said
2 in terms of his arranging this waiting list or this
3 theatre list, and Mr. O'Brien's view that -- and quite
4 correct review, that the waiting lists were too long
5 and people were waiting far too long, and he was very 13:03
6 concerned about the lengths of wait for patients on his
7 waiting list.
8 MR. HANBURY: Thank you very much. I have no further
9 questions. Thank you.
10 CHAIR: Thank you, Mr. Hanbury. Dr. Swart? Let me 13:03
11 check if we can hear you.
12 DR. SWART: Can you hear me?
13 CHAIR: Yes, we can. Thank you.
14 131 Q. DR. SWART: Right.
15 13:03
16 In your evidence last week, you spoke about the need to
17 support doctors under investigation and you said you
18 had some ideas about that. My first question about
19 that is did you have any idea what support was actually
20 being put in place for Aidan O'Brien? I don't mean 13:03
21 just occupational health and counselling, I mean help
22 for him to get everything done that he needed to get
23 everything done in the context of the investigation,
24 senior people to talk to about this? Do you have any
25 idea what was in place? 13:04
26 A. I have no idea what was in place for that.
27 132 Q. Hm. What should have been in place?
28 A. I think as doctors we have a number of sources of
29 support in terms of non -- I mean outside

1 investigations in terms of people we can access, of
2 course. But in terms of the investigation and
3 gathering information for the investigation and so on,
4 my understanding is that Mr. O'Brien would have
5 contacted Mrs. Hynds for any information that he 13:04
6 required, and Mrs. Hynds would have sourced the
7 information and then transferred it back to
8 Mr. O'Brien.
9
10 Ideally, I think that that shouldn't be how this works. 13:04
11 My view is that being able to have an identified person
12 that the doctor under investigation can contact and
13 deal with directly in relation to accessing these
14 things. Mr. O'Brien also, on a regular basis, would
15 have contacted the Non-Executive Director, 13:04
16 Mr. Wilkinson, and pointed out that he needed things.
17 Or he would have contacted Dr. Khan by e-mail directly.
18 Again, I think that probably caused confusion and
19 actually duplication of stuff which wasn't, I think,
20 fair on Mr. O'Brien. I think having one person 13:05
21 identified who would assist the doctor under
22 investigation, I think, would be very helpful.
23 133 Q. I agree with that. Did you have any support and did
24 you ask for any support? Was anybody identified for
25 you? Bearing in mind this has been quite a difficult 13:05
26 investigation, it will have taken its toll, and again
27 was there a mentor or somebody you could be signposted
28 to to bounce ideas off who was independent?
29 A. Psychiatrists are required to have a mentor. It's one

1 of the things that our college recommended. We always
2 did it informally anyway but it's a formal thing now
3 with the college. I would always have had people that
4 I would have informally sort of discussed things with
5 or if I was having difficulty with. In terms of 13:06
6 support, from that point of view, from sort of an
7 emotional point of view --
8 134 Q. No, I am talking about practical support rather than
9 the emotional side?
10 A. From practical support, no, not really. Mrs. Hynds was 13:06
11 very helpful and, as I say, would have done a lot of
12 the admin work in terms of tracking things down and
13 sending e-mails. I would have talked and she would
14 have typed, you know, in terms of putting things
15 together but no, no practical support outside of that. 13:06
16 I had a secretary who is absolutely wonderful, but my
17 secretary was already assisting me in my Associate
18 Medical Directorate role, and my clinical role which
19 was a very busy role, and I didn't feel it was
20 appropriate to expect her to add to that. 13:07
21 135 Q. I am thinking more of a senior critical friend of some
22 sort. These investigations nearly always cause
23 problems of some sort and one's own experience is
24 always limited. In retrospect, would that have been
25 helpful just to ask you some critical questions along 13:07
26 the way?
27 A. I think in retrospect, that would have been helpful.
28 I think one of the difficulties, and I've mentioned it
29 already, is the lack of expertise in doing these.

1 These are not something that we do in our everyday
2 practice. I think I'm -- I mean I don't know and the
3 Trust could probably comment on this, but I think I
4 have done more than most, so I'm not entirely sure who
5 I would have leaned on for that. Absolutely, I think 13:07
6 in retrospect that would have been extremely helpful.
7 136 Q. For example, one of the things I wanted to ask you
8 about there was a number of times when Mr. O'Brien
9 provided extensive amounts of information to you, and
10 the most latterly right at the end of the 13:08
11 investigation, it was after your deadline and all of
12 that. Looking back on it now, do you think there would
13 have been a way of handling that without opening
14 everything all over again? I can understand why you
15 felt enough was enough, but equally he's providing all 13:08
16 kinds of data at a very granular level. Was there
17 a way of rising above that, out of the weeds, so to
18 speak, to get to the principles? In retrospect do you
19 think you could have done with some help with that?
20 A. I think in retrospect some help with that would have 13:08
21 been good. I think, as I have indicated earlier,
22 a number of the issues that were raised as the terms of
23 reference, it was my view Mr. O'Brien was conceding in
24 any event the minutiae of it. I suppose I was
25 concerned that getting bogged down and deflected and 13:08
26 distracted by looking at minutiae of something, there
27 was a risk of me, or anybody, being distracted by that.
28 I was very mindful that that was something that I felt
29 shouldn't happen. But I certainly accept having

1 somebody else to look through that; I did look through
2 it all and it took some time but it was already past
3 the date and I was already trying to formulate my
4 report by that point. So, I progressed with that
5 whilst I looked at the rest of it, but it would have 13:09
6 been good to have somebody else to look at that.
7 137 Q. Just coming on to one of the things that you have been
8 asked about extensively. I am not going to go into the
9 detail, you will be relieved. But private patients,
10 the issue of transfer between the NHS and private 13:09
11 practice is always fraught with difficulty and most
12 Trusts have a policy that says if you see them
13 privately, and you want to see them in the NHS for any
14 reason, you have to transfer their care to the NHS, and
15 you shouldn't be transferring them back and forth as 13:09
16 you wish, and that must all be documented.
17
18 Now, whatever is the case with the private patients in
19 this situation, I can't see evidence that all of that
20 happened robustly. My question to you is, is that 13:10
21 a general problem in the Trust, do you think? Have you
22 got any awareness of that? Do people pay enough heed
23 to the rules and regulations around this, because it is
24 quite clearly set out in the GMC guidance that you
25 mustn't give private patients an unfair advantage. 13:10
26 Have you any comments about that?
27 A. I think managing private patients in the Trust has
28 become a much more robust system latterly. I think
29 there have been times in the past, particularly

1 historically, where the Trust would not have had robust
2 systems in place because a lot of consultants wouldn't
3 have been involved with private practice; some people
4 were seeing people outside of the Trust. So I do think
5 there probably weren't robust systems in place 13:10
6 historically. I believe that's not the situation
7 currently. Certainly when I was an Associate Medical
8 Director, we introduced, for example, a form that
9 consultants had to complete if they were seeing private
10 patients, and if they were seeing private patients on 13:11
11 Trust property, and who was doing appraisals in
12 relation to their competence to see private patients.
13 That's as a psychiatrist. I'm not aware of what the
14 situation would have been with surgeons. I would
15 certainly accept that the Trust historically wouldn't 13:11
16 have had robust structures and systems in place.
17 138 Q. Okay. Another thing; you commented on the term of
18 reference 5 in terms of the managerial issues, missed
19 opportunities, whatever you want to call it. It's been
20 quite clear from the people we have spoken to that 13:11
21 although all the managers, medical and operational,
22 were trying to do their best, there was a little bit of
23 confusion at times as to who was doing what. So, the
24 doctors tend to leave most things to the operational
25 managers because they are so busy but when there's an 13:12
26 issue with a doctor, it has to be managed by a doctor.
27 It's my impression that this isn't as functional as it
28 might be. Would you agree with that in terms of what
29 you have seen for this Inquiry, and is it a more

1 general problem in the Trust, or what do you think?
2 A. I do think that there was confusion about lines of
3 management and who was to manage that area. I think
4 that is an issue when it comes to senior clinicians and
5 consultants in particular. There does seem to be this 13:12
6 lack of clarity about what areas should be addressed by
7 non-clinical managers and what areas need to be
8 addressed by managers. I would completely agree with
9 that, and I think improvements in that have been made.
10 13:12
11 I'm aware that -- I mean we did this investigation
12 under Maintaining High Professional Standards, and we
13 wrote out to people and said to them this is what we
14 are doing. I'm not entirely convinced that people
15 always knew what that meant, and particularly 13:13
16 non-medical managers. However, it was explained to
17 them. I think non-medical managers are anxious about
18 managing doctors.
19 139 Q. And what's the solution to that?
20 A. I think there has to be a closer working with 13:13
21 non-medical and medical managers. I think the problem,
22 looking back from my time as a medical manager, the
23 problem is you are not actually given enough time to do
24 the medical management role because you are trying to
25 manage performance but you are also trying to manage 13:13
26 other governance issues, you are trying to manage SAIs,
27 you are trying to go to 101 meetings, you are looking
28 at service development, you are looking at quality
29 improvement. You have two sessions a week perhaps and

1 you are trying to do too many things in that short
2 space of time. You try to do those to the best of your
3 ability, usually outside of work time. So I think more
4 time, more protected time to properly engage in
5 management is, I think, required. 13:14
6 140 Q. Thank you. Last question. This whole Inquiry and
7 everything that we have heard about in your
8 investigation is overshadowed by the huge problem with
9 waiting lists in Northern Ireland. The waiting times
10 are so long that there's a sense that that overshadows 13:14
11 everything. That doesn't mean that people shouldn't do
12 their job responsibly, as you have alluded to. But are
13 there any very senior level discussions as to how
14 people should minimise the harm to people on waiting
15 lists generally? I can't see any evidence of that in 13:14
16 any of the Trust documentation. Did you have
17 discussions about that as Associate Medical Directors,
18 for example, because when times are this long -
19 Mr. O'Brien has a point - patients will come to harm?
20 A. I know at meetings there would have been discussion 13:15
21 about trying to verify waiting lists, for example, by
22 writing out to people, you know, 'do you still require
23 this appointment and things like that'? I think
24 a letter would have gone back to GPs to say this person
25 has been added to the waiting list, it's a waiting 13:15
26 list, if the situation changes please contact us again.
27
28 In terms of whether the waiting lists were being
29 scrutinised to look to see whether something -- people

1 needed to be pulled out and moved or whatever, I'm not
2 aware of that. Mental health, where I work, is a bit
3 different, urgent things are very urgent. It's a
4 little bit different because of the type of morbidity
5 and the risk of mortality that we deal with. I'm 13:15
6 afraid I probably haven't fully answered that question.
7 I'm not sure that I am able to.
8 141 Q. Okay. But I think you can see what I am getting at?
9 A. I do, of course, yes.
10 DR. SWART: Thank you very much. That's all from me. 13:16
11 CHAIR: Thank you, Dr. Swart. Just a couple of
12 questions from me. It's clear that your MHPS
13 investigation, your report might not have been as
14 granular as perhaps Mr. O'Brien would have wished. In
15 your investigations, you have said that he agreed he 13:16
16 didn't do the triage, he agreed he didn't dictate
17 letters, and he agreed that he had notes at home; and
18 the only issue of dispute, in effect, between you and
19 Mr. O'Brien - or your investigation, I should say, and
20 Mr. O'Brien - was in relation to the private patients, 13:16
21 no matter what the numbers and the granular detail of
22 all of that was. Is that a fair summation?
23 A. Yes.
24 142 Q. Okay. Just in terms of your training, as you say you
25 probably had done more of these cases than many in the 13:16
26 Trust. In terms of training, it seems to be that there
27 is a lack of expertise and a lack of continued
28 knowledge and continued training, even aside from when
29 you are being asked to do one of these things. We are

1 looking at how the whole system could be improved.
2 I wondered what your view would be of having a regional
3 pool of medics who come in to do these investigations?
4 I mean, I was struck by your comment that no
5 consultants will do these any more. So, how can that 13:17
6 be addressed?
7 A. I completely agree that I think there needs to be
8 a pool of expertise so that you are repeatedly exposed
9 to this and repeatedly doing this, because you learn
10 every time you do it. As you have highlighted, you 13:17
11 know, we didn't go into as much detail as we could
12 have. We are not saying as we should have because,
13 honestly, Mr. O'Brien, as you have indicated, acceded
14 to a lot of these points. But I think the time to do
15 them and the expertise to do them needs to be in a pool 13:18
16 of either three or four people in each Trust, if that
17 would cover it and I would like to think it could cover
18 it. If those people can be trained together and if
19 those people can form a support network, and the sort
20 of issues that have been raised already; be a practical 13:18
21 support to each other, I think that would be very,
22 very, very helpful. It also, as you say, keeps that
23 learning going. If somebody isn't involved in an
24 investigation like this for a period, at least if they
25 were going to those sort of forums and learning from 13:18
26 other people, that keeps that skill going.
27
28 One of the difficulties, it's a bit like induction in
29 hospitals. Junior doctors come into hospitals now and

1 inductions could last two weeks, because everybody has
2 to have a topic on the induction but they must be told
3 before they start how to do this and how to do that.
4 It becomes completely unmanageable and you start taking
5 things out of induction and replacing them with 13:19
6 something else. All of it is relevant and all of it is
7 important, but it's about trying to work out -- and
8 that's why I think this training needs to be targeted.
9 It's not something that should be done for consultants
10 as a body, it needs to be targeting people who are 13:19
11 interested in doing it and are willing to take the time
12 out from their clinical work. If you have somebody who
13 is very focused and very involved in clinical work and
14 doesn't really want to take the time out to do this, I
15 don't think that's helpful. I think targeting people 13:19
16 who are interested in doing it and who have time in
17 their job plan to do it and then bringing them together
18 is, I think, the way to go forward with this.
19 143 Q. Okay. That's interesting and helpful, thank you. Just
20 one other thing. You talked about the impression that 13:19
21 you formed. Impressions are formed on a cumulative
22 basis. I take it it was just an overall impression as
23 a result of all you heard from everyone you spoke to?
24 A. Yes, and I suppose that's exactly what I was trying to
25 say. It was information from witness statements; it 13:20
26 was information from e-mails; it was information from
27 the documentation I was provided with before; it was
28 information from the meetings with Mr. O'Brien himself
29 and trying to plan and trying to organise those

1 meetings. You just form -- you stand back and you form
2 an overall impression, you know. You walk away and you
3 think this is my impression of something. It's never
4 something that's formed in a single contact or a single
5 moment in time. It's always something that's much, 13:20
6 much wider than that.
7 144 Q. Okay. Thank you very much, Dr. Chada. I think we have
8 concluded with your evidence. We hopefully will not
9 need to call you back but I am sure if we need any
10 further information, we can ask for it in writing. 13:20
11
12 Mr. Wolfe, it's now twenty past one, so if we sit again
13 at twenty past two for our afternoon's witness, to give
14 people sufficient time for lunch.
15 MR. WOLFE KC: Yes. Ms. Horscroft is taking the next 13:21
16 witness, who is Mr. Wilkinson.
17 CHAIR: Who has been waiting here all morning, waiting
18 patiently.
19
20 THE INQUIRY ADJOURNED FOR LUNCH AND RESUMED AS FOLLOWS: 13:21
21
22 CHAIR: Good afternoon, everyone.
23 MS. HORSCROFT: Good afternoon, Chair. Your witness
24 this afternoon is Mr. Wilkinson, and Mr. Wilkinson will
25 take the oath. 14:20
26
27
28
29

1 JOHN WILKINSON, HAVING BEEN SWORN, WAS EXAMINED BY
2 MS. HORSCROFT AS FOLLOWS:
3
4 MS. HORSCROFT: Thank you, Mr. Wilkinson.
5 14:21
6 In preparation for your evidence today, Mr. Wilkinson,
7 you have prepared first of all a response to a Section
8 21 notice, and then yesterday as well you filed an
9 addendum with some corrections to that. I propose,
10 first of all, just to take you to the first page of 14:21
11 your Section 21 response. That can be found, please,
12 at WIT-26091. Do you recognise that, Mr. Wilkinson, as
13 being the first page of your response? I think you are
14 nodding yes.
15 A. I can, yes. 14:21
16 145 Q. Just for the transcript. Thank you. Then if we could
17 go please to WIT-26199. Scroll down. 26119, thank
18 you, Mr. Lunny.
19 A. That's it, yes.
20 146 Q. That's your signature as it appears? 14:22
21 A. Yes, it is. Indeed.
22 147 Q. Subject to the corrections that we will come to in the
23 addendum, would you be content to adopt that as part of
24 your evidence today for the Inquiry?
25 A. Yes, I am. 14:22
26 148 Q. If we could go then to the addendum at this stage, the
27 first page reference is WIT-91941. Is that the first
28 page of the addendum statement that you have filed,
29 Mr. Wilkinson?

1 A. Yes, it is.
2 149 Q. If we could just go on to the next page then, please.
3 If we scroll on down to the bottom, is that your
4 signature, Mr. Wilkinson?
5 A. That's it. 14:23
6 150 Q. Would you like to adopt that as well as part of your
7 evidence?
8 A. Yes, I do.
9 151 Q. We will come to some parts of that in more detail as we
10 go through your evidence. Just by way of background, 14:23
11 your background is in education; isn't that right?
12 A. Yes, it is indeed. Yes.
13 152 Q. You have said in your statement that you were
14 a post-primary school principal for 20 years; you had
15 former involvement with the NICCEA and the 14:23
16 South-Eastern Education and Library Board?
17 A. Yes.
18 153 Q. You had said in your statement as well you were
19 appointed as Non-Executive Director to the Southern
20 Health and Social Care Trust on 15th February 2016? 14:23
21 A. That's correct.
22 154 Q. Are you still on the board?
23 A. I am, yes.
24 155 Q. Yes. In your statement as well, just for the Inquiry's
25 reference, we don't need to bring it up, but at 14:24
26 WIT-26116 you had said that upon joining the Trust, you
27 had no knowledge of Health and Social Care policies or
28 procedures or governance. Is that right?
29 A. That's absolutely true.

1 156 Q. You have gone on in your statement then at WIT - again,
2 we don't need to bring it up but for the references for
3 everyone for the Inquiry it's WIT-26106 - that you
4 underwent induction training for non-executive
5 directors from the 22nd September 2016 until 1st 14:24
6 December 2016. Is that right?
7 A. Yes, that's correct, yes.
8 157 Q. And you describe that as broad general training?
9 A. I would. I would describe it as very broad general
10 training, yes. 14:24
11 158 Q. Yes. What did you take away from the training?
12 A. I took away the complex nature of the organisation in
13 the first instance, and that on some occasions they
14 drill down very deeply into their own respective areas.
15 I went away at the end of that time fully understanding 14:25
16 the complexity of the organisation.
17 159 Q. You described as well in your statement that you had
18 training in respect of MHPS specifically on the 22nd
19 September 2016. I wonder if we could bring up
20 a paragraph from your statement, please, at WIT-26106. 14:25
21 If we could go down, please, to paragraph 64. If
22 I could just read out for the benefit of everyone, you
23 said:
24
25 "I received broad general training on the MHPS 14:25
26 Framework. The role of the designated Non-Executive
27 Director was unclear and was highlighted as such by the
28 trainer who, on several occasions, stated that the role
29 was indistinct and that the Department of Health had

1 been asked on several occasions for clarification but
2 none had been provided."
3
4 So, what did you take in respect of MHPS specifically
5 and the training around that? Did you feel that it was 14:26
6 beneficial, did you feel it gave you an understanding
7 of your responsibilities?
8 A. I took away a general understanding of the role of the
9 Non-Executive Director as the designated person, but in
10 terms of the detail as to how they would actually carry 14:26
11 out that role, I was still unsure of that role.
12
13 With regards to the way in which it was actually
14 delivered, there was an overriding comment made that,
15 look, the role of the NED, if I can use that phrase, 14:26
16 the role of the NED is indistinct; you have to search
17 for it and you have bring it together, and this is what
18 we have done for this level of training. At that stage
19 I had no knowledge that I was going to be asked to
20 undertake this role, so I was content that it was okay 14:27
21 at that high level of understanding. On reflection
22 now, I know that it wasn't sufficient.
23 160 Q. We will come in more detail to the description itself.
24 Just on the next page there, which is on the screen,
25 you have said that throughout the course of the O'Brien 14:27
26 case, you asked on at least two occasions for
27 assistance regarding role definition and clarification
28 but this was not able to be provided. Who did you go
29 to to ask for that?

1 A. Well, in the first instance I went to Mrs. Toal, and
2 then Mrs. Toal redirected that to DLS and they offered
3 their assistance with regards to that.
4 161 Q. Again, just on this page at paragraph 65, you have said
5 in respect of the Trust guidelines that you think that 14:28
6 they were mentioned at the induction but you don't have
7 a clear recollection of specific guidance and training
8 from them. Did you feel that the focus was more on the
9 MHPS Framework than the Trust guidelines?
10 A. No, I would agree with that statement. I felt that it 14:28
11 was more on the framework rather than the Trust
12 guidelines, although they were mentioned. There's no
13 doubt about that, that they were mentioned.
14 162 Q. We have also been provided - we don't need to bring it
15 up but for the Inquiry's reference at TRU-164752 - that 14:28
16 there appears to have been training for non-executive
17 Directors on the 8th December 2016. Did you attend
18 that?
19 A. Yes. That was a mop-up session for those new members
20 of the Trust non-executive directors, and for anyone 14:28
21 else who didn't attend the original training in
22 September. I sat in on that again just for my own
23 benefit.
24 163 Q. If we could bring up the MHPS policy where it defines
25 the role of the NED. It's at WIT-18499, please. If we 14:29
26 could scroll to paragraph 8, please. It says:
27
28 "The non-executive member of the board appointed by the
29 chairman of the board to oversee the case to ensure

1 that momentum is maintained and consider any
2 representations from the practitioner about his or her
3 exclusion, or any representations about the
4 investigation".
5 14:29
6 What did you understand that to mean in practice as to
7 how you would apply that?
8 A. Well, first of all can I say that the overriding
9 impression was that I was to ensure that the momentum
10 of the case was -- other aspects of it weren't 14:30
11 highlighted to me sufficiently. In terms of how
12 I would actually carry that out, that wasn't made
13 clear. If I could go on to say that I found the
14 process to be organic for me. In other words, as
15 I went through the process, I was learning on-the-hoof, 14:30
16 as it were. That was quite alien to me in terms of
17 where I came from. In terms of my other work it would
18 have been more detailed, it would have been more
19 prescriptive, it would have been guided more.
20 164 Q. You have said, I think, that the emphasis seems to have 14:30
21 been on the ensuring momentum aspect of it. It
22 obviously also refers to consideration of
23 representations. Did you feel that that was part of
24 your role, and did you feel suitably equipped or able
25 to deal with that? 14:31
26 A. I took that on board myself that that was part and
27 parcel of my role and therefore I did engage with that
28 particular aspect of the role. In terms of how
29 I actually would engage with, for example HR,

1 Mr. O'Brien, Case Manager, Case Investigator, that
2 wasn't clear and therefore very indistinct for me.
3 165 Q. Did you take advice on that whenever you ended up in
4 the role? I know you said it progressed organically
5 for you but did you take advice? 14:31
6 A. Absolutely. Again, that would have been through
7 Mrs. Toal, the HR person, HR Director.
8 166 Q. In your statement, the way you had described the role -
9 it's at paragraph 2 of your statement, I don't think we
10 need to bring it up unless you want to see it, 14:31
11 Mr. Wilkinson, but it's at WIT-26092 - you have said
12 that the primary purpose of your role was to ensure the
13 momentum of the MHPS process in respect of Mr. O'Brien
14 was maintained by ensuring timely responses to requests
15 made by him. Did you feel there was an obligation to 14:32
16 go beyond just any requests made by him? Did you feel
17 that your role extended beyond solely that aspect of
18 it?
19 A. No, I didn't. Put simply, no, I didn't. My role was
20 to ensure that I was -- I find this difficult because 14:32
21 to get the right word to describe the role of the NED
22 is most difficult, but I will use the term "listening
23 ear" at this stage.
24 167 Q. So, are you saying that you felt your role was really
25 kept solely to requests that were made by the 14:32
26 practitioner and it didn't extend, for example, to
27 ensuring the momentum beyond that, so being proactive
28 in terms of ensuring that the case was progressing. It
29 would only arise if the practitioner brought it to your

1 attention?
2 A. Yes, and Mr. O'Brien did bring certain things to my
3 attention and therefore I would have dealt with those
4 virtually immediately; if not, the next day.
5 168 Q. But you didn't feel that you had an obligation to, as I 14:33
6 say, be proactive or to ensure the momentum yourself
7 without it being led by him?
8 A. That wasn't my understanding of the role.
9 169 Q. If we could scroll up, please, to paragraph 7 of this
10 document. You will see the bottom line of paragraph 7. 14:33
11 It says:
12
13 "Only the Designated Board Member should be involved to
14 any significant degree in the management of individual
15 cases." 14:33
16
17 Did you feel that managing the case formed part of your
18 responsibilities?
19 A. No. If I was to try and manage the case, then I would
20 have to take into consideration every single aspect of 14:34
21 that case as it developed. As a non-executive
22 director, I didn't see that as part of my role because
23 perhaps I would have needed to have been full-time. I
24 didn't have the capacity, the capability, nor the
25 resource in order to take on that particular role. 14:34
26 170 Q. Did that aspect in respect of management, did that form
27 part of the training that you received or the advice
28 that you received whenever you had gone looking?
29 A. Absolutely not.

1 171 Q. The Trust guidelines seem to reflect a slightly
2 different definition of the role. I wonder if we could
3 bring those up at TRU-83702. If we could scroll down,
4 please. It states that:
5 14:35
6 "The non-executive board member must ensure that the
7 investigation is completed in a fair and transparent
8 way".
9
10 Did you consider yourself able to ensure that it was 14:35
11 fair and transparent? Is that something that you had
12 in your mind throughout the process?
13 A. It was in my mind with reference to Mr. O'Brien, and if
14 he had concerns that there were issues, that issues
15 weren't being dealt with by the Trust, then that was up 14:35
16 to me to try and intervene and ensure that he was being
17 treated in a fair and transparent way, but I was not
18 instrumental in changing the situation. I could make
19 representation but that's as far as it went.
20 172 Q. The last sentence there refers to the non-executive 14:36
21 board member reporting findings back to the Trust
22 Board. I think we will address that a bit more maybe
23 later on in your evidence, Mr. Wilkinson.
24 A. Okay.
25 173 Q. I am going to jump forward slightly to the meeting that 14:36
26 you had with Mr. O'Brien on the 7th February. This
27 meeting, of course we now know, was recorded. Were you
28 aware of that at the time?
29 A. No. I just find this difficult but I have to bow to

1 the fact that it's admissible. In my other job, if it
2 was going to be recorded, then you had to inform the
3 person that it was going to be recorded. But I have no
4 hassle with the evidence being recorded and being
5 admissible. I have nothing -- I have no concerns about 14:36
6 what's in it.
7 174 Q. That you weren't aware it was recorded?
8 A. In short, I wasn't aware.
9 175 Q. I just want to refer to it at this stage in respect of
10 what you'd said to Mr. O'Brien at that meeting about 14:37
11 what your role would be. I wonder should we just bring
12 it up, please. It's at AOB-56075. This is the
13 transcript of the meeting. At paragraph C:
14
15 "My role, as you would know, is to facilitate to 14:37
16 expedite the carriage to the investigating panel or
17 whoever your concerns and represent you to them
18 directly, and to keep pushing to efficiently and
19 effectively get this seen to".
20 14:37
21 Do you feel that that was a clear way of describing to
22 Mr. O'Brien what your role would be? Do you think that
23 went beyond potentially what your role would be in
24 practice?
25 A. I suppose really what those phrases are saying is that 14:38
26 I was going to be acting as a conduit, carrying
27 information to key personnel that needed to respond to
28 Mr. AOB. It wasn't necessarily saying that I would do
29 that work, I would meet face-to-face with the people

1 concerned. I didn't see that as being my role.
2 176 Q. If we could scroll down a little bit more. Just at
3 paragraph E, you say to Mr. O'Brien "I am here at your
4 disposal".
5 14:38
6 Again, do you think that that's open to interpretation
7 from Mr. O'Brien to have thought that potentially your
8 role went beyond how you saw it?
9 A. I don't think so. I think Mr. O'Brien was well-versed
10 in MHPS and Trust guidelines and that he would have 14:38
11 understood what my role was.
12 177 Q. Do you feel it was part of your role to provide support
13 to Mr. O'Brien? For example, sort of from an employer
14 relations perspective or from a comforting perspective
15 or beyond the role that you have described there, did 14:39
16 you feel that formed part of your role as the
17 Non-Executive Director?
18 A. I think this is one of the issues with the role of a
19 nonexecutive director, is finding the word that best
20 describes what the nonexecutive director will actually 14:39
21 do as a designated person. I don't want to be pedantic
22 about it but support can mean different things to
23 different people. That's why I think there needs to be
24 some sort of guidance material which describes the
25 activity of the nonexecutive director. It could be 14:39
26 supporter, it could be inquirer, investigator, it could
27 be so many other things. But that wasn't clear within
28 the guidance material, nor was that intimated to me.
29

1 Whether or not Mr. O'Brien interpreted it in a wider
2 degree, I can't stand over how he interprets that. I
3 can give him what the guidelines say. But as unpacking
4 that statement, that's most important.
5 178 Q. Mrs. Toal has given evidence to the Inquiry. In her 14:40
6 written evidence - again I don't think we need to go to
7 it but it's at WIT-41144 - she set out that the role of
8 the Designated Board Member is particularly difficult
9 in her view to comprehend, and she questions what that
10 can realistically be under MHPS. She also says that 14:40
11 she didn't believe that you, Mr. Wilkinson, would have
12 had sufficient knowledge to determine or challenge if
13 any of Mr. O'Brien's representations were responded to
14 appropriately. Do you think is that a fair evaluation,
15 in your view? 14:41
16 A. I think that's a very fair evaluation.
17 179 Q. In your own statement, you'd said that you remained
18 unclear as to the role of the nonexecutive director.
19 Was that throughout the process did you feel that you
20 were unclear? 14:41
21 A. Throughout the process, and I kept returning to
22 Mrs. Toal, asking the same question and seeking advice
23 from DLS with regards to what my role actually was
24 because I was concerned to be fair and open and
25 transparent with Mr. O'Brien but, at the same time, 14:41
26 honouring my role. But I remained unclear.
27 180 Q. When you were seeking advice, were you seeking advice
28 on specific queries or questions or were you seeking
29 advice on the role in general?

1 A. I think both of those were the case. The initial
2 response would have been, look, here is a set of
3 concerns, there are 37 of them, what do I do with
4 these? How do I manage this, because I had no previous
5 knowledge of dealing with that sort of thing within the 14:42
6 Trust. So I was seeking advice in order to try and
7 expedite and to make some sort of return to
8 Mr. O'Brien.
9 181 Q. As we go through, we will maybe see examples of that.
10 This is actually a correction that you had made in your 14:42
11 statement but you were appointed in or around the 9th
12 January, and that seems to be when you responded to
13 Mrs. Brownlee's request to take this on. Did any of
14 the other nonexecutive directors have more experience
15 in MHPS than you, or why do you think you were 14:42
16 selected?
17 A. In answer to your first question, yes, there would have
18 been others who would have had more experience, simply
19 because they were there longer than I was. Why was
20 I chosen? I suppose that relates to -- well, I don't 14:43
21 know really why I was chosen. I could speculate why I
22 was chosen. If you want me to answer that, I can do
23 that.
24 182 Q. Well, what were your thoughts?
25 A. What's my thoughts on that? As you alluded to at the 14:43
26 very beginning of the interview, I was a member of the
27 Southern Education and Library Board. During my time
28 with them, I got to know Mrs. Brownlee and, in fact,
29 Mrs. Brownlee asked me to join the Trust. Well, she

1 asked me to apply. Now, you had to make a choice of
2 where maybe you want to exercise that role, so I had
3 the Southern and South-Eastern Trust down. Then
4 eventually I got word that I was going to be appointed
5 to the Southern Trust. I expect that because she knew 14:44
6 me, perhaps that's why she asked me to take on that
7 particular role.
8 183 Q. So there isn't a formal mechanism in place or
9 a procedure in place for selecting or choosing who the
10 Designated Board Member is going to be? 14:44
11 A. Not as far as I am aware.
12 184 Q. Do you think something like that might be appropriate
13 or helpful?
14 A. Yes, in some senses, but more explicit training would
15 be what I would be looking for. 14:44
16 185 Q. You said in your statement then that you met Mrs. Toal
17 to review the role after being appointed. What did
18 reviewing the role involve? What was the discussion
19 that you had with Mrs. Toal?
20 A. I have to say that it comes back down again to that 14:44
21 phrase which is about maintaining the momentum of the
22 investigation, and, if there was an exclusion, to
23 represent the person at the time of the exclusion, or
24 to support the person if there were some concerns that
25 he had. 14:45
26
27 In terms of illustrating the role and how you would
28 actually engage with the role, how you would engage
29 with the person or the people that you might want to

1 engage with, how would you set up meetings, none of
2 that was made explicit. I'm not sure how this
3 proceeded in previous cases. I have no awareness of
4 how it was done in previous cases, nor were there
5 illustrations given as to how it was performed on 14:45
6 previous occasions.
7 186 Q. You also received a telephone call or had a meeting on
8 26th January with Mrs. Brownlee about the case. What
9 was the substance of that communication?
10 A. Sorry, what date was that again? 14:46
11 187 Q. 26th January 2017 you have met with Mrs. Brownlee. I
12 can bring it up on the screen?
13 A. No, no, you are fine. That was a meeting?
14 188 Q. Yes.
15 A. Yes. 14:46
16 189 Q. At the outset; it would be the first meeting.
17 A. Really, the substance of that was, John, this is
18 a really good surgeon, he has the interests of the
19 patients at heart, I'm not sure why this process is
20 where it is at the moment, just look after him. 14:46
21 190 Q. Had you been aware at that stage of any connection or
22 friendship or relationship between Mrs. Brownlee and
23 Mr. O'Brien? Were you aware of that, anything like
24 that?
25 A. No, I wasn't aware but, sorry, at that meeting she did 14:46
26 mention that she was a patient of his and that, in
27 essence, her life was saved by him through surgery.
28 191 Q. Did you feel that that discussion or the way she
29 approached that discussion was appropriate in the

1 circumstances?
2 A. At that time, I just took it at face value, I have to
3 say. But as things progressed, then I began to
4 question. I use the term "independence of the Chair".
5 192 Q. We will maybe come on in more detail to that. Just to 14:47
6 go back briefly to your meeting with Mrs. Toal. What
7 background or knowledge about the case were you given
8 in terms of the details of the history of the case by
9 Mrs. Toal?
10 A. Absolutely minimal. I have to say there was no 14:47
11 documentation associated with that meeting, which, on
12 reflection, would have been very useful. Because I was
13 just working from the SAI stage but I didn't know
14 anything about -- and maybe it wasn't pertinent, maybe
15 it was better to be clean like that, I'm not sure. But 14:48
16 dating back 2014, 29 and the lead-up to all of this, I
17 was unfamiliar with that. Maybe that's the way it
18 should have been, I'm not sure.
19 193 Q. Obviously throughout the process, Mr. O'Brien has asked
20 you and come to you with different queries that it 14:48
21 appears you didn't feel - you can correct me if I am
22 wrong - equipped to deal with that. Would that be
23 fair?
24 A. Absolutely. The concerns and then the questions were
25 so diverse and were so scattered to be addressed by 14:48
26 different clinicians and management within the Trust,
27 it would have taken me an age to address. So I focused
28 on -- I focused on Mrs. Toal and I put the monkey on
29 her shoulders, as it were. I don't mean that in

1 a disparaging sense, I just mean that she was taking
2 control of that and seeking the questions -- seeking
3 answers to the questions to be addressed.
4 194 Q. When you had said that you didn't know if it would be
5 helpful to have more background or more knowledge of 14:49
6 the history, do you think something like that would
7 have assisted you maybe in being more instrumental in
8 your role in terms of dealing with Mr. O'Brien's
9 queries and concerns?
10 A. I have absolutely no doubt about that, but then that 14:49
11 brings me back to the question of what words describe
12 my role. I must apologise to the Panel for that
13 because it's something that sat with me throughout all
14 of this. Would I challenge Mr. O'Brien? Would I be an
15 open supporter of Mr. O'Brien? Was my role to 14:49
16 investigate? Those are only some of the action terms,
17 perhaps, that could apply to the role of the designated
18 person.
19 195 Q. You had then your first meeting with Mr. O'Brien on the
20 7th February 2017. It seems that Mr. O'Brien reached 14:50
21 out to you on 1st February, and that's a correction
22 you've made in your addendum statement. But you met
23 with Mr. O'Brien and his son, and that meeting was
24 recorded as well. Did you feel any impact of
25 Mr. O'Brien's son being present? 14:50
26 A. Yes, to an extent again. Although I didn't allow
27 myself to be, and I will use the term "intimidated", by
28 the fact that he was there. But what I did find
29 strange - and I have been listening to some of the

1 other interviews - what I did find strange was that his
2 son interjected every now and again during the
3 interview process. Again, looking back to my role in
4 education and if I was involved in an investigation and
5 there was someone there as a supporter, or someone to 14:51
6 comfort someone during this process, they did not have
7 the right to speak during the process. So, whenever
8 his son was interjecting, maybe to clarify something or
9 maybe to correct Mr. O'Brien, I found that strange,
10 I did find that strange. 14:51
11 196 Q. I think you described this meeting in your witness
12 statement as being a difficult meeting. What made it
13 difficult?
14 A. Well, there were two things. First of all, getting
15 a grasp of where the case was, bearing in mind that 14:51
16 there was a history to it. So, I was being brought
17 into that and trying to catch up and listen to the
18 different processes that had taken place up until that
19 time. And the interjection of his son was a strange
20 meeting, and strange in terms of the tenor of the 14:52
21 meeting. Do you want me to...
22 197 Q. Well, if you have anything else to add to that.
23 A. Well, the tenor of the meeting, and I think I make it
24 in my statement and it's not an exact statement of what
25 was actually said, I said that Mr. O'Brien stated to me 14:52
26 that the situation as it was, and if it was to
27 continue, he would bring embarrassment to the Southern
28 Trust and to certain people within the Southern Trust.
29 Now, that's my paraphrasing of it, it's not a direct

1 quote. But I found that strange, that that tension
2 existed.
3 198 Q. That's one of the corrections that you have made in
4 your addendum statement as well. You are accepting,
5 I think, that he didn't use the words "degree of 14:53
6 embarrassment"; is that right?
7 A. No. Those are my words to try and describe what
8 Mr. O'Brien was actually saying.
9 199 Q. Why did that language come into your head to put into
10 your statement? Obviously now you have seen the 14:53
11 transcript and you can see that those aren't the words
12 that were used, but why that language in particular?
13 A. That was my -- I have to say, that was my understanding
14 of what he was saying. He mightn't have used the word
15 "embarrassment", there may have been other words used, 14:53
16 but that was my understanding of where he was with
17 regards to this particular investigation.
18 200 Q. At this meeting -- and you'd referred to, I think,
19 Mrs. Toal in your initial meeting with her and her
20 reference to your representations around the 14:54
21 practitioner being excluded. Obviously at this stage
22 whenever you have met Mr. O'Brien, he has already been
23 excluded for a number of weeks. Were you aware of
24 that?
25 A. Eventually. You see, because I wasn't appointed until 14:54
26 later, as you know, I only became aware of it whenever
27 I was appointed that he had been excluded.
28 201 Q. That's not obviously how it's set out in the
29 guidelines. What were your views whenever you realised

1 that he had already been excluded?
2 A. Well, that's another strange aspect to where the
3 process was. It was strange that if it was the case
4 that the informal process was taking place then, that
5 I should have been appointed as a designated person. 14:54
6 So I took up the role where it was.
7 202 Q. Did you query the fact that he'd already been excluded
8 without there being a Designated Board Member
9 appointed?
10 A. I didn't. No, I didn't query it, no. 14:55
11 203 Q. Did you think you should have?
12 A. Well, whilst I say I didn't query it, I did say look, I
13 am coming into this role late but I didn't ask why.
14 204 Q. I don't think the board was informed of his exclusion.
15 I know that the board was informed later in January. 14:55
16 Was that right?
17 A. Obviously not because as soon as an exclusion is being
18 proposed, then the board should be informed of it.
19 205 Q. Did you feel a need to inform the board once you were
20 appointed and realised that he had been excluded 14:55
21 already and the board hadn't been informed?
22 A. This is another strange aspect of the role. From my
23 understanding of the designated person at that time,
24 and I was told this clearly, that during the process,
25 then the board should be kept, I will use the term 14:56
26 "clean of the situation". During the process I did
27 query that on an informal basis, about to what extent
28 should the board be kept informed of progress, because
29 it's clear within the guidelines that the nonexecutive

1 director should have a relationship with the board but
2 what that explicitly was, I wasn't sure.
3 206 Q. Whenever again you met Mr. O'Brien on this date, on 7th
4 February, were you aware of the time frames of the
5 investigation; the fact that, for example, the 14:56
6 investigation in the guidelines should be concluded
7 within four weeks and that time period was...
8 A. Absolutely. That was clear in my mind and I made
9 representation, I don't know how many times, to the
10 Trust with regards to the time scales. 14:57
11 207 Q. Did you feel that your representations were
12 instrumental in being able to change anything about
13 that?
14 A. It didn't change anything because of the ongoing
15 investigation that was taking place. As the 14:57
16 investigation went on, then the time scales seemed to
17 expand to accommodate the necessity of the
18 investigation.
19 208 Q. In that same meeting on the 7th February, you've said -
20 and it's in the transcript - that the conduct of the 14:57
21 investigation is concerning. What were you basing that
22 on, or where did that particular phrase come from?
23 A. Really in and around the time scales and how that was
24 being managed. If the guidelines say four weeks, then
25 it should be four weeks. There may be extenuating 14:57
26 circumstances that cause it to expand, but perhaps then
27 the person under investigation needs to be made aware
28 of why it was expanding. Then I suppose there were,
29 and I will use the term "competing priorities here".

1 The competing priority was, first of all, fairness and
2 transparency with regards to Mr. O'Brien. That's
3 a critical aspect of the investigation process. But
4 also there's the competing priority with regards to
5 patient safety and the concerns around patients. So, 14:58
6 those were two competing priorities that were, in my
7 view, operational throughout this investigation.
8 209 Q. From the outset, did you have it in your head that
9 there was a patient safety risk involved in this?
10 A. Not from the outset. Not from the outset at all. That 14:58
11 became more apparent as the investigation continued.
12 210 Q. When do you think that started to enter your
13 consciousness?
14 A. That's difficult to say. What I would say would be
15 whenever I saw additional SAIs being looked at, 14:59
16 whenever you had the number of untriaged referrals, and
17 the other three areas, then it became apparent to me
18 that maybe more time needs to be spent on this. But
19 that's not my call as an NED, I suppose it's
20 management's call with regards to how that should be 14:59
21 expedited.
22 211 Q. I suppose, though, you know, as a non-executive member
23 of the board and your responsibility to the board, did
24 it occur to you to think should I ask somebody if
25 there's a patient risk involved in this? 14:59
26 A. With regards to the patient risk, and again this is not
27 -- I had an informal conversation in and around a lunch
28 table with my colleagues, saying, look here, there are
29 issues out here. Now, not specific to the case. But

1 their response would have been this needs to be kept
2 away from us because it might damage future
3 investigations. I am talking about if there were
4 appeals.
5 15:00
6 Now, on reflection, I should have brought it to the
7 Governance Committee or to Trust Board and let the
8 Chair of those two committees say to me this is not
9 appropriate for this meeting.
10 212 Q. You had said, I think, at the outset you had been aware 15:00
11 that there was an SAI. I know there were some that
12 came later but you had, I think, been aware that there
13 was an SAI at the start. Did that not flag to you that
14 there are patient safety risks here; that there is an
15 issue of concern, as you say, to potentially take to 15:01
16 the Governance Committee or an appropriate person on
17 the board to let them know of the concern?
18 A. Yes. I would have assumed, I suppose, that the
19 Director of Human Resources, Mrs. Toal, would have seen
20 the opportunity, if that was required. I have to say 15:01
21 that during my tenure of this particular role, I was
22 relying very heavily upon Mrs. Toal, and indeed
23 Mrs. Hynds, who were very helpful in terms of me
24 carrying out the role.
25 213 Q. I think actually following this meeting on the 7th 15:01
26 February, you indicate in your statement that you had
27 met Mrs. Toal the next day, and that it was to discuss
28 the paper of concerns, I think, that Mr. O'Brien had
29 brought to you. I think actually if we just bring up

1 your contemporaneous note of that, it's at WIT-26121.
2 It's just here you have written, I think, "clarify the
3 role, protect the role".
4 A. You are right, yes. Arising out of that conversation
5 with Mr. O'Brien, it was clear to me I needed more 15:02
6 information about how to carry out the role. In terms
7 of protect the role, so that I wasn't overstepping the
8 mark, so that I wasn't going too far, so that I wasn't
9 seen as a supporter, so that -- and this is back to the
10 definition again. So, that's why the role was being 15:02
11 protected; just to make sure that I was doing the job
12 right, doing the thing right and doing the right thing.
13 214 Q. Were you assured by Mrs. Toal that you were going far
14 enough or not going too far?
15 A. No. She took advice on that from DLS to see where 15:03
16 I should be just with regards to that.
17 215 Q. In respect of this paper of concerns specifically or
18 just --
19 A. No, in general, in general. But also in terms of the
20 paper, of the 37 questions -- 37 concerns. 15:03
21 216 Q. Yes. I think that it's ultimately decided then that
22 the response to that would come from the Case Manager
23 rather than yourself?
24 A. That's right. That's right.
25 217 Q. Is that because you didn't feel that you had the 15:03
26 requisite knowledge to be able to deal with it
27 yourself?
28 A. I wouldn't have the knowledge, I wouldn't have the
29 time, I wouldn't have the resource. I'm

1 a non-executive director, I'm not a full-time employee
2 of the Trust. I'm employed one day a week. I'm not
3 saying that I don't want to put in the time, but on
4 average you are doing two-and-a-half days a week
5 I would say, at least, counting the time at home you 15:04
6 are going to be reading papers for Trust Board, for
7 governance audit and so forth.
8 218 Q. On the 2nd March then, it seems that you'd texted
9 Mr. O'Brien seeking a meeting. As you set out in your
10 statement, on that same day you also seem to have 15:04
11 gotten a phone call from Mrs. Brownlee. What was the
12 context of that phone call from Mrs. Brownlee?
13 A. I think she was looking me to be more supportive of
14 Mr. O'Brien, and she had concerns about the situation.
15 I am not sure if I have a contemporaneous note on that 15:04
16 or not. I can't remember if that's the telephone call
17 where Mrs. Brownlee said that Mrs. O'Brien was
18 suffering as a result of that.
19 219 Q. Well, if it helps you, I can bring up what
20 Mrs. Brownlee says about -- it's at WIT-90902. In that 15:05
21 first paragraph, she said:
22
23 "I remember Mr. O'Brien or possibly his wife phoning
24 the office and speaking to me about the long drawn out
25 process and the Trust not meeting his time scales". 15:05
26
27 I think she refers to how upsetting Mrs. O'Brien found
28 the situation. If we could scroll down. She says
29 then she informed you - if we could scroll down a
little bit

1 to that next paragraph - that she had asked you to call
2 Mr. O'Brien to offer additional support, and you
3 explained you didn't feel you needed to call
4 Mr. O'Brien. What's your recollection, I suppose, of
5 the -- 15:06
6 A. I think that summarises it fairly well in terms of
7 Mrs. Brownlee was asking me to provide additional
8 support, and the aspect of Mrs. O'Brien feeling that
9 this was causing her health issues was told to me by
10 Mrs. Brownlee. I think what I was doing, I was making 15:06
11 the point that in terms of the independence of the role
12 of the designated person, then I was going to adhere to
13 that and any representation that was being made to me,
14 I would discard. I think that's what I was saying
15 there. I was marking the line a bit. 15:06
16 220 Q. As in representations from Mrs. Brownlee you would
17 discard?
18 A. Yes.
19 221 Q. You do then, though, seem to contact Mr. O'Brien that
20 day so was that as a result? 15:07
21 A. No. It wasn't as a result of that. Definitely not as
22 a result of that.
23 222 Q. Did you feel the timing --
24 A. The timing, yeah. Absolutely.
25 223 Q. Did you feel that that was appropriate contact from 15:07
26 Mrs. Brownlee?
27 A. No, I don't, because there were successive telephone
28 calls. I note in some of the statements, there may
29 have been allusions that I was making the phone call to

1 Mrs. Brownlee. If there was one phone call from me at
2 the beginning to set up a meeting, that was it. Any
3 other time, Mrs. Brownlee would have been contacting
4 me. I know that because of the contemporaneous note
5 I would have made in my diary. 15:07
6 224 Q. Obviously Mrs. Brownlee sets out - you can see on the
7 screen - she doesn't consider herself to have been
8 advocating for Mr. O'Brien, just in fairness to her,
9 and she repeats that throughout her statement. But do
10 you feel like there was an attempt to pressure or put 15:08
11 influence onto you by reaching out in that way?
12 A. I would use the word "influence".
13 225 Q. Following then your reaching out to Mr. O'Brien on the
14 2nd March, you have a conversation with him then on the
15 6th March. In your statement, you had set out about 15:08
16 that, that you had concerns that he misunderstood the
17 role that you were to play. You say in your
18 statement -- I don't think we need to bring it up but I
19 will just read it for the Panel's benefit at WIT-26097.
20 You said: 15:08
21
22 "I did not perceive myself to be an advocate, a
23 representative, supporter, mediator or inquirer.
24 advised AOB that if he needed aspects of the Inquiry
25 clarified, he should address his queries and concerns 15:08
26 to the Case Investigator and Case Manager directly."
27
28 Was that following advice that you had passed that
29 message on to Mr. O'Brien, or how did you come to that

1 conclusion that he should contact them directly?
2 A. As I said earlier, this was just a concern of mine,
3 just what was my role. Those words were trying to give
4 an illustration of what that role could have been.
5 Following advice, it was that I was to be careful about 15:09
6 how much I was -- or how far I was being drawn into the
7 case. Therefore, I was saying to Mr. O'Brien maybe you
8 should be contacting the people or the person directly
9 as opposed to using me as a conduit, because that was
10 only going to delay the time scale. I also said that 15:09
11 if he was finding that there was some degree of
12 time-lag between when he was asking the question and
13 when he was getting a response, then of course he was
14 to contact me and then I would try and expedite the
15 matter. 15:10
16 226 Q. Mr. O'Brien then e-mails you on the 6th March, so the
17 same day as this telephone conversation, and he says
18 that he was taken aback and disappointed?
19 A. Mm-hmm.
20 227 Q. He also says that it implied that "your role on be my 15:10
21 behalf does not enjoy an autonomy". For the Panel's
22 behalf, that's AOB-01464. Did you get an impression
23 from Mr. O'Brien during your conversation with him that
24 he was disappointed in how you were reflecting the role
25 should be engaged? 15:10
26 A. I'm hesitating because I definitely know later that he
27 was disappointed. Perhaps he was thinking that
28 I wasn't doing what he wanted me to do. Therefore,
29 perhaps he didn't see the role as being important

1 enough for him to continue with because it wasn't
2 impacting the progress of the investigation. Later on
3 in one of the transcripts, he uses the word to describe
4 the role of the nonexecutive director, or me, as
5 "useless". That's a quote. I think that's from 15:11
6 Gráinne --
7 228 Q. I think that's in a discussion with Gráinne Lynn from
8 NCAS.
9 A. That may have been where he was at that particular
10 time. But there was another meeting on 21st March when 15:11
11 he passed on other information to me.
12 229 Q. What other information?
13 A. Well, I think those are the questions that he was
14 wanting asked. I distinguished between 37 concerns in
15 the first meeting and then I think there were 49 15:11
16 questions later. So he was still -- he was still
17 interacting with me at that stage.
18 230 Q. Yes. You described that he was disappointed in your
19 role. Do you feel that your description or your
20 engagement with him led to him having potentially what 15:12
21 you see as a misunderstanding or a misconception of the
22 role?
23 A. He may have had an understanding of what my role was
24 and maybe I didn't agree with what I thought his
25 understanding was. This is the problem with the 15:12
26 designated -- and I am not making excuses for myself on
27 this, I just see this as being a big issue that needs
28 to be addressed.
29 231 Q. He does then, as you say, send through I think it's 47

1 questions --
2 A. Yes.
3 232 Q. -- to be addressed. You respond to that. If we could
4 bring up AOB-01464, please. This is your response.
5 I think it's fair to say, and you can tell me if I am 15:13
6 wrong, but you don't seem -- the line that you use is
7 "as per my role, I will continue to ensure that the
8 momentum is maintained". There doesn't seem to be
9 further clarification, for example, that you aren't
10 going to be an advocate for him, or are the words that 15:13
11 you have used in your statement. Do you feel that you
12 should have set that out more clearly to him?
13 A. In my opinion, and I am open to correction, I didn't
14 see myself as an advocate for Mr. O'Brien. In essence,
15 to maintain the momentum was a critical aspect of it; 15:13
16 to respond to concerns that he had was a critical
17 aspect of it; to ensure that he was being heard and
18 that his concerns were being responded to in a timely
19 manner, that's what I was trying to achieve.
20 233 Q. You feel like you were clear enough with him about 15:14
21 that?
22 A. Absolutely.
23 234 Q. You do then have a further meeting, I think, with
24 Mr. O'Brien and his son on the 22nd March. You record
25 then in your statement that from that point on you've 15:14
26 limited direct contact between -- sorry, from
27 Mr. O'Brien, made by Mr. O'Brien to yourself, was how
28 you put it, and you say you felt uneasy about that.
29 Why uneasy?

1 A. Well, he was copying me into a lot of e-mails that were
2 going between different people within the Trust.
3 Again, it's clarity in and around the role. I was
4 uneasy because I wanted to be in a position to help or
5 assist with the progress of the investigation but 15:15
6 knowing where the demarcation lines were was difficult.
7 If Mr. O'Brien wasn't contacting me directly, then that
8 was a cause of concern. I brought this up with DLS.
9
10 But every time I was copied into an e-mail, I took that 15:15
11 as being a personal request to me so I was still
12 following up copied e-mails. Maybe they were directed
13 at someone else but I felt that I needed to. If there
14 was a delay on something, I would have been on the
15 e-mails to Mrs. Toal or Siobhán, Mrs. Hynds, or 15:15
16 Dr. Khan saying, look, this needs to be dealt with, you
17 need to expedite this, what is your response to this?
18 So, I was still pushing on even though Mr. O'Brien had
19 almost sidelined me in this because the e-mails weren't
20 directed to me directly. That was my understanding. 15:16
21 235 Q. If we go back at the outset of your evidence, you seem
22 to have suggested that, in your view, your role was to
23 maintain momentum in respect of representations made by
24 Mr. O'Brien. Because you weren't then having direct
25 contact from him, did you feel that your role had 15:16
26 become superfluous or did you feel that there's still
27 an obligation on you to ensure the momentum, whether or
28 not it's coming directly from Mr. O'Brien?
29 A. I felt morally that I had an obligation to follow that

1 and to keep my eye on what was happening. Regardless
2 of the position or the impression that Mr. O'Brien had
3 of me, I still felt that I had to track that and follow
4 that, and therefore still make representations to key
5 personnel who were carrying out their respective roles. 15:17
6 236 Q. The description in the MHPS guidance of your role, it
7 says "and consider representations", so the ensure
8 momentum "and" rather than by. I suppose I am just
9 wondering even if that was your understanding of the
10 role, was it correct and should you have been more 15:17
11 proactive in terms of seeking to push the case forward
12 even if there wasn't representation coming from
13 Mr. O'Brien?
14 A. I still was doing that through my e-mails saying to
15 different people look, there are outstanding witness 15:17
16 comments here, can you progress this? So I was still
17 asking the question. But in terms of the actual -- you
18 see, it's a different role. Within education I would
19 have been saying you get this done and get it down now.
20 So there was that -- there was that, I will call it 15:18
21 a power element. In my role, I was almost just
22 offering advice because -- sorry.
23 237 Q. No, sorry, you finish.
24 A. No, I've finished.
25 238 Q. I suppose I am wondering why didn't you feel you had 15:18
26 that power? I mean, that's what your role is set out
27 to do. Why did you not feel that you could be more
28 instrumental? What could you have done to be more
29 instrumental?

1 A. I don't know what I could have done that would have
2 made it more instrumental, bearing in mind the
3 knowledge that I have of the role. I was pressurising
4 rising people to respond.
5 239 Q. I think one thing again that Mrs. Toal had suggested 15:18
6 this was in your oral evidence -- I don't propose to go
7 to it but it's at TRU-03421. She suggested I think the
8 missing part of all this was somebody out of those,
9 myself, Dr. Khan the Medical Director, Mr. Wilkinson,
10 actually sitting down and saying right, where are we 15:19
11 with this? That's how she put it.
12
13 Did it ever occur to you say we need to get everyone
14 around a table here and try and work out what the
15 blockages are and more forward? 15:19
16 A. There would have been some meetings with Mrs. Toal and
17 Mrs. Hynds and myself, and at those meetings we were
18 teasing out some of those issues. But you could easily
19 explain away why it was taking longer than expected to
20 carry out the role or the investigation within the time 15:19
21 scale.
22 240 Q. Whenever you say easily explain away, you know, was
23 that that you were just being told we need more time
24 and did you accept that at face value, or did you dig
25 you know if -- if you are saying it was easily 15:20
26 explained, did you dig beyond the explanations you were
27 being given?
28 A. Maybe I shouldn't have used the words "easily
29 explained". It was explained in terms of the volume of

1 material that had to be looked at, in terms of
2 clinicians who were already doing a full day's work and
3 had to find the time in order to do this. Some
4 clinicians were on holidays, and that could have been
5 a four-week period. So, there were reasons why it 15:20
6 couldn't be carried through as quickly as I would have
7 wanted to.
8
9 Then the question has to be asked, is the four-week -
10 and this is coming from an educationalist as opposed to 15:20
11 a medical person - is the four-week period a reasonable
12 period to expect? I am well aware of the pressure
13 that's being exerted on a clinician during this time
14 and it's best to work to as limited a period of time as
15 you can, but there may be extenuating circumstances 15:21
16 where you have to operate outside of that four-week
17 period.
18 241 Q. I suppose what I'm asking is were you accepting at face
19 value that the Trust was telling you it's going to take
20 longer than the four weeks and whenever that kept 15:21
21 getting extended, did you just accept that?
22 A. Yes, because what else -- this is a -- what else was
23 I to do? Was I to investigate that? Was I to bring
24 people in and investigate that? Is the investigative
25 part of the nonexecutive director a key aspect of it? 15:21
26 If it is, then I doubt whether or not a layperson is
27 the person to carry out this role.
28 242 Q. Who do you think then would have been more appropriate?
29 A. Someone placed within the health system, who is well

1 trained. Because it is a well -- I believe now it's
2 someone that needs to be well-trained, and needs to
3 know the structures and processes within the
4 nonexecutive director role. That person needs to know
5 what he or she can or cannot do and what is expected of 15:22
6 them.
7 243 Q. You have referred to being copied into e-mails and so
8 on with updates. Throughout 2017 and 2018, there are
9 e-mails and you seem to, as you have referred to it,
10 had meetings, for example, with Mrs. Hynds. I'm not 15:22
11 going to go to all of these but I will give some
12 references for the Panel's note.
13 A. Yes.
14 244 Q. So at TRU-261888, on the 6th February Mrs. Hynds had
15 provided you with an update about the exclusion and the 15:23
16 return to work. You appear to e-mail Mrs. Toal
17 thereafter on the 15th February, and that's at
18 AOB-01442. What you say there is that you would urge
19 the Trust to process these matters as a matter of
20 urgency. It seems then that you had a meeting with 15:23
21 Mrs. Toal and Dr. Wright on the 23rd February. What
22 you say in your statement around that, which is at
23 WIT-26095, is that you were satisfied that the momentum
24 of the case would be maintained. I am just wondering
25 what gave you that assurance; what allowed you to be 15:23
26 satisfied that the momentum would be ensured or
27 maintained?
28 A. Because they were explaining to me what they were
29 actually doing and how they were doing it, and that

1 gave me satisfaction. Again, I didn't investigate, I
2 didn't interrogate them with regards to what they were
3 doing but I was satisfied, on face value, that they
4 were doing what they were saying they were doing.
5 245 Q. Did anybody at any stage give you an idea that it won't 15:24
6 take four weeks but it might take X amount of weeks?
7 A. Oh, yes.
8 246 Q. I am more asking was there ever a target time scale
9 that they had in mind, or did it just appear to be
10 open-ended to you? 15:24
11 A. No, I did ask the question about when they thought that
12 it would be finished, and that was one of Mr. O'Brien's
13 questions. If my memory serves me right, I think they
14 intimated a completion date in or around, was it April?
15 I can't remember that date just offhand. But yes, 15:24
16 I did ask the question when do you anticipate that this
17 is going to be completed.
18 247 Q. Sorry.
19 A. Because that would only be a fair indication to
20 Mr. O'Brien when it was going to be completed. 15:25
21 248 Q. Obviously it wasn't completed in April. You got
22 a further update, I think from Dr. Khan, on the 13th
23 April and that's at TRU-261935. Again, that's an
24 update from him. Again, your response is you say:
25 15:25
26 "I'm charged to ensure that the case is progressing in
27 a timely manner, taking into consideration the nature
28 and scope of the investigation".
29

1 You say that it would be a good idea, I think, to keep
2 Mr. O'Brien informed. Then you get another seemingly a
3 monthly almost update from Dr. Khan --
4 A. Yes.
5 249 Q. -- on 15th May and the 27th June. 15:25
6 A. Mm-hmm.
7 250 Q. In the 27th June e-mail, he indicates that all the
8 witnesses have been met and that there are going to be
9 issues with speaking to Mr. O'Brien before 31st July.
10 At that stage, obviously, the 31st July is about seven 15:26
11 months into the investigation. Did that cause concern
12 to you that you were so far in and that Mr. O'Brien
13 hadn't been met with yet?
14 A. Oh absolutely, but that was the time scale issue that
15 was mentioned at the very beginning of my involvement 15:26
16 of this and persisted the whole way through. If you
17 were to track my e-mails, you will see that I am
18 continuously saying, look, we are operating outside of
19 these time scales and we need to expedite this quicker.
20 But then there were all of these other questions in and 15:26
21 around witnesses and availability of clinicians and so
22 forth.
23 251 Q. Mr. O'Brien actually e-mails -- if we could bring this
24 up please at AOB-01689. Mr. O'Brien e-mails Dr. Khan,
25 copying you in, Mr. Wilkinson. This is on 31st July. 15:27
26 He attaches, as you can see there, a letter which
27 addresses a number of concerns he has in advance of his
28 interview with Dr. Chada, and it's quite a lengthy
29 letter that he provides. I wonder if we could just go

1 to AOB-01685, which should be part of the letter. Yes,
2 if you could scroll down, please. In the middle of
3 that paragraph, you can see that Dr. Chada has advised
4 in June that Mr. O'Brien should receive a witness list,
5 and he hasn't received that. He also states that he 15:27
6 hasn't been provided with the testimonies of any
7 witnesses. Were you aware that he hadn't those
8 documents, which could be seen obviously as very
9 important?
10 A. I was aware and I saw those in an e-mail, and 15:28
11 I responded to the e-mail which directly -- in my
12 memory I think it was Siobhán, or Mrs. Hynds, in
13 particular, and Dr. Chada saying look, it's only fair
14 that Mr. O'Brien receives this information.
15 252 Q. I think, and I can be corrected on this, but there is 15:28
16 a later e-mail where Mr. O'Brien chases statements
17 before his next interview, and you do respond to
18 this --
19 A. Okay.
20 253 Q. -- to that one. I'm not sure, and I am sure that I can 15:28
21 be corrected if I am wrong on that, that there is
22 a response to this particular e-mail. You were copied
23 in and I assume then you accept that you would have
24 been aware at this time?
25 A. Yeah, absolutely. 15:28
26 254 Q. Was that a matter of concern to you?
27 A. Of course it was because if someone is in the middle of
28 an investigation and they require statements, then they
29 should be readily given over to the person concerned.

1 That's why, when I picked it up later, I was trying to
2 get them to expedite this and make sure that they were
3 forwarded.
4 255 Q. If I'm right in saying that there is no response to
5 this particular one, do you feel you should have 15:29
6 responded or that you should have taken action?
7 A. Yes, I will accept that.
8 256 Q. We can go potentially then to the e-mail that I think
9 you are referring to, or that you might be conflating,
10 Mr. Wilkinson. It's at AOB-01766. This is an e-mail 15:29
11 in advance of Mr. O'Brien's second interview with
12 Dr. Chada, where he is asking for three statements.
13 I think if we scroll to the next page, we can see that
14 you do respond to this one. Yes.
15 A. Yeah. 15:30
16 257 Q. Is that what you were thinking?
17 A. That's what I thought. That's the one.
18 258 Q. Yes. Was it concerning for you that here we are
19 a number of months again down the line, there's to be
20 a second interview and there are still statements 15:30
21 outstanding? Was that a matter of concern?
22 A. Yes. Whenever I received that, I was concerned that
23 that information hadn't been given across.
24 259 Q. Did you feel that this was the best sort of tool that
25 you had to try and do something about it, by sending an 15:30
26 e-mail, or did you feel there was anything else you
27 could have done?
28 A. From experience, I know that whenever I contacted
29 Mrs. Toal or Mrs. Hynds that the matter would be

1 expedited, that she would listen to what I was saying.
2 260 Q. I appreciate you saying that they would listen to what
3 you are saying but obviously there's still considerable
4 delay here. Do you feel, for example, that your
5 e-mails were instrumental in changing or in reducing 15:31
6 the delay?
7 A. I think they were instrumental because it was drawing
8 to their attention that this had to be done and should
9 be done. Yes, I do.
10 261 Q. Then you receive an update on the 20th November from 15:31
11 Dr. Khan, which is at, for the Panel's note,
12 TRU-269355, where you are told that they hoped to have
13 their report done as soon as possible. There seems to
14 be a bit of a lag then where there doesn't seem to be
15 much activity or updates -- 15:31
16 A. No.
17 262 Q. -- until, it seems, February 2018, when you have an
18 update from Mrs. Hynds. That's, again for the Panel's
19 note, at TRU-261971. She, Mrs. Hynds, indicates that
20 they have not received feedback from Mr. O'Brien. But 15:32
21 on the 4th March there's a further e-mail from
22 Mrs. Hynds where she says that Mr. O'Brien has been
23 provided with all documentation for his comment.
24
25 Was it concerning to you to think that he might not 15:32
26 have had all the documentation at this point in March
27 2018?
28 A. It would have been concerning, yes. It would, yeah.
29 263 Q. Did you feel the need to raise or escalate or take any

1 action?
2 A. I can't remember what I actually did do but if there
3 was something like that coming through, there may have
4 been a conversation - again, I am sorry but I can't
5 remember - there may have been a conversation. I would 15:32
6 have seen Mrs. Hynds and Mrs. Toal on a regular basis
7 when I was over Trust Board, and I would have been
8 asking them questions how are things progressing and so
9 forth. There wouldn't have been a formal meeting in
10 and around that. 15:33
11 264 Q. Whenever you are saying that you would have met them
12 regularly, I suppose on one view of the documentation
13 and the e-mails, a lot of the documentation seems to
14 come, for example, from Dr. Khan to you or from
15 Mrs. Hynds to you? 15:33
16 A. Yeah.
17 265 Q. Were you acting proactively --
18 A. Yes, I believe I was because I actually would have been
19 acting for updates. Orally I would have been asking
20 for updates and, as a result of that, then they would 15:33
21 have sent this information to me.
22 266 Q. Whenever you say you were asking orally for updates,
23 what would have encouraged you? Did you have a regular
24 timeframe in how you sought an update? How would you
25 have managed it from your own perspective? 15:33
26 A. I would have been looking roughly for monthly updates
27 because I wouldn't have wanted it to be extended over
28 that extended period of time. I needed to have
29 a handle on where the investigation was. So for that

1 reason, you probably can see there is a pattern to
2 those e-mails that are coming through, and they are
3 generally on a monthly basis.
4 267 Q. Do you feel that you should have done something more
5 formal than perhaps raising it orally, as you have 15:34
6 described?
7 A. If I was doing this again, I would have been looking
8 for regularised meetings with HR, with the Case
9 Manager, with the Case Investigator. I know Siobhán
10 would have been, as it were, second-in-command, so 15:34
11 Siobhán would have done, I think, a regular meeting, a
12 formal meeting on a monthly -- if it could be arranged,
13 bearing in mind -- but I think that's part and parcel
14 of the learning that comes out of this, that as
15 a non-executive director, it would have been good to 15:35
16 have those formalised meetings, to sit down and seek,
17 well, where are the hiccups in the process.
18 268 Q. At the time, and, as I say, we are talking now about in
19 and around March 2018, over a year since the
20 investigation started, at the time did you not think we 15:35
21 need formalised meetings or we need something to
22 formalise this to try and combat the delay?
23 A. Honestly, no. That was not within my mindset at that
24 time. I thought that by contacting and meeting with
25 both Mrs. Toal and with Mrs. Hynds, that we were 15:35
26 tackling that particular issue.
27 269 Q. Again, you are copied into correspondence on the 10th
28 June. This is from Mr. O'Brien. It's at AOB-01815.
29 He is chasing amended minutes and an update on the

1 investigation. You do respond, asking for it to be
2 given immediate attention. Again, are you concerned at
3 this stage that he doesn't appear to have all of the
4 documents that he is requesting? Do you feel you could
5 have been instrumental in checking previous requests to 15:36
6 ensure that he had everything that he needed or that he
7 should have had?
8 A. Yes, again -- but yet again, I was relying on
9 management within the Trust - that's Mrs. Toal and
10 Mrs. Hynds and the Case Manager - to pass on that 15:36
11 information. I think in response to that particular
12 e-mail, I did make a response. Maybe not, but
13 I thought I did say look, guys, this needs to be
14 expedited again. That has been one word that has been
15 consistent throughout this investigation "expedite, 15:37
16 expedite", you know.
17 270 Q. I suppose the difficulty is that, on one view, it still
18 took a very, very long time.
19 A. Yeah. Someone has to make a judgment, if I can be so
20 bold. Someone needs to make a judgment with regards to 15:37
21 the time scales and what are the circumstances around
22 this which allows for the investigation to expand, and
23 what are the limits of that because you just can't have
24 an open situation, it needs to be time-bound. The
25 four-week, in my opinion, is maybe just a little -- can 15:38
26 I -- it's maybe just a little bit short. But to allow
27 it to expand to a year, I think that's testing the
28 boundaries just a little bit too much. There needs to
29 be some thought given to the time scales, bearing in

1 mind that these are clinicians who are busy. That's
2 not an excuse. If we want the clinicians to respond in
3 a more timely manner, then they need special time to do
4 this. They need to be taken out of their jobs,
5 perhaps, in order to respond to these in a more timely 15:38
6 manner. I think that's the most humane thing to do.
7 271 Q. Then you received another update from Mr. O'Brien to
8 Dr. Khan. This is on the 21st October 2018 and
9 Dr. Khan says that new concerns have emerged. Did that
10 concern you from again a patient risk or a patient 15:39
11 safety perspective?
12 A. Of course it did, I have no doubt about that. Again
13 the issue in and around that was my perception - and
14 this is just my perception - that there were at least
15 two, if not three, processes that were going on at the 15:39
16 same time. There was the Trust Board business that was
17 happening; there was the MHPS process that was going
18 on; there was my role in that. How they linked and
19 meshed together, I found to be most difficult. I knew
20 there was an obligation on the designated person to 15:39
21 report to the board, I saw that, but I didn't see the
22 opportunity to do that. There was no history of MHPS
23 being reported to the board during my time, and my
24 understanding is that in the history of the board,
25 there was no reporting process into the board or into 15:40
26 governance. Now, that has changed significantly over
27 this last year, year-and-a-half.
28 272 Q. In what way has it changed?
29 A. Now there is a report that comes to governance, which

1 looks at it in very general headline terms. It's
2 looking at progress being made and, therefore, there is
3 an opportunity for scrutiny and for challenge against
4 each of the cases that are listed. Before that, there
5 was no opportunity for that to happen. 15:40
6 273 Q. Even though there's potentially, as you say, no history
7 of things like this coming to the board, it could be
8 said that ultimately, as a board member, you still have
9 the responsibility to keep patients of the Southern
10 Health and Social Care Trust safe. Whenever these 15:41
11 concerns -- I don't know if you think this was at the
12 time when you started to have concerns about patient
13 safety or if it would have been earlier, but whenever
14 that came to your mind did you not think to yourself
15 the board needs to be informed in some way, whether 15:41
16 that be in a way that keeps the other aspects of the
17 investigation separate from the board so that the board
18 would be made aware that there was a potential risk to
19 patient safety?
20 A. There is no doubt in what you are saying. Whenever 15:41
21 these other aspects were being uncovered, then
22 I understood that the investigation was going to expand
23 even more, and that did concern me. The avenue for how
24 I was going to inform the board and governance, I
25 didn't see that avenue because I had no history of that 15:42
26 happening and whenever - I think I mentioned this
27 earlier - whenever I asked at a general level, look, I
28 am concerned about job plans, I am concerned about
29 appraisals, I am concerned about safety, in terms of

1 the specifics of this case, then there was almost 'we
2 don't do that, we have to wait, it might contaminate,
3 if you want to call it, the investigation'.
4
5 So there was a misunderstanding both in terms of myself 15:42
6 and in terms of -- well, I can't speak for my
7 colleagues. In terms of myself, there was
8 a misunderstanding in terms of how I could feed into
9 the board and the opportunities to feed into the board.
10 Again, I will come to this is a learning for me. 15:42
11 I come back to guidance for the nonexecutive director.
12 I think that needs to be clearly stated that this
13 should be the case. It wouldn't take too long to draft
14 up a booklet for prospective designated persons to make
15 the role more explicit and to give them the structures 15:43
16 whereby they can operate within, and what the
17 expectations are.
18 274 Q. If we almost separate out the two aspects of it, so
19 your role as the Designated Board Member for the MHPS
20 but also just your role as a board member generally, 15:43
21 because I am talking here about becoming aware of new
22 concerns --
23 A. Yes.
24 275 Q. -- linking that to patient risk. Taking that to the
25 board, I suppose, separately to taking concerns about 15:43
26 the investigation to the board, do you feel that
27 regardless of the definition of your role or the
28 training that you'd had as a Designated Board Member,
29 that whenever patient safety started to come into your

1 head, that that should have gone to the board?
2 A. Yes. To put it simply, yes, that should have been.
3 276 Q. Just to sort of wrap that up in terms of the delay
4 aspect of it that we had been going through, do you
5 feel that you should have informed the board at any 15:44
6 stage about the delay in the case? Again, separating
7 out potentially the intricacies of the investigation or
8 the findings or anything like that but just to draw to
9 their attention that there has been an MHPS
10 investigation that has gone so far outside of the 15:44
11 expected timeframe?
12 A. Again, I would put that within guidance to any
13 nonexecutive director designated person, yes, I would,
14 and I would expect that to take place. I suppose
15 during the process, I became more accepting of the need 15:44
16 for the expansion in the time scale because of the
17 patient safety aspect, yeah.
18 277 Q. Do you feel that you could have gone to Mrs. Brownlee
19 about the delay?
20 A. No. 15:45
21 278 Q. Why not?
22 A. Because I became more aware of her relationship with
23 Mr. O'Brien, her connection to Mr. O'Brien. That would
24 have been compromising her so I wouldn't have gone
25 there. 15:45
26 279 Q. I can go into the board in more detail. I am
27 wondering, Chair, do you want to take a break or do you
28 want to continue? I am obviously in everyone's hands?
29 CHAIR: I think it's quarter to four. We would like to

1 finish today, if possible. Are you content to sit on?
2 A. Yes, absolutely.
3 CHAIR: As long as the witness is content, we will try
4 and sit on and conclude.
5 MS. HORSCROFT: No problem. 15:46
6 280 Q. To continue with the bit about the board then. We have
7 looked at the Trust guidelines, and I know we said we
8 would come back to this, but part of the role within
9 the Trust guidelines is that the nonexecutive board
10 member reports findings back to the board. Was that 15:46
11 done?
12 A. No, because I didn't perceive -- first of all, I didn't
13 perceive the avenue whereby I should be doing that.
14 There was still in my mind that the advice that I was
15 given, that this should proceed without any 15:46
16 interference from board, that the board should be kept
17 -- I am going to use the term "the board should be kept
18 out of this", this investigation will continue to its
19 conclusion and then the findings will be reported to
20 the board. 15:46
21 281 Q. For example, when the determination came out, that
22 could be seen as being the findings. You didn't feel
23 that at that stage the board should be made aware of
24 those?
25 A. To be straight about that, I didn't know when it had 15:47
26 finished. I didn't actually know that that was
27 concluded.
28 282 Q. At the determination stage. And why weren't you aware
29 -- were you not aware that that was --

1 A. Because it wasn't clearly told to me that that was the
2 case. Hence, after the determination, I continued to
3 have an interest in what was going on. You would see
4 e-mails taking place between myself and others, even
5 though the determination was concluded. 15:47
6 283 Q. Yes, we will come to those. I think just to wrap up
7 this bit about the board. Again I can be corrected if
8 I am wrong, but it seems like the Trust had received
9 a confidential update on 27th January regarding
10 Mr. O'Brien's exclusion. Then it appears that the 15:47
11 board isn't told anything until the Early Alerts in and
12 around September 2020; is that right?
13 A. That's correct.
14 284 Q. So they hadn't been informed of anything in the
15 interim? 15:48
16 A. No.
17 285 Q. Do you think that there's a governance failing in that?
18 A. Yes. Put simply, yes. But I think that the Trust was
19 operating on what had been previous practice, and I
20 can't verify that because I was only fresh into the 15:48
21 Trust at that stage but that seems to me the way it was
22 done. There's no doubt about it, that the board needed
23 to be kept more informed, even at a general level, as
24 to the progress of this investigation.
25 286 Q. Was that your responsibility? 15:48
26 A. If you look at the Trust guidelines, you will see there
27 that the Director of HR, and I think it's under the
28 NED's role, that that contact should be there. How
29 that is achieved is not defined. That's not an excuse.

1 I'm just saying, look, how do you carry out this role?
2 What should you be doing in order to keep everyone
3 informed? What are the avenues open to you; what
4 should you be doing?
5 287 Q. Do you think that reporting back to the board, for 15:49
6 example, when it became apparent that timeframes
7 weren't being adhered to, do you think that that could
8 have been used as a resource or a mechanism to try and
9 expedite the case?
10 A. Yeah, yeah. The question is I know now, on reflection, 15:49
11 that the NED has an obligation. I was working
12 alongside HR at that stage so I would have anticipated
13 that that connection with Trust Board and with
14 governance would have been a mechanism. Now, that
15 doesn't excuse the absence of behaviours on my part. 15:50
16 It's clarification in and around whose responsibility
17 it is and the way in which it should be done.
18 288 Q. You'd indicated that you continued to be involved in
19 e-mail traffic after the determination. I think you
20 seem to be saying that you had some level of confusion 15:50
21 about when your role ended; is that fair to say?
22 A. That's fair to say.
23 289 Q. Yes. Were you aware of the outcome of Dr. Khan's
24 determination and the recommendations that he had made?
25 A. Yes. 15:51
26 290 Q. For example, that there was to be a review and that
27 there was to be a Conduct Panel and so on. Did you
28 consider it part of your role then to ensure that those
29 aspects were completed in a timely fashion, because

1 obviously we are aware that that didn't happen either?
2 A. I didn't know what I was to do after the determination.
3 There was a frustration on my part. I wanted to do the
4 right thing. Therefore, I continued to track it and to
5 make representation to individuals within my knowledge 15:51
6 sphere. Now, whenever it comes down to looking at the
7 way in which Mr. O'Brien was to be, I will use the term
8 supervised, that was outside of my remit. I didn't see
9 that as being something that I should be concerned
10 with. 15:52
11 291 Q. Is this the return -- the monitoring plan?
12 A. The monitoring. I didn't see that as being part of my
13 role.
14 292 Q. Do you think that you should have been made aware of
15 that, or do you think you should have asked? From the 15:52
16 perspective of, again, a board member and also as the
17 designated NED, do you think that is an aspect that you
18 should have had more involvement in?
19 A. I don't see that as -- I don't see that as being part
20 of this particular role at all. 15:52
21 293 Q. And what's that based on? Is that based on advice; is
22 that based on your understanding of the guidance?
23 A. That's based on my understanding of the guidance. The
24 fact that I continue to have an interest or track what
25 was going on, as I say, was a moral obligation as 15:52
26 opposed to following it through, because I didn't know
27 if it had ended.
28 294 Q. Did you seek advice on when your role would conclude?
29 A. I remember having a meeting with Mrs. Toal and sitting

1 around and saying look, where is this going now? What
2 is happening now? I think I can remember that there
3 was a point made about there was a grievance submitted
4 and there was going to be -- the words I can remember
5 was there may be a High Court case, there is going to 15:53
6 be another case but you will not be involved. It was
7 only then that I recognised that I had no longer a role
8 to play.
9 295 Q. So you are saying that you recognised you had no longer
10 a role to play. You are right in saying that there's 15:53
11 a grievance lodged by Mr. O'Brien, but you do still
12 seem to receive updates and be in contact with there is
13 Toal thereafter. For example on the 15th May, you
14 refer to this in your witness statement - it's at
15 WIT-26102, for the Panel's note - you receive an update 15:54
16 and you are told that the case was becoming
17 increasingly complex and required significant lookback
18 at various cases. Again, did you have a concern about
19 patient safety at that stage? This is in 2019, so we
20 are in and around a year after you are told by Dr. Khan 15:54
21 obviously that there are more avenues being opened up.
22 Did you have a concern again at that stage about
23 patient safety?
24 A. Yes, I did obviously have a concern about this but it
25 comes back to the point that you made earlier: The 15:54
26 avenue whereby I was to alert Trust Board or Governance
27 to that wasn't still clear to me.
28 296 Q. Did you ask for any further detail about what was
29 making it increasingly complex; about what cases were

1 being looked at? Did you ask for any detail to go
2 behind that information?
3 A. Not in terms of detail. I would have got general
4 highlights of what was going on but not the detail.
5 297 Q. I wonder if we could bring up, please, just in respect 15:55
6 of the grievance, TRU-262019. This should hopefully be
7 your diary entry for the 12th June 2020. Again, we are
8 another year on from the previous update from
9 Mrs. Toal.
10 15:55
11 Maybe just before we do this, we will just deal with
12 this which would wrap up the last bit. If we could go
13 to TRU-261994. This is an e-mail from Dr. Khan about
14 the new concerns. I think you actually reference this
15 in your statement. It refers to a deviation from an 15:56
16 agreed action plan. Were you aware of the action plan
17 to some extent, I suppose?
18 A. Just to some extent.
19 298 Q. Again, did you look behind any of this in respect of
20 the new concerns that have emerged? Did you ask for 15:56
21 any further detail or --
22 A. No, I didn't.
23 299 Q. -- dig deeper?
24 A. No. I didn't drill down into that.
25 300 Q. If we could go then again, sorry, to TRU-262019. This 15:56
26 is your diary and I think this is on the 12th June. If
27 we could scroll down, yes, we can see here it seems to
28 be a note of a conversation that you have had with
29 Mrs. Toal?

1 A. Yes.
2 301 Q. And about a third of the way down you can see, if
3 I translate your writing properly, "still trying to get
4 grievance done!". What was your thought process or
5 what had you been told behind expressing it in this 15:57
6 way?
7 A. Do you mean the exclamation mark?
8 302 Q. Yes.
9 A. That relates back to my own situation where a grievance
10 comes in - and I suppose it's thinking out loud on 15:57
11 paper - where a grievance comes in and everything has
12 to stop until the grievance is processed. There I was
13 saying oh no, this is going to take another turn, we
14 are going to have to -- this is going to have to wait
15 a bit more. It wasn't anything to do with the Trust, 15:58
16 it had something to do with how I felt. This is
17 a contemporaneous note, this is my jottings as
18 something was occurring. So that's what that was
19 about.
20 303 Q. I think what you are saying from your previous 15:58
21 experience, you understood that when a grievance was
22 lodged, everything stops?
23 A. Yes.
24 304 Q. Did you feel that that was appropriate in this case,
25 that everything seemed to sort of grind to a halt on 15:58
26 the basis of a grievance?
27 A. I assumed that that was going to happen. It wasn't
28 that I knew it was going to happen, it's just that's
29 what I assumed was going to happen and, my goodness,

1 this is going to be even more protracted.
2 305 Q. Obviously this is a number of months on from the
3 grievance being lodged. Even at that, did you feel
4 concerned by those timeframes, that the grievance was
5 lodged in November 2018 and we are now in June 2020? 15:59
6 A. Yeah. You'll see at the next jotting that I have
7 there:
8
9 "Original issue not dealt with. Still trying to get
10 grievance done. There have been delays caused by AOB 15:59
11 asking for further information and Trust inability to
12 match deadlines".
13
14 Really what that is saying there seemed to be
15 a combination of issues there that's causing these 15:59
16 delays and that there seems to be problems on both
17 sides of the house.
18 306 Q. Did you feel that those were appropriate reasons for
19 the delay?
20 A. From where I was standing, yes. 15:59
21 307 Q. Did you question with Mrs. Toal in this conversation,
22 for example, what information requests Mr. O'Brien had
23 been making, or what the Trust's inability to meet
24 deadlines were?
25 A. No. 16:00
26 308 Q. Did you think it was part of your role to inquire
27 further like that?
28 A. Trust would have been very familiar with continued
29 urging to provide information and to act within an

1 agreed time scale. They knew my position on this.
2 I assumed that there were good reasons, on both sides
3 of the house, why the delay was occurring.
4 309 Q. You will see as well further down on your note, you
5 seem to discuss there "role of NED". 16:00
6 A. Yes.
7 310 Q. It says: "Primarily keep your distance. Don't get too
8 involved". I'm just wondering is that advice that you
9 were receiving in respect of that precise period in
10 time or was that advice that you were receiving 16:00
11 regarding the role generally?
12 A. That was advice I was receiving with regards to it
13 generally, not to be drawn in. That was an important
14 -- not to be drawn in but to -- and this was -- sorry,
15 this was with regards to Mr. O'Brien specifically, not 16:01
16 to get drawn in to the investigation and to carry out
17 roles that may be expected from him. So, that's...
18 311 Q. What do you mean by in respect of Mr. O'Brien
19 specifically?
20 A. Because in the past he was wanting -- you can see, for 16:01
21 example, whenever the concerns or the questions were
22 coming, he was not pleased that I hadn't addressed
23 those issues myself and that I hadn't replied to those
24 questions or concerns myself. He thought that my role
25 was being usurped or was being subsumed within the 16:02
26 Trust. Again that's another issue, I think, that does
27 need to be looked at.
28
29 With regards to this, it was, look, don't be drawn into

1 being an advocate, don't be drawn into be an
2 investigator; whatever your role is, don't be any of
3 those.
4 312 Q. You also, I think, were told by Mrs. Toal that
5 Mr. O'Brien was seeking retirement but a return to 16:02
6 work. What were you told in and around that aspect of
7 the issues? What information were you given about
8 that?
9 A. Simply what you have articulated to me. The other
10 thing, there was an issue that came up with regards to 16:02
11 his return -- he was going to get retirement and then
12 the next minute he wasn't going to get retirement,
13 I think, was there because he wanted to return to work
14 or he wanted to continue to practice.
15 16:02
16 Now, this was getting -- the whole area of contract
17 law, employment law if you want -- sorry, employment
18 law in particular, I didn't see that that was my issue.
19 I honestly didn't see that. I saw that as being Trust
20 business and they needed to expedite that aspect of it. 16:03
21 313 Q. If you didn't see it as being your issue, why do you
22 think you were being told about it or how did that
23 happen?
24 A. I have absolutely no idea.
25 314 Q. Did you feel it was appropriate? 16:03
26 A. They may have wanted to share it with me as
27 a colleague, perhaps. I didn't really want to know
28 about that.
29 315 Q. Well, why didn't you?

1 A. Because I thought it was outside of my remit. This was
2 moving on to another area altogether. It wasn't
3 originally within the terms of reference of the
4 investigation. That was moving on to something else.
5 16:04
6 Again, I would have been much happier if someone had
7 said to me, John, your role is now finished, and was
8 clear about that.
9 316 Q. Did you have any concerns about the way in which the
10 grievance or the return-to-work issue was being dealt 16:04
11 with?
12 A. This is a dangerous reply, which is why should I? You
13 know, why should I? I see that as being again outside
14 of the role of this particular investigation.
15 317 Q. This conversation that you were having with Mrs. Toal, 16:04
16 as we have said it's in June 2020, we are coming up on
17 nearly two years since Dr. Khan's determination, there
18 are a number of aspects of his recommendations that
19 haven't been actioned; I think you have accepted the
20 board hasn't been made aware of his decision? 16:05
21 A. Mm-hmm.
22 318 Q. Do you accept that the momentum was lost over the
23 course of this investigation?
24 A. Not having oversight of the whole of the process,
25 I would find it difficult to answer that. On the face 16:05
26 of it, you could say, without a doubt, it lasted two
27 years and more, the momentum was lost. But again, if
28 you drill down into the situation and you find out or
29 you are made aware of the issues with regards to

1 a clinician's, and I don't want to rehearse this all
2 again, but there's clinicians not being made available;
3 I will use the word the inability, maybe that's better,
4 the inability of Mr. O'Brien to reply in a timely
5 manner to requests that was made for additional 16:06
6 information; for the board to supply Mr. O'Brien with
7 additional information or statements, it seems to me
8 that within all of those parameters, that the momentum
9 was kept going. How instrumental the role of the NED
10 was in all of this, I have great doubts. 16:06
11 319 Q. Your role was ineffective really at being able to
12 ensure that it was completed in a timely fashion?
13 A. It depends what you mean by a timely fashion. If you
14 mean within four weeks, obviously it wasn't completed.
15 It was a long period of time that this took place. On 16:07
16 face, I would say my role, the role of the nonexecutive
17 director, was ineffective. That complies with other
18 information I have in my own personal file with regards
19 to a report that was written. Now, whilst that
20 person - I can't remember the name of the person 16:07
21 again - but they were looking at the role of the NED
22 and said it was ineffective, look, it didn't serve any
23 purpose at all; the role of the N ED operated outside
24 of the Board. I can't remember --
25 320 Q. Is this the Kennedy Review that you are referring to? 16:07
26 A. Yes. Whenever I read it and I only got it about a week
27 or so ago, whenever I read that, I said yes, that's
28 exactly how I feel about this.
29 321 Q. Just while you raise that, one thing that's highlighted

1 in the Kennedy Review is that's one solution would be
2 to have agreed standards and means for measuring
3 compliance with the standards, and that that would
4 serve to provide regular objective information for the
5 board. They seem to think that keeping the board 16:08
6 updated --
7 A. Yeah.
8 322 Q. Do you agree with that?
9 A. Absolutely. The learning that comes out -- the
10 learning that comes out of this, for me as a person, 16:08
11 I would be in a much better position to carry out this
12 role if I ever accepted to do it again. But the
13 learning is there. The problem is there's a roll-on,
14 roll-off position with nonexecutive directors and the
15 cultural capital is lost every time those people leave. 16:08
16 Therefore there's a lack of knowledge and understanding
17 and skills which is lost every time. That needs to be
18 captured in some way.
19 323 Q. I think you have accepted that to some degree, your
20 role was potentially ineffective. Was it apparent to 16:09
21 you at the time, or is that a reflection?
22 A. That's a reflection because I was doing the best
23 I could to try and keep things moving and to expedite
24 the matters. I still have a lot of trust in people, in
25 managers, and maybe that's a failing but that's the way 16:09
26 I operate until people let me down. I don't think
27 people let me down when I was asking them to expedite
28 things; I don't think so. There were other factors
29 which we have talked about which were in play which

1 slowed down the process. I think both sides are at
2 fault on this. But there has to be a better way.
3 324 Q. Do you have any thoughts on what better way there would
4 be?
5 A. Yes. If we go right back -- this could take a wee 16:10
6 while. If you go back to training, first of all. The
7 training needs to be more explicit to begin with, and
8 tie in framework with guidelines. It needs to set the
9 role of the nonexecutive director much more clearly.
10 There needs to be a handbook -- in my opinion, there 16:10
11 needs to be a handbook provided for the nonexecutive
12 director which clarifies not only his role but the way
13 in which -- and it will not take lots of work to do
14 that. I carry out other duties and there is a handbook
15 which is provided which clarifies the role clearly that 16:10
16 you have to do.
17
18 There's the way in which you should interact with key
19 personnel within the Trust; what is your obligation I
20 have said to HR, to the Case Manager, to the Case 16:11
21 Investigator. What is your role; how should you play
22 your role? Should there be an agreed monthly meeting
23 between the key personnel to make sure that things are
24 being progressed?
25 16:11
26 I have put some of this in the statement but I can't
27 remember it all. I definitely believe that if you are
28 put into this role, the training can be fine but unless
29 you have, and I heard the word earlier on today, unless

1 there's a mentor beside you on a one-to-one basis just
2 going through and giving you the confidence and the
3 competence to carry out this role and to highlight some
4 of the issues which you have rightly put to me this
5 afternoon, and to highlight those and then to put them 16:12
6 into place, I think if those types of things are put in
7 place -- and then your position with the board, that
8 was unclear to me. I knew that there had to be a board
9 aspect to this because it was in the Trust guidelines,
10 but it wasn't clear to me how I was to achieve that. 16:12
11 If you excuse the phrase, perhaps I should have been
12 more bloody-minded about the thing and just done it,
13 and told it's not appropriate, John.
14
15 I think those sorts of things - and I have others in my 16:12
16 Section 21 statement - those sorts of things will
17 certainly help the NED to carry out his role in a more
18 effective way.
19 325 Q. Just to go again to what you were saying about the
20 board - and I know we have been through this - but your 16:12
21 knowledge of how to interact with the board. There
22 were then, in 2020, matters regarding the Early Alert
23 brought to the attention of the board.
24 A. Hm.
25 326 Q. And we have discussed a little bit about the contact 16:13
26 that you had with Mrs. Brownlee in respect of the
27 meetings that you had and the telephone conversation
28 that you had with her. On the 22nd October 2020, she
29 doesn't appear to have declared a conflict of interest

1 in that meeting. What were your views on that?
2 A. I found that strange, bearing in mind that she had some
3 sort of connection with Mr. O'Brien. She would have
4 been careful at all other times to make sure, if there
5 was a conflict of interest, that it was declared. But 16:14
6 that was a reflection that I had after the meeting.
7 I think on subsequent meetings, she did declare an
8 interest and, therefore, did leave. Then whenever it
9 came the telephone calls which I received, that made it
10 even more strange for me. 16:14
11 327 Q. We have spoken about the meeting that you had with her
12 on the 26th January 2017, and that was sort of at the
13 outset of your appointment. We have also spoken about
14 the telephone call you had with her on the 2nd March
15 2017. You also set out in your statement that you have 16:14
16 received inquiries from her on the 15th February 2018,
17 the 11th September 2018, and then 11th June 2020 and
18 the 18th June 2020. You described the one on the 18th
19 June 2020 as being a strange call. What made you feel
20 that it was strange? 16:15
21 A. Initially, Mrs. Brownlee came on and was making
22 requests of me, the detail of which I just can't --
23 I knew it was to have conversations with Mr. O'Brien to
24 see if this matter, this whole situation, could be
25 expedited more quickly; would I have a chat with 16:15
26 Mr. O'Brien. I found it strange because, as Chair of
27 the Trust, I felt that she shouldn't be making those
28 requests of me, and that in terms of the independence
29 of the role, then those were out of order. I think at

1 the end of that telephone call, she came back off that
2 position, having listened to me. I can't remember if
3 I noted I wouldn't be doing it. That was the just how
4 I felt about that.
5 328 Q. Again, in fairness to Mrs. Brownlee, she indicates in 16:16
6 her own statement that she didn't try to influence you
7 in any way, but did you feel influenced in any way
8 generally but also in respect of your feelings about
9 what you could or couldn't tell the board?
10 A. So, my question on that would be what was the purpose 16:16
11 of the telephone call? Really what I am saying, why
12 did she ring up in the first place then, other than to
13 make comments? That's why the word "advocate" doesn't
14 sit easy with me. Influence, does influence mean
15 advocate? I just know initially she wanted me to do 16:17
16 something.
17 329 Q. And did it work?
18 A. No.
19 330 Q. You don't feel that you would have acted any
20 differently? 16:17
21 A. Oh, definitely not. I am a fairly independent sort of
22 person and I would judge the situation as I saw it
23 within the rules that are there. No. No.
24 331 Q. I think, Mr. Wilkinson, you have given us what your
25 reflections are or what way you think, unless you have 16:17
26 anything that you wish to add about that?
27 A. Just about my role within this investigation, is that
28 what you mean?
29 332 Q. Yes, things that the Panel might be interested to hear

1 about your views on how it can be improved?
2 A. Well, I think I have illustrated how I think they can
3 be improved. I just found -- I am being straight. If
4 I was asked to do this job again given the information
5 about the role of the NED at this particular time, 16:18
6 I wouldn't do it because there's too much ambiguity and
7 you would need more -- I could do it better this time,
8 I think, I think I could do it better because I have
9 learned from it. But I don't know whether I even have
10 the option of saying no, which is an interesting thing. 16:18
11 But I just found throughout the process, I found it
12 difficult to do. But I think there is learning and I
13 have tried to illustrate to the Inquiry Panel how that
14 might be achieved.
15 16:19
16 This is like baring your soul, almost. I know there
17 are shortcomings in the way that I have carried out
18 this role, and I was going to say I am not looking for
19 sympathy but I will not get sympathy. I know that
20 I could have done it better, but in defence I need 16:19
21 definitions, I need processes to be clearer and
22 expectations to be clearer.
23 MS. HORSCROFT: I don't think I have any further
24 questions for Mr. Wilkinson, but the Chair and Panel
25 may have some questions for you. 16:19
26 CHAIR: Thank you. Mr. Wilkinson, I am going to go to
27 my colleagues, first of all, and I will go to
28 Mr. Hanbury first if he has any questions for you.
29

1 THE WITNESS WAS QUESTIONED BY THE INQUIRY PANEL AS
2 FOLLOWS:
3
4 MR. HANBURY: Thank you very much. I hope you can hear
5 me. I have just two short questions for you. One is, 16:20
6 to my mind it was always going to take a long time,
7 this investigation; would you agree with that? If you
8 had sat down, say, in February 2017 with the Case
9 Investigator and the Case Investigator and had a pretty
10 good idea of what was in front of you, that is an 16:20
11 analysis of 783 triages, 668 case notes to go through,
12 and all the time that took, 13 witnesses to see, and
13 Mr. O'Brien as well probably on a couple of occasions,
14 it would have dawned on you roughly how long that was
15 all going to take. You could have then had a much 16:21
16 better idea of sort of expectation versus reality.
17 What would you comment on that?
18 A. I would absolutely agree with that and that's why
19 I think, in retrospect, the opportunity to have round
20 table meetings to discuss it and to sit down with 16:21
21 people would have been the way forward for that because
22 at least then that could have been communicated to
23 Mr. O'Brien, that this was going to be longer than the
24 four-week period that is set aside for the
25 investigation. Perhaps that might have alleviated some 16:21
26 of the pressure and the tension that Mr. O'Brien felt.
27 333 Q. Thank you, I totally agree. Then the second one, since
28 you seem to be the sort of timekeeper here, and that
29 was obviously what hung over you, is one of the things

1 that delayed after the November '17 meeting was
2 Mr. O'Brien requested to stall the whole process so he
3 can spend two months doing his appraisal and then there
4 was Christmas. So, you know what happened there, sort
5 of two to three months of nothing, at least from the 16:22
6 point of view of the investigation. In retrospect,
7 since you had some ear to the board with the Medical
8 Director there, do you think that was the right
9 decision to allow him to do the appraisal, or should he
10 just have cracked on? Your advice to the next person 16:22
11 doing it, do you think things like this should just be
12 stopped until the investigation is completed?
13 A. I would agree completely with that as well. There
14 seemed to be a favourite word of mine going around now
15 which is "expedite". In order to expedite the process, 16:22
16 then to stall those other processes would certainly
17 enable things to progress at a quicker pace and at
18 least get to a conclusion quicker.
19
20 It just seemed -- everything seemed to stall the 16:23
21 process. They were legitimate enough in themselves but
22 what was the priority? I think there were competing
23 priorities at different levels throughout this process.
24 The very high level, as I mentioned earlier on, was the
25 need to expedite the process so that Mr. O'Brien got 16:23
26 a conclusion to it, and then there was the
27 patient/client experience and safety aspect of it. And
28 then there was the whole process itself and the
29 processes within that process which elongated the whole

1 thing. I would definitely agree with you that those
2 should be suspended pending the outcome.
3 MR. HANBURY: Thank you very much. I have no more
4 questions.
5 CHAIR: Thank you, Mr. Hanbury. 16:23
6
7 Dr. Swart, if you have some questions.
8 334 Q. DR. SWART: I think as a NED, your first MHPS
9 investigation was particularly challenging, if it's any
10 consolation. Mostly the involvement isn't of this 16:24
11 degree and I am sure people have told you that already.
12
13 You quite clearly made a big point about the
14 clarification of roles and responsibilities, and
15 everyone involved in this process has made similar 16:24
16 points. There is clearly a need to define that.
17 That's pretty consistent down all levels of the Trust,
18 actually, in terms of who was doing what in regard to
19 this issue.
20 16:24
21 Another feature which has come through quite clearly
22 from our witnesses is that there's a huge emphasis at
23 the Southern Trust on performance targets. I think one
24 of your Acute Medical Directors put it as I would not
25 say that quality was overtly discarded. But many 16:25
26 people have said the focus was on performance,
27 performance, performance. I think this is because of
28 the waiting lists and it's understandable. Equally, as
29 a board member your prime responsibility is also for

1 patient safety, and the fact that the board was unaware
2 of all of this for such a long time seems to me to be
3 quite a significant issue.
4
5 You weren't the only board member who knew about this, 16:25
6 the Medical Director knew about it, and yet it wasn't
7 raised with board members for a discussion. You feel
8 you didn't have a route. This says something about the
9 culture of the board. What was your experience as
10 a board member of the relevant priority of performance 16:25
11 quality and finance and so on? Would you accept that
12 perhaps there's some learning in this in terms of
13 patient safety being more of a priority issue?
14 A. Yeah. It's an interesting question simply because the
15 board within maybe this last year, year-and-a-half, 16:26
16 have created another subcommittee which is
17 a performance subcommittee.
18 335 Q. Mm-hmm.
19 A. Probably in direct response to the waiting lists,
20 I would suggest. However, I Chair the Patient Client 16:26
21 Experience Committee, and coming through there there is
22 a marked interest in quality and in the patient
23 experience. I haven't really been asked about this but
24 there was an occasion where ironically I had to attend
25 the Urology Department within the Trust, and I used the 16:26
26 opportunity to ask some questions. As a result of
27 those -- and I did declare that I was a nonexecutive
28 director, by the way, it wasn't a subversive thing -
29 and I used that opportunity to ask questions. As a

1 result of that, I brought I think it's the lead nurse
2 back down to the Patient Client Experience to describe
3 what the patient experience was in terms of the quality
4 of experience that they were actually getting out of
5 Urology. My query wasn't as a direct result of being 16:27
6 involved as the designated NED.
7
8 In answer direct to your question, I think there's
9 a balance within the Trust in terms of performance and
10 quality. We try to address both of those. There is 16:27
11 a direct input or interest in performance because
12 there's a Performance Committee and they do a lot of
13 drilling down. The quality bit of it is done through
14 the Patient Client Experience where we look at SAIs;
15 I would look at concerns and complaints; we have the 16:27
16 HCAT; we have Care Opinion which is looking at the
17 quality of the experience. So, that's part and parcel
18 of what we do. So there's a balance; I would argue
19 there's a balance to that.
20 336 Q. What I am really trying to say, though, this sort of 16:28
21 situation puts patients at direct risk, quite
22 considerable risk, and we have heard directly from the
23 families. That was going on for quite a long time.
24 A. Yes, I understand --
25 337 Q. You know, this isn't just a simple question, of course, 16:28
26 it's more do you think the board has actually learned
27 as a result of this?
28 A. Without a doubt.
29 338 Q. Yes.

1 A. Without a doubt. That's evidenced by the pro forma
2 that they are beginning to use in Governance and
3 reported up into Trust Board. That was non-existent,
4 non-existent. They understand that, by using it, they
5 can challenge. There's an avenue for scrutiny that 16:29
6 wasn't there before. So I think they have learned.
7 339 Q. Okay. That's all from me. Thank you.
8 A. Thank you.
9 CHAIR: Just one short question, Mr. Wilkinson. You
10 talked about how you felt sidelined by Mr. O'Brien in 16:29
11 that he e-mailed other people and simply copied you
12 into it. You had actually told him that you couldn't
13 answer the questions and that he should go directly to
14 these other people, so from his point of view what was
15 he to do other than go to them directly? 16:29
16 A. Yeah, but I didn't instruct him to go to the other
17 people only. I said that if it was the case that that
18 person could answer your question directly, then to
19 avoid coming through -- it wasn't that I didn't want to
20 do it; it was more appropriate, in my view, that he 16:29
21 directed those questions to the people who could answer
22 it without going through a loop in order to get to it.
23
24 But that didn't, and I wasn't suggesting that that
25 would, negate the situation where he could come to me, 16:30
26 because I did say if there was a problem and if there
27 was an issue, that he was to come back to me but he
28 never really did. He copied me into e-mails but
29 I still wanted to know what was going on and if I saw

1 something that needed to be addressed, then I chased it
2 a bit.
3 340 Q. I suppose the other side of that coin is when you saw
4 this happening, did you try to contact him and say,
5 look, are you all right, is there anything I can do 16:30
6 here more for you?
7 A. I did on one occasion that I can remember. There
8 should be an e-mail about that, where I did go back to
9 him and say, look, if this is the case -- oh, I
10 remember now. There was a -- was it a grievance letter 16:30
11 that was sent to the Chief Executive, the Chair and the
12 Director of HR. I was copied into that, and I wrote to
13 him and said if there's something that I can do here in
14 terms of my role as the nonexecutive director, please
15 let me know, please contact me. 16:31
16 341 Q. And did he do so?
17 A. No.
18 342 Q. Thank you very much, Mr. Wilkinson. I am glad we have
19 managed to get you through your evidence at some speed
20 today but I think we have covered all the issues. 16:31
21 Thank you, Ms. Horscroft.
22
23 Ladies and gentlemen, tomorrow we have a very early
24 start. The reason for that is that our witness is
25 currently in New Zealand and will be joining us 16:31
26 remotely. In fairness to him, he will be starting at
27 I think it's 9:00 in the evening for him, so a long
28 day's work, then having to come and speak to the
29 Inquiry. We are going to start at 8:00 in the morning,

1 so please set your alarm clocks, ladies and gentlemen,
2 I know I will have to. Thank you.
3
4 THE INQUIRY WAS THEN ADJOURNED TO THURSDAY, 30TH MARCH
5 AT 8:00 A.M. 16:33
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