Urology Services Inquiry

Oral Hearing

Day 31 – Wednesday, 22nd March 2023

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

Dr Sonia Swart (Panel Member)

Mr Damian Hanbury (Assessor)

Held at: **Bradford Court, Belfast**

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

Gwen Malone Stenography Services

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CHAIR: Good morning, everyone.

MS. McMAHON BL: The witness this morning is Siobhán Hynds who was the employee relations manager at the time of the MHPS investigation, and I believe she's going to affirm. 09:59

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

CHAIR: Thank you. 09:59

MS. MCMAHON BL: Thank you, Mrs. Hynds. Now, you've provided the Inquiry with two Section 21 responses; well, one substantive response and an addendum. The response to notice 47 can be found at WIT-42012. If we go to 42103, we'll see your signature at the end of 10:00 that. Do you recognise that statement and your signature at the end, dated 3rd August 2022?

A. I do.

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

A. I do. 10:00

2 Q. Recently we've received a further addendum to that statement where you want to amend some typos, some errors and some dates. That can be found at WIT-91921, and the signature is at WIT-92923. Can you see your signature at the end of the that statement and the date 10:01 16 March 2023. Do you wish to adopt that as your evidence as well?

A. I do.

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

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

A. That's correct, yes.

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

A. That's correct.

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

A. Correct, yes.

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

A. Yes, that's the only addition. The others are amendments to errors, but that's an addition to my original statement.

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

If I could just go to your employment history just to

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

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

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

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

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

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

A. That's right.

10 Q. Was that up until January 2019?

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

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

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

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

Litigation Services?
A. That's correct.
13 Q. Who do you report to in that particular structure?
A. At that particular time in 2016, the reporting arrangement there was through to ... I'm just trying to recall. Immediately it was Kieran Donaghy, who was the director of HR and OD, and very quickly after then Vivian Toal took over in that role and I reported directly to Vivian in that role. 10:05
14 Q. There will be some emails we see with Lynne Hainey but she's not in on this structure. Can you identify where she sits in relation to your role? 10:05
A. Okay. So, the structure is the Assistant Directors, who sits as part of the senior management teams within service directorates at 8B level. The tier below that are the heads of service at 8A level, in the main. There are one or two exceptions to that. The vast majorities of heads of service sat then at 8A in a tier, not reporting to the assistant directors but with a reporting line directly to the director. Lynne Hainey was a direct report of mine under that as a band 7 at the time of -- when I was in the Head of Employee Relations role. She subsequently took up the head of Litigation Services, so stepped out of the Employee Relations role, but that was sometime after her time in Employee Relations. 10:06 10:06 10:06
15 Q. So it would be fair to say at the time that we're going to look at today, Lynne Hainey sat below you?
A. She did, she reported directly to me.

16 Q. And Vivienne Toal was your direct boss?
A. Yes.
17 Q. Now, I understand you were able to listen in to Dr. Chada's evidence yesterday?
A. I was. 10:07
18 Q. So you'll know that the focus of the questioning around this and the MHPS also involves consideration of The Trust guidelines. I want to take you to those, first of all.
10:07
If I could ask you to go to WIT-42038, paragraph 7.1. You have said about your familiarity with The Trust guidelines there. In the second line:

"I was involved in the drafting of this document in 10:07 conjunction with a range of Senior Trust managers at that time, including Mr. Kieran Donaghy" - who you mentioned - "Mrs. Vivienne Toal, Ms. Anne Brennen and Mrs. Zoe Parks".
Now, this was done in 2010. What was your role in 10:08 relation to the drafting of those guidelines?
A. At that time I was in the Employee Relation manager role, I wasn't in the Head of Employee Relations role. Sorry, in fact I was the Human Resources Manager Band 7 in 2010 up until May of 2011. So, I was reporting to 10:08 Vivienne Toal as the Head of Employee Relations at that time, and Zoe Parks was the Medical HR Manager. So, an equivalent Band 7 role with responsibility for Medical HR.

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

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

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

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

20 Q. So would it be fair to say that the guidelines were anticipated to be the nuts and bolts of how MHPS would work?

A. How we were going to do it locally was essentially it, yes.

21 Q. Was that the reason why individuals like yourself who had experience of human resources and personnel issues were drafted in to create this, so that people with knowledge of what potential areas of concern might arise could inform that document?

A. Yes, that's my understanding at the time as to why I was asked to comment. This was a framework. Yes, it was in 2005 but it was still probably even by 2010 a framework which was still being worked through by organisations in terms of how it was being applied. So, the folk who were working within medical HR teams probably were the closest to understanding how this was being applied in practice at that time. I believe that because of my role within the Legacy Newry and Mourne Trust was partly why Kieran Donaghy at the time had asked me to become involved and comment on that.

22 Q. Just a couple of general questions on that. If the framework, the MHPS Framework document, was what was supposed to be done and the guidelines were the way in which it was to be done, what was your experience of how that actually played out in practice?

A. The framework, as you know, is quite a lengthy document but there are some elements of it that aren't described in terms of how you practically do things. The

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

Back then, you know, between 2005 and 2010, the number of MHPS cases were fairly small. There were not huge 10:12
numbers. So, experience in terms of volume of cases, you know, it was a handful of cases. It wasn't really that anybody -- and I say that in terms of regionally, I mean, because we would have met back in 2005/2006. At that time there were 19 separate Trusts, there were 10:13
19 separate medical staffing managers meeting to discuss how is this going to work, how are we going to apply this? The numbers across the board were small in terms of cases.

23 Q. And you had been involved in some of those cases? 10:13
A. In Legacy Newry and Mourne Trust, no. I, mean we didn't actually have any cases, so when the framework came out how it was going to be applied back then, you were applying it in theory because there wasn't an actual live case. 10:13

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

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

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

10:15

Now, you listened to Dr. Chada's evidence yesterday and some of the questions I'll take you to today. Obviously there are questions to be asked about the application of the framework and the application, indeed, of The Trust guidelines in the case of Mr. O'Brien. I'm just wondering, are these familiar issues that you recognise from your previous engagement with MHPS, the sort of things that are issues perhaps here as, for example, delay, the volume of workload for those involved, access to documents for both those doing the investigation and the person who is subject to that investigation. Are they themes that you recall from previous MHPS investigations? 10:15 10:15

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

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

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

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

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

build capacity. That has culminated now in additional resources within the Medical HR team but that is much more recent, and I suppose it is in response to what we now recognise as being a particular issue in terms of trying to move these at pace. 10:18

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

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

A. I don't think there's any -- I don't think anybody would argue with that. I suppose the practicalities around some of that, so yes, absolutely, in terms of putting that in the framework in terms of those steps that should happen is the ideal. 10:20

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

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

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

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

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

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

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

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

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

practicable.

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

A. Mr. O'Brien.

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

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

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

A. With the Oversight or with the Case Manager?

32 Q. Yes.

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

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

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

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

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

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34 Q. When was that guidance note issued?

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

10:29
10:29

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

We've tried to address that within this document to say that there needs to be an identified point of contact, probably from somebody in a line management role, to provide that support on an ongoing basis to ensure there are regular updates and that there are contacts made just as a check-in in terms of how are you feeling, how are things going for you, how are you feeling, and we built that into this new guidance note. 10:29 10:30 10:30

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

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

36 Q. Perhaps the Trust could provide that guidance to us.
A. Yes.
37 Q. It would be helpful. Thank you.

Now, you did have training on the guidelines. I just want to set this out very briefly because I want to ask you later on some questions about your involvement. The training on the guidelines is set out at WIT-42045, paragraph 9.1. You said: 10:31

10:31

"In my roles as Head of Employee Regulations/Deputy Director HR Services, I received the following training: I attended the Trust's development programme for AMDs and CDs on 7 and 8 March 2017 which covered the MHPS Framework and specifically investigator training by NCAS trainers. I attended and presented at a training session on the 24th September 2010 which was a Trust Medical Leadership forum facilitated by NCAS. This session provided training to medical managers on the MHPS Framework, case scenarios, and The Trust guidelines, which I had been involved in drafting". 10:32 10:32

Then you say:

10:32

"I have not attended any specific training on the handling of performance concerns in either of these roles".

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

A. No.

38 Q. Were you involved in training others after having received this training? 10:32

A. Training other than?

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

A. On a train-the-trainer type arrangement? Other than informally, so there would have been occasions where 10:32 I would have gone along and sat down with individuals who were taking on these roles. The training that is -- if you take, for example, the 7th and 8th March 2017 training, that is training that is planned quite substantially in advance. It's a full two-day 10:33 programme; we have trainers that were brought in specifically for this. So in between having those kind of formal training programmes, we would have had a requirement maybe for an individual to undertake a role, and I would have done or provided some advice 10:33 and guidance around this is the process, this is how you move it forward, take it forward, or a refresher for somebody who had attended training, say, for a day for example, in 2017, but has only taken up a role of a case manager or a case investigator in, say, this 10:33 year.

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

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

40 Q. Just in relation to training, there's an email in the documents received by the Inquiry at TRU-267437. It is an email to you from Vivienne Toal dated 25th January 2017. 10:34

You'll see she says to you:

"Siobhan, just a couple of thoughts. Training for CM and CI" - which I presume is Case Manager and Case Investigator - "could we do something quick so that if we are ever asked we can say they are trained. John is trained". 10:35

Then she asks: 10:35

"Are we bringing AOB back on Friday to tell him next steps? We will need NCAS advice on Thursday/Friday first thing, as their date of review is the 27th". 10:35

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

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

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

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

41 Q. You don't recall?

A. I don't.

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

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

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

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

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

A. Absolutely.

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

the fine detail of the MHPS framework or the Trust guidelines, so a refresher at the point of need might be something that the Trust considers to be entirely appropriate. My question was merely aimed at if the person doing that in future -- 10:39

A. Doing that. Yes I accept that.

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

Now, Mr. O'Brien raises an issue that at WIT-82617, 10:39 where he considers that the Trust preferred the MHPS Framework rather than The Trust guidelines. I just want to read out what he says about that at paragraph 42. 642; I think my number 6 has fallen off. I'll just read that paragraph and you can comment on it 10:39 if you think appropriate. He says:

"I wish to reiterate my concern and dissatisfaction in respect of the length of time the Trust took to conduct and complete the formal investigation using the MHPS 10:39 Framework, and which was in breach of The Trust's own policy, namely the Southern Trust Guidelines for handling concerns about doctors and dentists' performance (September 2010). Under That Trust policy, the investigation regarding my practice should have 10:40 been undertaken and concluded within four weeks from the date of exclusion on 30th December 2016. The Trust did not comply with that policy, and indeed during the course of the investigation, the Trust ignored it,

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

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

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

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

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

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

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

A. I do.

47 Q. She also says that in her witness statement. We don't need to go to it but for the Panel's note at WIT-39881 paragraph 4.1. She said she became aware of the framework in conversation with you. 10:44

First of all, does it surprise you that someone of Ms. Corrigan's seniority wouldn't be aware of a document like that and, secondly, would you expect someone at her level not only to be aware but to have 10:44 some perhaps training in that framework document, given that she is responsible for medical -- well, nonmedical staff who may find themselves subjected to the Trust guidelines, and the medical staff to the framework?

A. Okay, so there's a couple of things in there. 10:45

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

A. You're okay.

I suppose what you've asked me is am I surprised that she wasn't aware of it. Truthfully, probably not 10:45 surprised.

49 Q. Why was that?

A. So MHPS, again, is one of those documents that, unless you probably have been centrally involved in it, is something that sits probably, you know, to the side and 10:45 there wouldn't be necessarily in my experience a lot of organisational knowledge of the detail or perhaps even the framework by everyone who potentially touches it. So, is that right? No, it's not. We absolutely need

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

10:46

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

10:46

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

10:46

10:47

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

10:47

A. I suppose for me those are probably two different

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

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

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

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

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

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

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

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

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

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

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

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

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

"The Clinical Manager and HR Case Manager undertake

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

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

Then, again, the next box underneath that:

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

We will see that you did consult with NCAS. Did you consult with Occupational Health at all? 10:54

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

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

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

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

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

A. Yes.

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

So, the Clinical Manager and HR Case Manager notify the Oversight Group of their assessment and decision. Okay? Although it says then the Trust Guidance it is not an decision-making role, it is clear, would you agree on this - at least on this particular part on the screening process - that the very first stage does involve the HR Manager in a decision-making role? 10:56

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

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

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

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

58 Q. They don't in the MHPS?

A. Yes.

59 Q. You base that on what when you say they don't, they don't have any decision-making? 10:57

A. There's no formal role identified for a HR Manager within that. There's a clear role for the HR Director but it is absent in terms of any other role.

60 Q. So the MHPS Framework is silent as to the extent to which the HR Manager may become involved? 10:57

A. It is silent on a HR manager at all.

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

A. Yes.

62 Q. In sequencing, in Mr. O'Brien's case, he was excluded before the screening process started; is that your understanding? 10:58

A. No. My understanding is that the screening was undertaken in the very late part of 2016, and the --

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

So, as I understand it - I could be wrong, I wasn't involved in that - but I understand subsequently from paperwork that I have seen in terms of the bundles, 10:59
that that screening had happened in the late part of 2016 and fed into the meeting of the 30th December.
64 Q. Well, I don't want to ask you -- the Inquiry has heard and will hear evidence around what happened before your involvement. Just so I'm clear on that, is it your 10:59
understanding that when you became involved just in the turn of the new year, really, that there was no subsequent screening process or that there was a screening process under MHPS carried out?
A. No. My understanding and recollection is that the 10:59
decision was taken by the 30th December that we were into a formal investigation process, and that the decision was to immediately exclude -- sorry, I'm actually going to reverse that. That's not my

understanding.

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

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

A. Yes.

66 Q. -- at the very beginning?

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

67 Q. The 28th, yes.

11:01

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

significant at that stage, yes.

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

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

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

Vivienne and myself was that I would be the support.

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

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

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

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

A. Yes.
76 Q. That letter hadn't, as I understand it, been anywhere near Employee Relations?
A. No.
77 Q. It had never been shown to you before? 11:14
A. No, I had seen it -- Lynne Hainey had shown it to me in an email. She said take note there's a March 2016 letter, because it was significant to Lynne at the point at which she was joining the process to say, you know, there has been a letter previously. 11:14
78 Q. Was that letter significant to you when you saw it?
A. Absolutely. She was flagging that very specifically to me.
79 Q. What was significant about that letter to you?
A. I suppose the fact that it was probably eight months 11:14 previously. I'm doing the calculation in my head in terms of months. Well, nine/10 months potentially previously that the issues at hand were known and that a letter had gone to Mr. O'Brien to set out the same concerns. So I suppose in my -- in thinking about it 11:15 at that stage, I'm looking at this with a view of these issues have been known for a period of time, there has been conversation or a correspondence already to date in terms of trying to address those. I suppose in a way maybe discussed the effectiveness of trying to 11:15 address those, but that was that attempt at that stage. Then by the time we hit January of 2017 when I become involved, we've progressed to the stage where, actually, we're now in a formal investigation and there

has been a decision to immediately exclude.

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

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

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

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

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

81 Q. Do you think they should have been involved back then?

A. I do. I do. I think that would have been helpful at that early stage, yes. I understand that the HR involvement came probably in and around September of 2017 with the Oversight meeting. So, there was a period of time there that that letter had been constructed, it had been issued, and there was no HR sight on that. 11:18

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

A. Yes, in 2016.

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

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

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

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

THE INQUIRY BRIEFLY ADJOURNED AND RESUMED AT 11:39

CHAIR: Thank you, everyone.

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

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

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

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

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

A. Yes.

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

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

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

11:41 11:41 11:41 11:42

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

11:42

it just simply isn't there.

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

When I'm referring to cases from the point of view of the Employee Relations role, that was only one element of that role. I was also responsible for the pay, terms and conditions and pay processing, ensuring that payroll was undertaken for 14,000 staff, 13/14,000 staff, four payrolls during every month and making sure that that was done and done properly, and pay awards were on time. So, it was a much broader role than even just case handling. 11:43 11:44

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

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

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

A. Yes. 11:45

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

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

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

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

example, in terms of his appointment. I was notified that that's who it was, and that we -- I then think there's email correspondence somewhere a number of days later where we are arranging to try to meet up and commence the process. 11:46

91 Q. There actually is an email from Colin Weir. We'll just step away from that, TRU-267243. The context of bringing you to this email is to indicate that 12th January, Mr. Weir writes to you and says: 11:46

"I am the lead investigator for an investigation. I know an Oversight Committee met this week to discuss the issues. I have not yet received any official confirmation to commence the investigation but I have been forwarded several emails explaining the issues. 11:47 My understanding is the process should be completed within four weeks of suspension of the consultant concerned; from 30th December in this case. I also understand I would have assistance from Employee Relations. Can you tell me who is helping me and how 11:47 we can progress this".

I suppose in the context of this being two weeks into the four-week period set down, does it surprise you to learn that Mr. Weir hasn't been informed at this stage, 11:47 or in fact hadn't been at the meeting on 10th January?

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

look at the attendees, I think I was probably the only person who was newly joined to the issues at hand --

92 Q. We'll just go back to that. We'll have it on the screen. TRU-267241. Sorry, I interrupted you. You were the new person, as it were? 11:48

A. I was the newbie, I suppose, to the issues, I think. The Oversight had been meeting obviously previously, and I would have only been starting to become aware of the fact that there were previous meetings happening. Simon and Ronan, and I understand Tracy from the SAI 11:48 point of view, had been previously involved. So in terms of joining this meeting, I joined it, I suppose probably giving little thought to should Colin Weir or Ahmed Khan be at this meeting because this is an early view of taking the case from a HR support point of 11:49 view. I probably didn't think past that.

93 Q. The reason for the next set of questions is to try to establish what is happening. Obviously Mr. O'Brien has concerns about the timing and were things done in a reasonable time or an appropriate time or 11:49 expeditiously. That's the context of why I'm taking you to some of the documents, for the Panel to understand what was done and when.

Now, when Mr. Weir sends that email on 12th January, he 11:49 hadn't been informed yet and wasn't aware of what his involvement was to be except that he was a Case Investigator and had been provided with some background information. Was there any concern from you around

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

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

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

A. Yes, yes.

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

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

96 Q. The 26th?

A. The 26th, sorry. 11:50

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

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

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

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

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

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

A. Yes.

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

A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

106 Q. They sign it off? 11:59

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

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

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

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

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

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

108 Q. Whose role was it to send them? Was it Lynne Hainey's 12:01
having been at the meeting?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116 Q. Did you ever contact Mr. Wilkinson?

A. About notifying Mr. O'Brien?

117 Q. Notifying anything.

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

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

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

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

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

into those?

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

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

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

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

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

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

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

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

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

A. There was.

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

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

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

"I see Vivienne was going to ring you about the letter and terms of reference. Did these go yet? I have a number of comments to add if they haven't been sent. The wording in the terms of reference needs changed". 12:12

Do you know what that was about at that point?

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

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

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

A. Yes.

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

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

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

12:14

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

They are the members of the Oversight Group?

A. Yes.

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

A. Absolutely.

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

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

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

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

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

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

A. It is.

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

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

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

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

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

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

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

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

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

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

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

meeting?

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

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

A. Yes. 12:24

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

A. Absolutely. My contact directly was with primarily

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

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

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

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

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

private patient one by 3rd August.

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

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

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

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

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

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

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

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

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

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

A. No.

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

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

I wouldn't have been aware of any of the urology consultants. 12:29

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

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

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

And you say:

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

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

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

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

147 Q. When she came to the door, you knew who she was?

A. I knew who she was, yes.

148 Q. You had never met Mr. O'Brien at that point and you didn't know his son? 12:31

A. No.

149 Q. You say you and Mr. Weir were in the room at the time. Did Mr. Weir know Mr. O'Brien?

A. Yes. 12:31

150 Q. And did Mrs. Brownlee come into the room with Mr. O'Brien?

A. She came to the door of the meeting.

151 Q. Do you recall what she said?

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

152 Q. In your involvement in other Trust Guideline investigations or MHPS Framework processes, has Mrs. Brownlee ever brought a witness to a meeting? 12:32

A. In MHPS cases or non-MHPS cases, no. I've been involved, I suppose, in substantial numbers of meetings on the nonmedical side; probably less so on the medical side. But no, this was -- I suppose it struck as

unusual.

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

A. I don't recall if we did.

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

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

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

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

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

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

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

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

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

A. I have, yes.

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

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

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

A. No.

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

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

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

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

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

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

163 Q. The framework allows for the person accompanying

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

A. Yes.

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

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

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

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

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

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

A. I'm okay.

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

A. Yes. 12:42

168 Q. You've referred to that at WIT-42065, paragraph 18.13. 18.12, sorry, my mistake. You had got feedback from Mr. O'Brien on the issues of concern at the meeting we've just referred to. You say at that paragraph: 12:42

"It was evident that further and fuller investigation of the matter was required. The meeting did not provide sufficient assurance in respect of the concerns".

Can you just explain a little bit more about that?

A. Yes. I suppose that 24th January meeting was the first opportunity to hear directly from Mr. O'Brien in terms of triage and notes and undictated. There was that other side of it in terms of we also need to give you an opportunity to propose alternatives to exclusion. We hadn't got all of the facts gathered. For me, coming away from that meeting on 24th January, I was fairly clear we still had significant matters of concern that needed to be investigated. I suppose had we gone into the meeting on 24th January, which was the first opportunity to hear from Mr. O'Brien, where he turned around and said actually, that didn't happen and here's why it didn't happen and that wasn't the case, and was able to discount those issues of concern very quickly, that would have been one thing. That didn't happen. I suppose that's what I mean by that, it didn't provide sufficient assurance in respect of the concerns that would have halted a formal investigation process. The requirement was still there that we needed to do continue to investigate. 12:43 12:43 12:43 12:44

169 Q. Then this led to you preparing the report based on information that had been sent from the scoping exercise. 18.13: 12:44

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

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

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

But the purpose again of the report was also to share with the case conference what Mr. O'Brien had offered by way of alternatives to formal exclusion. It was also to set out what his initial response was and what he was saying about how we could go forward. If I recall correctly at that time and at the meeting of 24th January, Mr. O'Brien was saying things - and I'm paraphrasing because I can't directly quote him - you know, I will work within whatever plan you need to put in place essentially, but his overriding priority was I want to be back at work. 12:45 12:46

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

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

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

A. He was. 12:46

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

A. No. The actual core issues of concern still remained. So, the issue for the case conference, in my mind, was, 12:46 yes, we still have these concerns, we still have concerns about the practice; here's what Mr. O'Brien is offering by way of what he feels can be done as - and I'm terming it safeguards - to allow that investigation process to happen. It was really for the case 12:47 conference members to determine are they content with that. Essentially the decision lay with the Case Manager. But again, there was input from Mrs. Toal, from Richard Wright and from -- I believe it was maybe Anne McVey maybe at that meeting. 12:47

172 Q. Yes.

A. In terms of, again, their collective expertise in terms of can this work and is there something that we can put in place that safeguards patient whilst Mr. O'Brien returns to work in a kind of more managed way. 12:47

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

this meeting. You can find that at TRU-267411.
Ms. Gishkori has a day's leave booked and she suggested that Ms. McVey should attend the meeting in her place. Vivienne Toal replies to say:

12:48

"This is a very important meeting and requires senior representation from Acute Services. Given Ronan's involvement in a parallel process in relation to the scoping of the impact (actual or potential) on patients, I think it is more appropriate to keep him 12:48 separate from the Oversight Committee role in relation to him deputising for you to ensure there is a clear separation in relation to these processes.

Would you please arrange for another AD to deputise for 12:49 you on Thursday to ensure Acute Services input to this process".

It would seem clear that Mrs. Toal considers there's a need for high-level representation at this case 12:49 conference meeting. Was that a view you shared as well?

A. Absolutely. This is something -- I mean, the exclusion of a consultant or any medic is highly unusual. It is not something that happens every day; it's very 12:49 unusual. So in terms of a meeting like this, you would absolutely expect that you would have very senior representation to consider the issues at hand.

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

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

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

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

A. When you say "independent"?

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

A. No.

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

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

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

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

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

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

CHAIR: Good afternoon, everyone.

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

A. That was the 9th February?

179 Q. Sorry?

A. The February meeting.

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

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

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

We have them now.

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

There was a meeting held, and I think it's just maybe slightly further down on that screen. Yes, a meeting on 6th February where I had met with Ronan Carroll and Esther Gishkori to discuss, essentially, what that would look like. Following those discussions, I drafted what was my understanding and takeaway from that meeting and shared it with Ronan, copied to Esther in an email on the 7th. That was then seeking their input and any amendments, adjustments or whatever other requirements needed for the plan. I think Martina Corrigan was also invited to comment or input to how that would work in practice. The plan was formulated from there, essentially. 14:14 14:14

181 Q. Mrs. Corrigan has subsequently said in her statement that Mr. O'Brien's return to work was not accompanied by, and I quote "a proper plan to manage him". That's at WIT-26315. That's an incorrect reference from me but I will correct that because I'm quoting directly from Mrs. Corrigan. She pointed out that the monitoring arrangement "focused on the gaps in his outpatient dictation and outcomes but ignored his administrative responsibilities towards patients who came in as emergencies or as a day case". 14:14 14:16

Now, that level of information obviously was subsequent, that wouldn't be an information that was available to you. 14:16

A. No, it wasn't at the time so the action plan was based solely on the concerns in front of us at that

particular point in time.

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

A. Yes.

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

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

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

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

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

A. I knew I shared it eventually with them.

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

Wilkinson. I'll read it out:

"John, I just wanted to give you a very quick update ahead of tomorrow's Trust board meeting in relation to AOB case.

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

Dr. Khan determined that there was indeed a case to answer and a formal investigation would indeed be required under MHPS. All those present were in agreement.

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

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

the restriction in more detail.

You will of course receive a copy of the correspondence to Mr AOB following the case conference for your records. 14:20

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

14:20

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

A. That was my understanding of that. And I suppose I note from Vivienne's email, I mean she was very pointedly pointing to, you know, the issues of concern. That's my recollection of it as well, that the action plan was around what was in front of us at the time in terms of those core issues of concern. 14:20

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

A. I don't. I don't. I do believe they were ultimately copied in to the final version. When that was, I'm not quite sure. 14:21

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

A. Yes.

189 Q. -- on 9th February 2017?

A. That's right.
190 Q. That was in relation to the action plan. That was another meeting that was recorded. Do you recall that meeting and going through the action plan?
A. Yes, I do. 14:21
191 Q. Was it the case that the action plan was presented and Mr. O'Brien was asked for comments, or do you recall if it was simply an understanding that this was what was going to happen now that he was coming back to work?
A. I think it was essentially more that in terms of here 14:21
is what -- you know, the decision from the 26th January meeting is to return to work with this monitoring arrangement, and here's the monitoring arrangement. I couldn't be 100 percent sure as to whether he was
invited for any comment on it but I'm not sure that was 14:22
ever really the intention of it anyway. It was more a case of saying this is how, you know, these concerns will be monitored or your practice will be monitored to ensure we don't have those continued concerns whilst
we go through the investigation process. 14:22
192 Q. It was after that meeting then on 17th February that you sent the plan that you had discussed with Mr. O'Brien to the Oversight Group. We don't have to go to that but it is an email from you at TRU-267739. You have sent to Vivienne Toal, Mr. Wright, 14:22
Esther Gishkori and June Turkington?
A. Yes.
193 Q. Now, if we could go to WIT-42078. You've said at the top of the page, 21.3, you were aware that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14:28

I suppose it didn't strike me as particularly concerning because the updates probably pretty much from February - sorry, March, when Mr. O'Brien came back to work - through to at least July, the updates were no deviation, no deviation, no deviation. There 14:28 was nothing really being reported at that time. So no, it didn't really strike me to be a particular concern that it was only then by exception.

197 Q. You have said that when you did email Mrs. Corrigan when you were completing the report or the 14:29 investigation for Dr. Chada, you asked about any deviations. This is a reply she sent you on 22nd May 2018, WIT-42080. She has indicated to you that apart from one deviation on 1st February 2018, when Mr. O'Brien had to be spoken to regarding a delay in 14:29 red flag triage, and he immediately addressed it, "I can confirm that he has adhered to his return to work action plan...".

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

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

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

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

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

A. Yes.

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

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

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

A. Possibly.

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

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

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

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

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

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

201 Q. That was towards the late end of -- 14:35

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

202 Q. -- her absence?

A. Yes.

203 Q. There is an email you are copied into just to indicate that you were notified of the July 2017 apparent 14:35 deviation. TRU-251860. That is the email about the variance of the charts in the office. I think that's the one you were referring to?

A. Yes, the one I mentioned.

204 Q. Apart from that and the February one that Martina 14:35 Corrigan informed you about, that was your knowledge?

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

205 Q. If that was to happen now, are there different procedures in place if someone is getting 14:35 a return-to-work action plan that requires to be monitored? Has there been learning, I suppose is the question, about how that should be carried out as regards communication and information sharing?

A. I haven't been involved in discussion or learning of 14:36 that. I suppose what I would caveat that with is the return of a doctor on an action plan such as this, again, isn't very frequent. I'm not sure we probably have it since Mr. O'Brien. So yes, I don't believe

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

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

A. Yes. 14:36

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

A. That's right.

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

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

209 Q. The second part of the email refers to:

"Siobhan, I'm sure you will update Neta with this case 14:38 and her role as investigator. Can a short meeting be arranged in the next couple of weeks for the three of us".

Was there a meeting subsequent to that email; can you recall?

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

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

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

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

211 Q. Rather than individual names, because I don't think you knew many of the urology practitioners, would it have been positions you were suggesting? For example the clinical manager, those sort of individuals, how did that come about? 14:40

A. I could be wrong but I believe it was a conversation with Colin Weir in terms of we will probably need to speak to his urology colleagues. I wouldn't have known who they were. It was about kind of plotting names at a point then against that. I think that was possibly even a conversation with Dr. Weir and then going off to find out who those folk were. 14:41

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

A. I suppose not at that early stage. It was a case of looking to see what information could be gathered that would help inform the investigation process. But certainly at any point, and would be normal practice for us, is that if there is an individual who is the subject of an investigation, medical or nonmedical, and a witness is suggested as being relevant, we would certainly consider the relevance of that witness and determine whether or not that was somebody who needed to be spoken to. 14:41 14:42

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

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

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

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

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

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

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

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

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

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

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

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

A. I may be saying something slightly different.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. There was a lot of that. In terms of the private patient piece, and, again, just in listening to the questions put to Dr. Chada yesterday but also in preparation, I've had a lookback over why those names were quite late in the process being provided. This starts off in terms of the private patient issue about TURP patients because that's what's known at the 10th January meeting. My only explanation that I can provide over the course of that is that January/February time, the triages were being dealt with by the operational team and we were waiting on information coming back about that. I know you'll know from the email sequencing that it probably took right up to May, in fact -- I think it was May when I was confirmed with the last of the five patients that were going to be the subject of an SAI. That process was going on over that period of time. Then the operational team turned their attention at a point to the undictated clinics and the notes that had been returned, so they were working through that. 14:55 14:55 14:56 14:56

I suppose the only explanation I can give is that the private patient bit came at the end of all of that. There was a delay in terms of information flow back to ourselves in relation to the private patients. But in terms of, you know, the question you asked me about getting the documents to Mr. O'Brien, was that purely down to administrative capacity, it absolutely was. 14:56

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

225 Q. On top of the work?

A. This is on top of. 14:58

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

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

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

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

A. Yes. 14:59

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

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

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

A. Yes. 15:00

230 Q. And the 6th November --

A. 3rd August.

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

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

A. Yes.

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

A. Yes, the two meetings.

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

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

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

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

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

A. Absolutely, yes.

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

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

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

A. Yes.

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

A. Yes, absolutely. 15:03

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

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

going back, and on reflection of all of those matters, the four terms of reference, leaving aside term of reference 5, but the first four terms of reference were fairly straightforward, were fairly straightforward matters. The terms of reference for the investigation was to determine if these things occurred. For example, I'm going to take the first one, the triage. Had triage been done, had it been done timely, and was there any impact -- I'm paraphrasing the wording of the terms of reference. Mr. O'Brien, I suppose, at the 30th August meeting, Mr. O'Brien accepted the --

CHAIR: 3rd August.

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

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

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

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

A. Yes.

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

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

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

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

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

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

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

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

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

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

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

244 Q. From an Employee Relations perspective, when you see other aspects being added along or considered like the private patients issue, did it trigger in you any curiosity that perhaps there needed to be a bit of a deeper dive into what the potential problems were, or the problems that were in existence were at that time? Did you think let's have a proper look at this, there's other issues coming up as we go along? 15:12

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

245 Q. And also whether it triggered any curiosity in you to think maybe we need to have a look at wider issues here. There's an opportunity perhaps to not focus just on this but to look at things that are arising, that have been suggested. You've heard that through Dr. Chada's evidence? 15:12

A. I have. It is something, you know, even outside of here that I have reflected on in terms of was there opportunities. Obviously now what we know in 2020 wasn't in front of us at the time of the MHPS investigation. I suppose it's that consideration of should we have known or could we have known? 15:13

I suppose the only thing I can say on that - and it's probably very much mirroring Dr. Chada - it's really hard to describe. We were meeting with individuals as part of this where not only were they not telling us 15:13

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

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

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

a short break.

CHAIR: I think we'll take a break until 3.30. Probably about another hour, would you say, or less?

MS. MCMAHON BL: Maybe less.

CHAIR: Thank you. 15:15

THE INQUIRY BRIEFLY ADJOURNED AND RESUMED AS FOLLOWS:

CHAIR: Everyone.

246 Q. MS. MCMAHON BL: Mrs. Hynds, I just want to read out some extracts from your witness statement to you on the issue of delay and see what your views are on that and the MHPS timelines generally. WIT-42068, the paragraph beginning "In my experience". You say: 15:29 15:30

"In my experience of supporting clinical managers with MHPS cases, completion of a formal investigation within four weeks has never been achieved. The concerns relating to Mr. O'Brien were multiple, involving many hundreds of patient records/notes and many witnesses. It was complex and very resource intensive. It was entirely impractical that such an investigation could be complete within a four-week period. Added to this, the four-week requirement for completion of a formal investigation is at odds with a four-week immediate exclusion time scale providing the opportunity to establish facts during that initial four-week period". 15:30 15:30

Can you just explain what you mean by that?

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

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

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

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

I think we've gone through that. You also say at paragraph 24.10 of your statement. 15:32

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

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

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

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

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

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

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

15:35 15:35 15:36 15:36 15:36

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

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

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

15:38
You had also indicated that you wished to make comment on the witness statements shared with you and you indicated that you would also do this and provide those comments to us. Can you advise if this is complete and if you are in a position to share with this us? 15:38
I appreciate that when we met you had indicated you had a number of priorities to deal with in December outside of the MHPS process and would not be in a position to return your comments prior to January. We would like to try to bring this process to a conclusion and 15:38
I would be grateful if you would come back to me as soon as possible on these matters.

I have the notes of our meeting in November to share with you which will also require your agreement. We do, however, have your written statement on those issues in full so that is a smaller matter to be finalised". 15:38

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

A. I suppose my expectation was that Mr. O'Brien was attending to that in January. Now, equally it shouldn't have taken me until 15th February before I emailed him about that. I fully accept that. 15:38

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

A. No. Again, it was probably a bit of Mr. O'Brien is going to attend to that in January so I'll deal with that at a time when I think maybe he's at that concluding stage. So, it was probably nothing more than that. Hindsight, again, start of January, should I have emailed and said we will be looking for this and put a time scale on it? Yes, I probably should have. 15:39 15:39

But I suppose I was surprised when I got the email back on 15th February to say that nothing had been attended to because, yes, whilst the 6th November was there -- and I had deliberately set that aside on the basis of knowing he wasn't attending to anything over the November and December period, but I did expect that the rest of the comments would have been trickling in 15:39

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

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

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

15:40 15:40 15:41 15:41

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

251 Q. They were appended to the final report?

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

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

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

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

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

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

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

A. Absolutely.

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

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

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

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

A. I felt that, yes.

257 Q. What was that based on?

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

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

roles?

A. No. We separate that now, yes.

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

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

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

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

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

A. Yes.

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

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

262 Q. Also drafting some letters for Mr. Wilkinson --

A. Yes.

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

A. Yes.

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

A. No, by the very nature of what we were doing. I mean, HR tends to be the go-to for the drafting of corresponds and for assisting in all of that.

I suppose I said to you at the outset, the options for

me, I took this case knowing there were very limited, in fact no other alternative options because of gaps in staffing and workloads. So again, did I give it much thought? No, I probably just kept paddling is the best description I can give in terms of just let's keep going, let's keep getting things over the line. 15:49

Again, in reflection and hindsight, there's lots of learning in terms of the requirement to resource each aspect of that. 15:49

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

"The MHPS framework is the document setting out the requirements for managing concerns about performance and is the document relied on when a concern arises. The Trust Guidelines were put in place as a requirement under MHPS setting out how cases are practically managed". 15:50

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

"The MHPS framework is a lengthy framework, difficult to read and follow as it is not always in a logical sequence. 15:50

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

15:51

Because of the length and structure, it is complicated, and as someone with the experience in my role using the document, I find I need to read the document carefully every time, many times over, to understand each step and what needs to be actioned. 15:51

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

15:51

The framework refers to 'all concerns' when it points to when it should be used to manage performance concerns and register with the Chief Executive. There was always ongoing management of performance and it is impractical to suggest that the framework will be used 15:51 for every single concern.

The intention of the framework, as it is set out, is to tackle blame culture and to ensure for swift and timely resolution of concerns. I agree with this, however in 15:52 practice, it doesn't always work. The case of Mr. O'Brien had a historical 'tail' to it so when it came to being managed under the MHPS, that, along with the scale and volume of patient records involvement,

meant that a quick process was unrealistic.

"The time scale for completion of formal investigations is entirely unrealistic. For this to be achievable in any way, individuals with roles under the process would require to be released from their normal day-to-day roles. The coordination of diaries alone to commence a process when individuals already have full diary commitments is hugely problematic. The seniority of those individuals with specific roles under the framework makes this impractical. 15:52

The time scale for completion of the investigation is the same as the time scale for completion of the fact finding during a period of immediate exclusion - this is a clear contradiction in time scales. 15:52

The term 'clinical performance' is broad and can be interpreted differently by different users of the framework. In my experience, separating conduct issues from clinical impacts or decisions can be difficult I feel that the clinical performance process is overly cumbersome and doesn't necessarily assist employers to easily deal with conduct matters. 15:53

It is challenging to navigate cases when local procedures for managing absence, conduct and conflict should be used in how they link with MHPS. 15:53

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

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

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

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

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

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

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

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

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

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

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

15:57

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

work that needs to be done.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Yes.

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

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

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

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

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

DR. SWART: You have seen the development of MHPS over the years, been involved in a lot of it, and you also look after the employment relations of other staff. What's your view on whether MHPS or whether it's 16:07 actually a good idea to manage doctors completely differently from other staff groups? Does it help or not?

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

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

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

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

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

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

management, really.

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

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

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

instance there was that perception of there's been complaints before so we'll not go there. Unfortunately, you know, as registrants we have to go there. There's a lot of support from HR required.

273 Q. Clearly there's a big issue with HR resource if you were going to take all of this forward. 16:12

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

A. I don't believe we did.

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

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

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

A. Yes.

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

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

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

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

A. I don't believe that happened.

DR. SWART: Thank you.

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

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

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

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

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

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

CHAIR: Which is likely to delay the whole process even further. 16:18

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

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

don't build up an expertise, they do it so infrequently. So there is absolute benefit, I think, in terms of having a pool of people who build that expertise and go around and do those types of investigations. 16:19

I can't see how else you would do it efficiently because internally within the Trust, the challenge is there's not enough of these cases for anybody to build expertise, and the capacity issues and the relationship 16:20 issues and all of those things impact on that. So, taking somebody completely independently in, I think is -- yes.

CHAIR: Thank you very much. I'm glad to say that we've managed to get your evidence concluded in one 16:20 day, which will not impact on our timetable as we head towards Easter. Thank you very much for your evidence, Mrs. Hynds.

Tomorrow's witness is attending remotely. I understand 16:20 that we may have a few technical issues to resolve in respect of that but hopefully we will get them resolved before tomorrow morning. We plan to sit at 10:00 but just in case there's any issue of it, I'm giving you fair warning. 16:20

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