Urology Services Inquiry

Oral Hearing

Day 38 – Thursday, 20th April 2023

Being heard before: **Ms Christine Smith KC (Chair)**

Dr Sonia Swart (Panel Member)

Mr Damian Hanbury (Assessor)

Held at: **Bradford Court, Belfast**

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

Gwen Malone Stenography Services

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

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

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

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

A. Good morning, Mr. Wolfe.

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

A. That is correct.

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

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

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

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

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

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

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

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

to me. And I scanned down through it. And at the end of that I said to him: 'What am I to do?' And he -- I mean I know Eamonn's body language. He just went like that (indicating). As he shrugs his shoulder, he tends to have a facial movement as well. That's what he did. The only words that Martina spoke was to explain that she was the there in place of Heather Trouton who couldn't attend that day, for whatever reason. And I looked at it again, and I left. 10:09

4 Q. Your question, again, to him was what am I to do with this? 10:09

A. Yes, what am I to do? What do you want me to do. Words to that effect. A simply singular question like that. What am I to do? What am I supposed to do? And he shrugged his shoulders. 10:09

5 Q. If we just go to the bottom of the letter please, it's two, perhaps three pages on. Yes, thank you. The letter was explicitly clear about what you were to do?

A. Yes, it was to respond with a commitment and an immediate plan to address the above as soon as possible. 10:10

6 Q. While he may have shrugged his shoulders, that was the answer to the question, wasn't it? That's what you were to do?

A. Yes. 10:10

7 Q. Was your question meant in a different way?

A. In what regard?

8 Q. Was your question a request for assistance?

A. No, it was --

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

email to Mr. Carroll on 28th April - the reference is TRU-274671 - that the expectation was that they were to get a response from you in four weeks?

A. I have read that.

12 Q. Is that your understanding of what you were to do? 10:13

A. No.

13 Q. How did you read the letter when it asked you to provide an immediate plan? Was it less than four weeks or --

A. I didn't interpret this at all as me having to reply with a written plan to anyone. And I -- that was my -- it was never my interpretation that I had to reply with a plan. To me a response can be inclusive, indeed, of a reply which, to my mind wasn't explicitly specified in this letter. I wasn't asked to reply with a plan. 10:13 10:14 But I responded with all of the actions. That was my interpretation of it. And it was -- if there was any doubt about that, when you ask what are you supposed to do, that seemed to me to -- I never even considered that I had to reply with a plan to anyone. It was to 10:14 respond with a commitment and an immediate plan to address the above as soon as possible. That's what I did to the best of my ability.

14 Q. The language of this, respond with a commitment and immediate plan didn't speak to you of communicating 10:15 a response to what was asked of you?

A. It did not.

15 Q. Thank you. So, in terms of four weeks, you had to come back to us within four weeks. Can you recall that

being said?

A. I certainly do not recall it because it wasn't said. I didn't know of that until I read it in that email.

16 Q. When you took it to your office and you read it and thought about it, did you speak to anybody about it? 10:15

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

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

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

18 Q. One response might have been, after you had thought about it and calmed down, would have been to go back to Mrs. Corrigan. We understand your difficulties with Mr. Mackle, but to say, 'listen, you handed me this yesterday or last week and I've been thinking about it. I'm going to need some assistance to work through some of these issues.' 10:16 10:16

A. In retrospect that might have been -- my response might have been better to have included that kind of step but I didn't do it. I felt that I was being left on my own to try to cope with these concerns. 10:16

19 Q. We'll work through the concerns. If you go back to the top of the letter. Scroll down to Issue 1 then. At that point it is recorded at 253 untriaged letters dating back to December '14. You've reflected already in your evidence that the impossibility, from your perspective, of doing triage was something that you thought was already in the mix, was already known? 10:17

A. Yes.

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

said it was February '15 when the default --

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

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

A. Yes. 10:18

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

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

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

A. Yes.

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

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

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

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

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

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

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

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

A. Mm-hmm.

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

A. No.

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

A. Yes.

29 Q. What does that mean?

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

we did a separate clinic for patients who already had a diagnose of cancer. Mine was on a Friday.

30 Q. And they were looking, from you, a validation or an assurance that there are no clinically urgent patients on that list. Again, was that an assurance you were able to communicate with them? 10:22

A. No.

31 Q. You've answered no to both of those questions. And why was that?

A. Because it's entirely unreasonable. 10:22

32 Q. In what sense?

A. Well, it's just --

33 Q. Was it unreasonable because it was a workload thing to do it or was it an unreasonable question to ask more generally? 10:22

A. Well, certainly because it was workload that they were passing on to me with an expectation that somehow, in my time, in addition to all of the things that we have discussed yesterday, that I would, nevertheless - doesn't matter how many hours or days it will take - 10:22 that I will undertake a validation exercise in order to relieve the Trust of its anxieties. But there is no limit to the expectations of the organisation, as Mark Haynes described.

34 Q. In terms of this backlog, in the course of that year 10:23 were you provided with any assistance from any of your other colleagues to address the backlog? In other words, were some of the cases passed on to them for validation?

A. Not to my knowledge, no.

35 Q. In terms then of the third item. So, as I explained yesterday, consultant colleagues were reporting in a frustration in relation to record keeping around clinical encounters described here as consultations and discharges. It goes on to say: 10:23

"If your patient is reviewed in another urology clinic, in those circumstances a new appointment slot is required due to the lack of documentation. And the lack of documentation, etcetera may mean that further investigations may not be organised." 10:24

And we saw a flavour of that yesterday in Mr. Carroll's email, for example, and I think an acknowledgment from you. 10:24

Again, here was an opportunity to say, 'I'm just not managing the dictations. I'm doing...' as you explained yesterday, '...additionality in theatre, I need some leeway here or some solution.' But that didn't emerge from you, did it? 10:24

A. It didn't because the -- well, this was the first I was aware of any such frustration. I think I made reference to it yesterday, that my colleagues had never spoken to me about it. But the cohort of patients to whom it is referred were, I regarded, completely separate from the dictations that I still had to do on the patients whose records I had in my home. 10:25

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

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

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

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

10:28

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

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

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

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

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

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

A. Yes.

42 Q. But you continued to do that.

A. Mm-hmm.

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

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

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

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

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

44 Q. Very well, Mr. O'Brien. But with the greatest of respect, you're the employee in these circumstances. The employer, on the face of this letter, is giving you an instruction, and there were solutions: Step back from theatre. You've given reasons why you didn't think that was a viable option. Change your working practises to some measure or degree; ask for help; return the notes immediately. None of that was done? 10:37

A. That was not done. I didn't return all the notes immediately. I returned them as I processed them, to use that word. 10:37

45 Q. Is that maybe not the most serious matter in the world?

A. Which?

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

A. The notes, yes.

47 Q. But it's an important matter for the Trust?

A. It is an important matter for the Trust.

48 Q. For all sorts of reasons, no doubt? 10:38

A. Yes, yes.

49 Q. A never simple instruction?

A. Mmm.

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

A. Yes.

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

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

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

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

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

That letter starts with, perhaps, a legal-type assessment of what the letter is not.

A. Yes.

53 Q. What were you thinking there? What was the point at the root of that? Let me frame it as a question: Are you suggesting that upon receipt of the letter it wasn't bringing itself within any of these procedures and that, in a sense, explains, at least in part, why it didn't meet with a response from you? 10:41

A. No, I think that that is much more to do with any relationship that I'd had or had not had with what had happened in December of that year. 10:41

54 Q. So, are you saying that if it -- and I think the Trust says this isn't -- the letter isn't to be regarded as falling within, if you like, the MHPS process. 10:41

A. Mmm.

55 Q. But, the MHPS process may more properly be viewed as having something of a start in September, albeit we'll look at in a moment where that went. But what is the point that you're making here? That really, because it doesn't sit within -- because this letter didn't sit within a process, it was of less significance, of less moment? 10:42

A. Yes, to an extent that is correct; that it doesn't diminish the clinical aspects and consequences of all of these concerns, not for one moment. And I just -- if things had been handled differently in, let's say, March, April, May, June of 2016, where people were able to sit down together and try to come up with a plan, 10:42

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

So, I'm just making a statement that I didn't regard it as, in any sense, the initiation of some kind of informal process that would progress to an even greater degree of formality, but that doesn't ignore the significance of the concerns that were raised, which I already was totally aware of. 10:43 10:44

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

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

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

you're making here?

A. That's one way of interpreting it. I think, if Dr. Swart doesn't mind me referring to her, she asked a witness in recent times, did no one ever just use common sense in dealing with these concerns? And if we had set down around the table and used common sense to address and resolve these concerns over a period of time, then the construct of an MHPS process or framework or the Trust Guidelines, or both, would not have been required. But the employer was perfectly entitled to say, you know, 'we have to address this. You have to collaborate. We have to engage. We have to have end points, milestones, audit and so forth to get to an endpoint which is sustainable, and we're going to have to discuss ways and means by which it will be sustainable in the future.' To my mind, that would have worked. But that wasn't done. 10:45 10:46 10:46

Insofar as I have contributed to that never getting off the ground by not replying with a plan or not seeking help, you know, that is a possibility and I regret that in retrospect. But I just felt I wasn't left in that kind of situation where I could seek that help. 10:46

57 Q. Just to pick up on your point about sitting down, the common sense, the good communication between colleagues and between management and clinicians; what do you put the failure to sit down after this March interaction, what do you put that down to? 10:47

A. I just think -- I'm not an expert on this but there's

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

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

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

59 Q. But that effort, and we can see it's reflected in the documents we saw yesterday, over and above your job plan, that was directed in a way using your time but it was directed away from what they were asking you to do on that page, on the page of that letter. 10:50

A. Not totally. I mean, you know, certainly the amount of time that I dedicated to additional operating because of my concerns about patient risk and so forth didn't totally deflect. I made progress on these fronts. It mightn't be tabulated, but I did make progress. 10:50 I reduced the outpatient backlog. I started dictating prospectively, I had a backlog of that to do. I made progress on that as well, as reflected in the numbers. It wasn't 668, it was 189. I do really wish that I had even managed to use my time more productively to get 10:50 that down to zero; that would have been a great achievement. So, I made progress.

I was reassured that there was a default mechanism in for the triage and I was making progress in auditing 10:51 that to ensure that everybody referred was actually given an appointment and not overlooked.

So, I regret I didn't make more progress but I certainly made every effort. 10:51

60 Q. I think we have something of an illustration in statistical terms of progress being made. It's fair to put this on the screen, of course, TRU-257706. That's not what I intended. Allow me a moment...

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

"There are currently 174 untriaged letters dating back to May 2016."

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

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

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

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

10:55

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

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

A. That's right.

62 Q. I don't think you ever disputed that.
A. Not at all. I mean I retained them in chronological order. I did say yesterday that I did some urgent and non-red-flag triage. I did -- always. I wasn't able to complete it. I wasn't able to do 50 percent of them, I may have done 20 or 30 percent of them, I don't know, I didn't keep a record of it. You all I'm just saying is that that is a true number. I kept them, I handed them -- well, I told them where they were, where Martina could find them. So, as of the last week of June '15, because I was the urologist of the week then, I still had 783 referrals that I had not triaged and that I had not completed the audit of. I gather, actually, that there was only one patient from that week who still had not had an appointment, which speaks for itself because that was June '15. I don't think -- it's very difficult to understand where that number comes from. 10:57 10:57 10:58
63 Q. Very well. We can ask Mrs. Corrigan.
10:58
The reason I brought this document to the screen was to reflect the point that you were making earlier about making progress on some of these issues. And if we went to the March letter we could see that they were referring to 41 cases in 2013, which were in the review backlog. You appear to -- I can bring that up just to show you quickly. It's somewhat awkward jumping between documents, but if you take my word for it that TRU-274696 has 41 patients in the review backlog for 10:59

2013, and you can see the rest of the figures. And if we jump back to where we were in the August document, you can see - that's TRU-252776 - sorry, it's not. Back to my mistake of earlier. I beg your pardon. Do you have that in your memory? 11:00

MR. LUNNY KC: 274273.

64 Q. MR. WOLFE KC: Thank you, Mr. Lunny. There you can see that the 2013, to make this very -- what I thought was going to be a straightforward point, the 2013 element, the backlog has disappeared; is that reflective or was 11:00 that your work being clearing --

A. Yes.

65 Q. -- aspects of the backlogging --

A. Yes.

66 Q. -- in chronological fashion? 11:00

A. Yes.

67 Q. I'm obliged. Thank you.

Now, we know - and this is an illustration of it - that unbeknownst to you, it seems that Dr. Wright had 11:00 reawoken to an interest in this matter, and Mr. Gibson was tasked to provide a screening report. We also know, running parallel to this, that Mr. Weir and Dr. McAllister were having discussions about how to address the issues that were known to have arisen from 11:01 the March letter. And we can see part of that interaction between Weir and McAllister - TRU-281130. And they had both been tasked by Mr. Gibson to update on whether they had heard anything from you following

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

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

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

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

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

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

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

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

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

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

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

11:04 11:04 11:04 11:05 11:05

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

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

He goes on to say:

"I don't think people knew the enormity of the problem or how far back. I know I was told at a point not to meet with Mr. O'Brien about this issue." 11:06

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

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

oversight meeting and --

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

A. Mmm.

72 Q. Isn't that one possibility?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Firstly, you're concerned that the decision to seek

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

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

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

A. That's right.

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

A. That's right. 11:16

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

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

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

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

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

You say that:

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

You say:

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

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

Secondly, you say: 11:18

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

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

the letter..

Thirdly, then, you're saying that:

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

Then over the page you say, fourthly: 11:18

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

And you say that: 11:19

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

The word "formal" was used, as you'll recall. 11:19

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

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

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

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

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

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

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

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

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

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

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

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

knowledge, I've never failed to do so.

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

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

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

Have you a sense of what that alludes to?

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

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

A. I see.

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

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

"The Trust has a policy of removing charts from the

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

You take umbrage with Dr. Fitzpatrick's phrasing of that on the basis that you're assuming that Mr. Gibson is suggesting you've had a formal warning? 11:26 11:27

A. Yes.

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

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

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

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

A. Yes. 11:29

88 Q. Just scroll down.

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

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

A. Yes.

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

A. Yes. Yes.

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

A. I cannot.

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

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

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

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

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

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

93 Q. Yes.

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

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

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

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

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

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

CHAIR: Very well.

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

there's to be input from Mrs. Gishkori, Colin, Ronan and Simon prior to the meeting. Would that have been a sensible way forward with you at that time?

A. Yes. I mean anything would have been better than nothing, obviously. I still am of the view that, as I've just articulated that NCAS input would have been even additionally helpful. I've no doubt, whatsoever, if this kind of approach had been taken with NCAS input, it would have been successful. It may have been frustrated by my having to go off on sick leave because I had deferred it for as long as was tolerable, but that's another matter. 11:35 11:35

96 Q. Yes. I just want to set -- let's just go to the letter and have any observations you wish to make on that. It's TRU-231450. Conscious, of course, you didn't see the letter in real-time. Its content is summarised in the minute I just put in front of you. But scrolling down through it we can see an informal approach to consider four areas of your practise, and be time-bound. 11:36 11:36

Scrolling on down again. They ask you to complete -- they would have been asking you to reduce, by 70 patients per month, your review backlog. Would that have caused any difficulty with support? 11:36

A. Well, without support virtually impossible. I'm not going to say impossible, as I have used that term in the past, but unrealistic, of course, without some other kind of support.

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

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

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

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

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

"They already have plans, it's reported, to deal with 11:38

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

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

A. No. 11:39

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

A. Yes.

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

A. Yes.

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

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

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

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

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

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

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

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

11:43

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

11:43

11:43

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

11:44

11:44

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

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

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

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

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

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

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

A. By no one.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIR: 12:10 then. 11:52

THE INQUIRY ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

CHAIR: Mr. Wolfe, are you ready?

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

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

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

The sentence that I was interested in was:

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

12:10

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

A. Where are you suggesting?

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

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

I was concerned that there was an allegation being made, a serious allegation if it had -- you know, that I was not making notes at patient consultations. That's it.

110 Q. So the linkage then between that concern and the advice from NCAS is -- if we go to AOB-01049 and if we go down, to the bottom of that page. It's recorded that "you told me" - if we go to the end of the sentence - "on occasions there are no records of consultations." Is that the point you were concerned about? 12:11 12:12

A. Yes. You can see the genesis of that and you can see in the earlier clause of that sentence "you told me that his note taking" as opposed to what turned out, not taking. That explains it. I'm relieved.

111 Q. Thank you. Now, we ended just before the break and the broad thrust of what you were saying was there was a missed opportunity here to sit down and talk to me, bring NCAS into the equation, and sort this out. The starting point for our discussion this morning was the opportunity on your part, available to you, to respond to the March letter and move the process forward, as appears to have been expected by the Medical Director and people down from that. And it was in the context of your failure to engage the Trust appears to be saying, through its witnesses, that it then led to the escalation of events into September and thereafter; is that a fair way of looking at it? 12:12 12:13 12:13

A. No, I think it's a rather one-sided way of looking at it. It required all of us to be engaged in a process.

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

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

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

risk of being harmed.

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

A. Absolutely, yes. That's true.

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

A. That's right.

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

about to put to you.

Patient 93, if we go to TRU-274751. And if we scroll down the page, please. Just below that again. Keep going down, sorry. Scroll on down further. And on down, please. I'll tell you when to stop. 12:19

This is a patient we called Patient 93. Mr. Haynes is writing in to Martina Corrigan, 31st August 2016, and sets out the history there. 12:20

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

It appears that the referral comes to you for triaging and isn't done and it comes back into the system in August with "metastatic disease from the prostate primary", as it's described there. 12:20

"As a result of no triage, there is a delay in treatment of 3.5 months. Mr. Haynes's view is it wouldn't change the outcome." 12:21

Now, if we scroll down to the bottom of a long email trail but you may take it from me that this goes back to Mrs. Corrigan, to Dr. McAllister, to Mr. Young, and I think possibly at some later point to Mr. Weir. 12:21

Is this case ever discussed with you?

A. No.

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

A. Yes, of course.

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

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

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

A. Consultants.

118 Q. -- consultant urologists.

A. Mmm.

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

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

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

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

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

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

121 Q. I think it was leg.

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

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

A. Yes. 12:26

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

A. That's right.

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

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

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

12:28

So, that indicates that she's aware that you've notes at home - maybe that's not a surprising thing to say. She knows you're going to be working from home to attempt to work into the backlog, and she's giving her blessing for that arrangement. Is there anything else on that that you wish to say? 12:28

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

125 Q. Into December then, and we know that the Oversight Committee met on 22nd December. But prior to that, I want to take your own view on this because I think you've expressed some scepticism as to whether the emerging findings from the Patient 10 SAI were the true triggering reason for the decision to exclude you from work and to conduct a formal MHPS investigation. Let me take you through some of this. 12:29 12:29

If we could look at TRU-251827. Here, Esther Gishkori, if you scroll down, please, is confirming your absence on sick leave. She says: 12:30

"The SAI Review continues and will no doubt produce its own recommendations".

She says:

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

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

12:30

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

A. Yes.

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

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

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

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

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

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

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

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

A. Was it?

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

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

A. I accept that, yes.

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

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

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

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

harm."

In the context of triage there's nothing wrong with that conclusion, is there?

A. There's a strong possibility that patients may have come to harm. There's nothing wrong with that sentence grammatically. It's conditional. 12:42

130 Q. Well, it's pointing to, in real terms, a risk that if triage isn't done --

A. Of course. 12:42

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

A. Yes.

132 Q. It says:

"Should Dr. O'Brien return to work, the potential that his continuing administrative practises could continue to harm patients would still exist." 12:42

Again, if you continued the way you were working, that risk would pertain? 12:43

A. Yes. There's a potential there. There's still conditionality in that, yes.

133 Q. For those reasons, it appears, it was agreed to exclude you, albeit it's made subject to contacting NCAS to seek confirmation of that approach. 12:43

As I say, you've made the point that this Committee failed to consider alternatives to exclusion.

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

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

12:44

"Should Dr. O'Brien return to work, the potential that his continuing administrative practises could continue to harm patients would still exist."

Now, it hadn't been yet established whether risk had translated into harm.

12:45

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

12:44

12:45

that was taken?

A. Completely.

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

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

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

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

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

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

The exclusion, you say, has the effect of impacting on patients?

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

137 Q. Yes.

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

cited in the MHPS Framework for exclusion, it wouldn't cost them a thought, actually, to have excluded me for a month, six months, nine months, a year, year and a half, doesn't matter. What impact that would have on patients was not a concern. 12:51

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

A. Thankfully.

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

12:51

Your meeting with Dr. Wright on 30th December, you've described the impact of that on you in your statement. There was a dispute after that meeting, or at least you disputed the record that you had been sent, isn't that right? 12:51

A. Yes.

140 Q. And you wrote on 21st February to contest that record. You set out a note. If we could go to AOB-01443. You set out a number of concerns about the note, factual errors, and omissions. And the final detail of that 12:52 isn't terribly important for our purposes.

Could I just ask you this: There's a letter on the Inquiry bundle which suggests that you received a response to this letter. Is it your recommendation 12:52 that you didn't receive a response?

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

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

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

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

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

"I do clearly recall that when I asked if your job plan was unrealistic, your initial response was to state that it was okay." Etcetera. 12:54

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

please. It does appear to be an identical letter. When did that come into your hands?

A. I think that came into our hands - I can't recall - as part of information that we had requested in late 2018 or '19 after the investigation had been concluded. 12:56

142 Q. So, perhaps as part of the grievance?

A. Subsequent to that. That's my understanding. Because, in fact, I think we have -- there's documentary evidence where I have repeatedly requested that letter and did not receive it. 12:56

143 Q. It appears that you were able to make, with a confident tone, your comments in relation to the transcript of the 30th December meeting because you had recorded the meeting.

A. Well, I hadn't recorded it but my wife had recorded it. 12:56 I didn't know that it was being recorded. And my wife recorded it because she does have impaired hearing, which probably wasn't as bad then as it was now. Now, it's to an extent that she is more confident in declaring it, which has been an issue for her here in 12:57 this chamber. But back then --

144 Q. Sorry, to cut across you. She attended with you at the meeting of 30th December?

A. Yes. That's right. She did.

145 Q. She probably could see that Dr. Wright was accompanied 12:57 by Ms. Hainey?

A. Hainey, that's right.

146 Q. And she was making a note of the meeting?

A. Yes.

147 Q. Your wife, Mrs. O'Brien, had decided to record it?
A. Yes.
148 Q. That wasn't brought to the attention of Dr. Wright, is that fair?
A. That's right. 12:58
149 Q. Had it been brought to your attention --
A. No.
150 Q. -- in advance of the meeting, 'I've a hearing problem, Aidan, I'm going to need to record it'?
A. No. I didn't even know it is possible. I'm not an IT 12:58
geek. So, I didn't know it was possible on a smartphone to do so.
151 Q. When was it revealed to you that it had been recorded?
A. Maybe two hours after we got home that day.
152 Q. And you sat and listened to it? 12:58
A. Not for several days after. I was -- I wasn't in a state to listen to anything, really.
153 Q. And we know that you have provided the Inquiry with, I think, 26 such recordings, and transcripts have been made. Is that all of the recordings that you have? 12:59
A. Yes.
154 Q. The second recording that we're aware of your wife wasn't in attendance on 9th January when you met with Martina Corrigan, I think in her car?
A. In my car. 12:59
155 Q. You don't have a hearing impediment?
A. No.
156 Q. So, you didn't need it recorded but it was recorded?
A. It was.

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

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

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

162 Q. At no stage did you seek permission from --
A. No.
163 Q. -- anyone, whether that's a formal meeting such as the meetings you had with Dr. Wright, Dr. Khan or Mr. Weir or the more informal, private conversations such as you had with Mr. Weir. 13:04

The conversation with Mr. Weir, for example, in October 2018, and that was recorded and from it we looked at the point this morning about who was it who asked him to step aside? 13:05
A. Yes. Yes.
CHAIR: Was that with Mr. Wilkinson?
MR. WOLFE KC: It was a meeting with Mr. Weir.
THE WITNESS: Mr. Weir. 13:05
164 Q. MR. WOLFE KC: That meeting was then reported into your grievance, isn't that right?
A. Yes.
165 Q. Was that, plain and simply, an information-gathering exercise for your grievance? 13:05
A. Well, the meeting, actually, was to find out whether or not he had been spoken to by someone not to engage with me back in September '16. That was the purpose of the meeting. I think, actually, I was gathering two bits of information. That's one of them. And whether I had been allocated more administrative time than my colleagues, which had been repeatedly reported. So, it's just a recording of the information that was gathered. 13:05

166 Q. Could I ask you to take a look at the following document, AOB-56500. This is a meeting attended along with Michael O'Brien on July 20th. If we go into the first page, please, towards the bottom. Down to the bottom of the next page. Thanks. 13:06

At the bottom of the page the speaker, Ms. Young, is saying:

"The other things that we have checked, our phones are off. Obviously, this is not the end of the world if your phone is not off, but it might distract you from what we are doing. So long as we don't distract you, that would be the main thing. Okay?" 13:07

13:07

Ms. Young then says:

"We are taking our own notes and I want to make sure, to let you know, we are not recording and I am asking that you are not recording it either." 13:07

And Michael O'Brien answers "no". She then says:

"Because if you were, as long as you let us know, that's fine." 13:07

Over the page:

"So we are here today in relation to this stage..."

etcetera.

Did Michael O'Brien know that you were recording?

A. No.

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

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

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

A. Yes.

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

A. Yes. 13:09

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

A. No, let's be clear. I can't recall when Michael became aware that we had recorded any meetings. I cannot recall. What I certainly can recall is that when he became aware he was uncomfortable and disapproving of it. He would have preferred it hadn't happened. 13:09

I didn't advise him that I was recording this meeting. Whether I didn't advise him of that because of his previous awareness, if he was aware previously,

I cannot recall.

171 Q. Why did you not intervene - you're sitting beside him - and tell Mrs. Young, 'my son has answered no but in fact the answer is yes, I am recording'?

A. Well, I felt it wasn't an issue for her because she said it was fine. So, I didn't think it was an issue. And I didn't ever, ever anticipate that any of these recordings would enter into an arena or forum like this. They weren't even kept for any litigious or other reason, I can assure you. So, it happened. I was so thankful, on a number of occasions, that it did happen because we were able to make significant corrections, such as, like, Mr. Carroll stated that he had never met me, whereas in fact we had a meeting. Important things. And I know that it has been said that it was the fact that it was being recorded that had me steer the discussions that took place in some meetings, but that's not the case at all. I was just recording them. We had found it very, very useful to be able to listen to them, to hear what people did actually say. It enabled us, actually, to offer corrections, and we became disappointed and despondent at the fact that the corrections that we were able to offer were not always amended. 13:10 13:10 13:10 13:11

172 Q. Could I ask you to reflect upon the integrity of the first part of the answer you've just given me? 13:11

A. Mmm.

173 Q. The questioner says to you: Are you recording?

A. Mm-hmm.

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

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

175 Q. Roll back up, please. She says:

"We're taking our own notes. I want to make sure, to let you know, we are not recording and I am asking that you are not recording it either because, if you were, so long as you let us know, that's fine." 13:12

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

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

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

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

MR. WOLFE KC: Quarter past two?

CHAIR: Quarter past two.

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

CHAIR: Good afternoon, everyone. Mr. Wolfe.

MR. WOLFE KC: Good afternoon, Chair.

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

176 Q. MR. WOLFE KC: Good afternoon, Mr. O'Brien. Just a few of the developments that happened after 30th December when you met with Dr. Wright. You met with Mrs. Corrigan to bring back the charts. You directed 14:15 her to the referrals that were kept in a cabinet in your office. Outcome sheets, they weren't returned with the patient charts?

A. That's correct. Just to correct you. I didn't meet

with Martina Corrigan to return the charts, I returned the charts to my office, I think, on 1st and 2nd January. So, yes, I didn't return the outcome sheets with the charts.

177 Q. Had you a particular intention in retaining them? 14:16

A. Not particularly. I mean I retained copies of them anyhow when I had them requested. So just as an interesting point, you know, outcome sheets, in any case, should not be returned with charts. The whole purpose of outcome sheets, following clinics, is that 14:16 they should be returned to the secretary separately and apart from charts, whether before charts are returned in the normal course of events but, in any case, separately. That was the purpose of their introduction in the first instance. 14:16

178 Q. But these charts remained with you notwithstanding the direction to -- sorry, these outcome sheets remained with you. Did you not understand that they should go back at the same time as the charts?

A. No. And they should, in my view, not have gone back at 14:17 the same time as the charts and should have been returned separately.

179 Q. And why didn't you return them separately?

A. I wasn't asked to. There was no difficulty in returning them, and for which purpose I arranged to 14:17 meet with her.

180 Q. Now, on 6th January, as I mentioned briefly this morning, Dr. Wright wrote to you. Just briefly look at that letter, if we can, please. AOB-01355. Scroll up

to the top of the letter.

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

14:18

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

Scrolling down to the bottom, it's explained to you 14:18
that for the reasons explained at the meeting there would be an exclusion, described as a precautionary measure. And he sets out the reasons for that which I think I laboured somewhat to articulate just before lunch. Those are the reasons ultimately given. And he 14:19
explains that the exclusion will be up to no more than four weeks.

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

14:19

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

Scrolling down. He deals with the notes issue and he provides for you some information in relation to the availability of the services within Occupational Health or the Care Call Services.

In terms of outlining the procedure for you and the various steps, that's a fairly clear indication that matters would take, I suppose, some four weeks before they would get moving properly. That was, I suppose, transparently explained to you. 14:20 14:21

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

So, have I answered your question adequately? 14:22

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

"Apart from this notification I heard nothing from the

Trust for over two weeks."

A. Mmm.

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

A. Mmm. 14:22

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

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

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

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

184 Q. To the?

A. 16th January.

185 Q. Okay. 14:24

A. -- I had no further communication with regard to any search meeting. That caused me on that date to contact the case investigator. The case investigator told me that he would find out, or had found out, the identity of the person from Human Resources who would be 14:25 assisting him. And he rang me back on 19th January to advise me that a meeting was going to be organised to meet with her, not with me, on 26th January '17 and that they would -- the intent was that there would be a meeting with me subsequent to that. Meanwhile, I'm 14:25 reading the Trust Guidelines that says the formal investigation must be completed by 27th January '17. And that was hugely stressful, in addition to exclusion.

186 Q. Did you read the MHPS Guidelines that provide that the 14:26 four-week time limit is in certain circumstances to be subject to extension? In other words, it's a flexible time limit?

A. Again, I read that, but to my mind, having read the Trust Guidelines, the Trust Guidelines were more 14:26 restrictive or constrictive in that regard and the Trust Guidelines were the vehicle that was used which obliged of the employer to enable it to use the MHPS Framework.

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

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

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

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

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

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

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

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

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

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

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

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

A. Not at all.

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

A. Not at all. No. 14:34

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

A. Not at all.

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

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

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

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

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

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

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

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

Michael Young and I are still directors of CURE. So, we agreed to fund the conversion of the website of the British Association of Urological Nursing into an interactive educational website, and we fund other activities of theirs. So, those are ongoing activities.

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

A. It's a registered --

204 Q. -- registered charity? 14:39

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

205 Q. Yes.

A. Whatever.

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

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

Do you remember making a phone call to her?

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

I don't think that -- you know, I mean, I have already articulated the reasons why I would not have done so. And in any case, I don't think, actually, that Roberta Brownlee was in a position to be doing anything, even if it was possible and proper. So, I didn't. I was very, very particular about that. 14:41

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

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

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

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

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

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

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

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

A. Mmm.

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

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

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

you'd mentioned to Mr. Wilkinson a previous meeting with her.

A. Mm-hmm.

210 Q. So, dealing with these matters in reverse, do you recall telling Mr. Wilkinson that you intended meeting with Mrs. Brownlee in the context of this investigation? 14:45

A. No. No.

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

A. I don't recall telling him that. 14:45

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

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

213 Q. Yes, a previous meeting and you were going to meet again. 14:46

A. No, I didn't meet her again. And the only previous meeting that I had with her was when she called at our home well after he had been appointed, just to re-assure me of the nature of the person who had been appointed. 14:46

214 Q. Mr. Wilkinson has given evidence that it was his perception, and you might feel it unfair to ask you to comment on this, but if I can ask it in this way: It's his perception that is Mrs. Brownlee was attempting to influence him in this process. First of all, were you seeking or was your wife seeking to prevail upon Mrs. Brownlee to advocate on your behalf? 14:46

A. No.

215 Q. Do you recognise that if she is speaking to Mr. Wilkinson in the terms that are mentioned on 2nd March, if that was the case, that that is advocating on your behalf?

A. What happened, which 2nd March. 14:47

216 Q. On 2nd March, sorry. If we go back to what he says at paragraph 19, if we scroll back, 26095. At paragraph 19 he's saying that she is describing your attributes as a surgeon, well-respected, setting up the Urological Service, expressing concern about the 14:47 handling of the case and asking Wilkinson to make contact with you.

A. So the question, sorry, is?

217 Q. Would you accept that's advocating on your behalf?

A. I don't know. I mean, I can't be inside 14:48 Roberta Brownlee's mind and her intentions, or whatever, at that point in time. What I can certainly state categorically is that I didn't request any such advocacy. I thought that would have been highly improper and I never sought it. She would have had, by 14:48 this stage, an awareness of the adverse effect that it was having on us as a family. And if she asked him to contact me, that was fine, but whether that amounts to advocacy of some kind, I do not know.

14:48

Part of his role was liaise with me or for me to be able to liaise with him and to make representations. So, I had a person appointed to do that, why would I seek another person to press upon them? It

just didn't happen.

218 Q. Could I ask you about one final matter in this context. If we turn to AOB-56363. So, this is a record of a meeting which you weren't present at, I understand, it was just between Dr. Wright and Mrs. O'Brien, takes 14:50 place on 14th September of 2018. If we just scroll about halfway down the page, please. The discussion is around the role of Mr. Wilkinson. Mrs. O'Brien says:

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

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

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

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

with your concerns about it?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It says:

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

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

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

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

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

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

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

223 Q. Yes.

A. So there was a lot going on. It was a very stressful time. 15:00 15:01

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

15:01

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

15:02

Would you accept that there was a part of the Trust's process within its Guidelines that did require this stage to be undertaken?

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

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

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

A. That's right.

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

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

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

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

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

Then the big box:

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

So, plainly, it refers to the need for the Chief Executive to be present if the practitioner is at consultant level.

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

that?

A. Yes.

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

A. Yes.

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

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

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

facilitate the application of the MHPS Framework.

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

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

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

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

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

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

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

"The Case Investigator must complete the investigation within four weeks and submit to the Case Manager within a further five days." 15:11

Is that what you're relying on?

A. Yes.

230 Q. And your concern is that that is a strict requirement and that's the one that binds the employer? 15:12

A. Yes.

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

A. No, because -- there are two points I would make. I think, actually, you may have asked Dr. Wright when 15:12 he was giving his evidence, you know, it was well established that there was a failure to triage. It was well established there were charts at home. It as well established that a patient wasn't always done. What were you investigating? 15:13

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

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

A. Yes. I know -- the second point I was going to make was, you made reference to the backlog, the review backlog, but the review backlog was not part of the Terms of Reference. It wasn't an issue. It had fallen away, presumably on the grounds -- 15:13

233 Q. What I meant by the backlog is the parallel investigation into the implications of the triage shortcoming, the implications of the dictation shortcoming, and obviously then there was investigation on the private patient issue, etcetera. 15:14

A. Yeah.

234 Q. So, your concern is that this wasn't done in four weeks?

A. I was just pointing out the fact that this wasn't done in four weeks; that the Trust wasn't complying with its 15:14 own policy. I thought it was reasonable to do so. I felt it was bound to do so. And I still feel it was bound to do so. If they had found, over a period of six years or seven years ago by this stage, that they couldn't usually meet compliance with their own policy, 15:14 the policy, the policy should have long since been rewritten.

235 Q. It is, if we look at this more generally, not necessarily your case, but it's said of these cases generally that it's extremely difficult to bring them 15:15 it to a conclusion where they have any complexity, within a timeframe of four weeks. Take, for example, your own circumstances; you were left with a task to perform after you met with Dr. Chada on 3rd November --

6th November?

A. 6th November.

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

A. Yes.

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

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

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

He's appointed by the Trust Chair.

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

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

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

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

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

I wonder is your criticism on the page here a criticism of the role or a criticism of him?

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

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

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

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

A. Mmm.

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

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

The letter runs to several pages. A series of very

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

245 Q. So, do your answers suggest that even now you see a roll for a non-exec, or perhaps somebody else adjacent to this process to receive expressions of concern from you and that that person should be enabled by the process to independently investigate them or demand answers for you?

A. Yes. I think that would be very, very helpful in terms of building that into the kind of framework or structure or process of any such investigation. That a person on the receiving end does have some kind of conduit, some independently-appointed person, a Non-Executive Director seems to be to be a very appropriate person to fulfil the role because they do have an accountability to the Trust Board.

But, I do accept, indeed, that they need to have the skill set to do so. It's not an easy task to be such a person. Having been a kind of Non-Executive Director as a trustee of a school and governor, and so forth, I appreciate how important it is to have skill sets as an individuals in order to fulfil certain roles as governors and trustees and so forth. I do think it's very, very important.

If you have a person who is as disenchanted and disappointed and annoyed and angry about this whole process by this point in time, I thought it was really crucial to have someone who could inquire, investigate, and provide answers to me freely. You know, he did --

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

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

A. Mmm. 15:33

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

A. Mmm.

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

CHAIR: Yes, 10 to 4.

THE INQUIRY ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

CHAIR: Last session of the afternoon then. 15:51

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

248 Q. MR. WOLFE KC: Mr. O'Brien, I was asking you, about 30 minutes before our break there, about your engagement with Mrs. Brownlee as various points. Just one factual point I should check with you. You mentioned being abroad with her at a wedding, and her family. When was that, approximately? 15:51

A. I'll have to consult with the authority. I can't recall. We were abroad -- I can give you the details. 15:52

249 Q. Can I just ask it in this way: Was it during the currency of the life of the MHPS investigation?

A. I would have to check that as well.

250 Q. If you could check then, after you've finished giving evidence, so after you've come off oath and we can receive that information through your legal team. 15:52

A. Yes.

251 Q. Very well. Thank you. I just want to, in the time left with us, this afternoon - and regrettably we'll have to go into tomorrow morning - ask you about the steps taken after you returned to work. 15:52

A. Yes.

252 Q. If I could have up on the screen, please, TRU-00039. This is the record of the case conference that took place on 26th January 2017. This is the second page of it. If we just scroll down, please, towards the bottom. So, the first thing to note was that the case conference decided that you could return to work but 15:53

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

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

"There was consideration about whether there was a process for him..." that's you "...highlighting unsustainable workload."

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

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

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

A. Of 26th January?

253 Q. Yes.

A. No.

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

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

A. No.

255 Q. We're going to come on and look at a meeting which you attended with, I think it was Mr. Weir and Mrs. Corrigan, at the start of March, there was some discussion around backlog. 15:55

A. Yes.

256 Q. We'll look at that. But are you aware of any formal exercise, put it in those terms, which involved a comparison of your workload activity with others? 15:55

A. No.

257 Q. Job planning, I'm going to come to, was the responsibility of Mr. Weir. We have evidence from him in that respect. 15:56

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

A. Yes. Yes. 15:56

258 Q. And, obviously, the MHPS investigation is about to swing into action in terms of its investigative phase. You have, and we've observed the difficulties -- you've acknowledged and we've observed the difficulties around your administrative practise, which you put down largely to workload pressures, meaning you couldn't do all that was required of you, and you've frankly acknowledged that. Did you get any sense, upon returning to work, that, if you like, there was going 15:56

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

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

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

259 Q. There was nothing, no, if you like, fundamental --

A. Re-evaluations, no.

260 Q. -- project to look at this?

A. No.

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

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

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

A. In 2016?

262 Q. Yes.

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

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

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

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

issue to get it resolved because it was seen as important, I suppose, to get to grips with the pressures that you were feeling as regards aspects of your role and to make your return to work, I suppose, as patient safe as possible, and as administratively compliant as possible. That seemed to be the thinking. Why did it not reach a conclusion? 16:04

A. Well, I think the first meeting in -- is it February '17? No, sorry. Do you see the job plans that are published, as the say, on Zircadian, their time, they expire off. 16:05

264 Q. Yes. Do you want to scroll back?

A. Yes, October '16 and of course then I go off.

265 Q. Yes. So back to the bottom of the next page.

A. But the important one then is, when did we first meet on my return from -- 16:05

266 Q. You met upon your return with Mr. Weir and Mrs. Corrigan On 9th March. Now, that was a more general meeting, it seems.

A. It was a return to work meeting essentially. That's right, yes. 16:05

267 Q. Yes. I don't wish to descend into the weeds on this, but do you have a general reflection on why job planning wasn't brought to a conclusion, notwithstanding the efforts, apparently, made by Mr. Weir? Was it a case that you couldn't agree with what was being offered? 16:05

A. Well, yes, by definition that is the case. If I recall, when we met for the second time - and is that in 2018?

268 Q. I think so yes, if you scroll down.
A. I believe it is, because it says it was rewritten in April '18, though, in fact -- we had a further review of job planning in April '18 but the start date was retrospectively in February '17. I thought actually 16:06
that we -- I though we had a further meeting, which was a very, very constructive meeting, and it was running concurrently in late '18 with us trying to get meetings with senior management in the Trust to sort out some issues that remained of concern to all of us, not least 16:06
triaging and the relationship with urologist of the week, and the long waiting list and how we're going to address all of those global issues.

So, I think, actually, job planning alone was not going 16:07
to adequately address -- it wasn't -- job planning alone was not going to enable Mr. Weir to draw a line under the past and start off with a fresh sheet. And the Zircadian System is very, very complex. It's typically the case that when a job planner makes every 16:07
best effort that they can to navigate their way around it, annualising some activities, and it's best done, actually, by email correspondence because you're presented with a plan which is sometimes very, very difficult to comprehend. There are things missing, 16:08
things on the wrong day, and so forth.
269 Q. He refers to an email you sent in September 2018, just before he went off.
A. Mmm.

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

A. Mmm.

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

A. Mm -- hmm.

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

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

And you say 20 to 24 hours when conducting advanced triage and you were doing that in your own time over the weekend after UOW.

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

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

He says:

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

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

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

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

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

A. No.

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

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

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

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

A number of matters to take out of this discussion of the Enniskillen Clinics. As you said earlier, you reiterated a wish to go to the clinics on a monthly basis. There was discussion, was there, about whether you should stop going?

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

16:15 16:15 16:16 16:16 16:16

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

275 Q. Is it fair to frame that discussion in terms of Mr. Weir exploring with you --

A. Absolutely. Yes.

276 Q. -- whether the valve which is containing the pressure on your practice could be released in some shape or form? 16:17

A. Yes. In some shape or form, yes.

277 Q. And you thought that would be an inappropriate starting point?

A. Yes. In fact I think, actually, when I have read the transcript of that meeting, I'd have been much happier to have sacrificed the one in Armagh Community Hospital because people can travel from Armagh to Craigavon, whereas distance is a big issue for Co. Fermanagh. 16:17

278 Q. Just scrolling down the page, there's a discussion about dictation which was obviously a concern. I hope I get this right but, in essence, they were to ensure that the IT facilities at SWAH would enable you to dictate promptly after the clinic? 16:17

A. That never really worked out. They made every attempt from our Southern Trust point of view to make it work. There was some attempt on the SWAH end as well, but, ultimately, neither Michael nor I were employees of the Western Trust and we couldn't really use their system to do digital dictation that would link in with the Southern Trust. I brought my own Trust laptop to dock in. We tried lots of things. Michael Young continued until the SWAH clinics ended at the start of lockdown in 2020, he continued to use tapes for his patients. 16:18 16:18

I gave up out of frustration, and that was known to Martina Corrigan. So I brought them, ultimately, back home and I dictated on them at home.

279 Q. If we scroll down, it was agreed that you would see 16 patients - eight morning, eight afternoon - and would get one hour to dictate at the end of the clinic. You agreed to this and said that you would not release files until all the charts had been dictated on. Did that become academic because of the failure of the IT system? 16:19

A. It did.

280 Q. Can this be framed as another attempt, with Mr. Weir's intervention, to assist you upon your return to work --

A. Yes. Yes.

281 Q. -- to get more efficient with this? 16:20

A. Yes.

282 Q. If we scroll down then to the next page, the issue of new outpatient clinics is discussed.

A. Yes.

283 Q. And you, is it fair to say, made a pitch for being absolved from seeing any new outpatients -- 16:20

A. Yes.

284 Q. -- at least until you got caught up with your backlog? Is that the way to frame that?

A. Yes. 16:20

285 Q. You felt - tell me if this is right - it's recorded here that you felt that you had the most patients waiting to be operated on with the longest waiting times and it wasn't fair to keep adding to your list?

A. Yes.

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

A. Yes. 16:21

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

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

16:22

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

increased pressure on my colleagues as a consequence. So, that was described to me and it was a non-runner, regrettably, because I think that would have been helpful and it would have made sense in any case in order to plan some day the end of one's employment. 16:23

288 Q. If one then goes to another issue by way of example of discussions around your work pressures at page 56 in this sequence - three pages further on, please - and you, I think I'm right in saying, were contemplating giving up the rotating chair role for MDT; is that 16:24 right?

A. What I was not prepared to do was to continue operating until 8 o'clock in the evening and going home and having a first meal of the day, on a Wednesday, and then to preview the next day's MDM, as I had done for 16:24 the previous years. So I -- I'm reading it as I --

289 Q. Scroll up so we can see the full entry. No, sorry, scroll down?

A. Scroll down, yes.

290 Q. So what you're saying is, you're reflecting that 16:24 Wednesday was a long operating day and you were advising Martina Corrigan that you hadn't quite made up your mind of that you're going to continue with the chairing role, but if you did, then you wouldn't be coming into work on the Thursday morning, the time 16:24 would be spent previewing for the MDT?

A. Yeah. Well, in any case, I think at that time, having introduced a rota involving three of us back in September 2014, I took the opportunity then of

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

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

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

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

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

A. Mmm.

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

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

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

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

16:27

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

16:27

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

A. Mmm.

16:27

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

16:28

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

THE INQUIRY WAS THEN ADJOURNED UNTIL FRIDAY, 21ST APRIL 2023 AT 10:00 A.M.

16:28