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Hunt loses court battle over Lewisham Hospital



LONDON NEWS PICTURES/REX

GPs, hospital staff, and the general public have fought to save emergency services at Lewisham Hospital

Clare Dyer BMJ

Ingrid Torjesen BMJ

The Court of Appeal has ruled that England's health secretary, Jeremy Hunt, did not have the power to close accident and emergency services at Lewisham Hospital in southeast London.

Hunt went to the appeal court on Monday 28 October to fight against a High Court ruling in the summer stopping him closing the services at Lewisham.¹ Hunt was arguing that the High Court judge Mr Justice Silber erred in law last July when he quashed Hunt's decision to downgrade the hospital's accident and emergency and maternity units.²

Hunt made the decision to downgrade the Lewisham services after a recommendation by Matthew Kerslake, the trust special administrator for the neighbouring South London Healthcare NHS Trust. The recommendation was part of a package intended to solve the financial problems of that trust, which was losing more than £1m a week.

At the High Court Silber held that Hunt had no power to reorganise services at a different NHS trust, in this case Lewisham Healthcare NHS Trust, without the approval of local GP commissioners. The High Court case was brought by Lewisham council and the Save Lewisham

Hospital campaign, which is backed by patients, GPs, hospital doctors, and nurses.

The two day appeal against that decision was heard by the master of the rolls, Lord Dyson, and Lords Justices Sullivan and Underhill and was dismissed on Tuesday 29 October.¹ Rory Phillips QC, counsel for Hunt and Kerslake, told the judges that Silber interpreted the law too narrowly when he ruled that they had exceeded their powers under the 2006 National Health Service Act.

Phillips said that the act's wording, statutory context, and purpose should have led Silber "to conclude that they were entitled so to act, consistently with parliament's evident intention." The QC also argued that the support of GP commissioners in Lewisham was not a legal requirement. He said that other commissioning groups in the wider southeast London area were broadly supportive of Hunt's decision and that one group of GPs could not be given "some kind of veto." But the health secretary lost the case.

However, although the ruling is a victory for Lewisham, it is unlikely to prevent the health secretary having the final say in any similar cases in the future.

The government has put down an amendment to the Care Bill, now going through parliament, to try to "put beyond doubt" the health secretary's powers to take decisions about trusts other than the one to which the administrator was appointed.³

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HRA outlines plans to improve transparency of clinical trials

Adrian O'Dowd LONDON

The body that represents the interests of UK patients in health research is working on ways to ensure that the results of clinical studies see the light of day. Plans to improve NHS research were detailed in the Health Research Authority's official response to MPs on the House of Commons Science and Technology Committee. The authority also said that it would be looking at ways to speed up how quickly proposed research studies could start.

Its plans were published on 29 October,¹ in response to the MPs' report *Clinical Trials*, published on 17 September.^{2,3}

In their report the MPs called on the government to improve the current system for clinical trials in the United Kingdom, which allowed many results of research to never be published and which meant a lack of transparency in the results and conduct of trials.

In the latest report the Health Research Authority said that it had already taken steps in many of the

areas identified by MPs to improve awareness, promote transparency, and improve efficiency in the regulation of health research.

The authority was proposing to devote more resources to streamline the process of research approval, by merging the research and development approval and research ethics committee stages into a single assessment and approval stage.

The authority said that it was fully committed to the transparency agenda outlined by MPs and that it

had announced the implementation of the first of a series of measures from 30 September. It had specified that registration of clinical trials in a publicly accessible database was to be a condition of the favourable ethical opinion given by research ethics committees.⁴

The authority is also to carry out an audit of completed studies to more fully understand publication and registration rates in the UK.

Cite this as: BMJ 2013;347:f6555



IN BRIEF

**Most people with tuberculosis in London are UK residents:**

Eight in 10 people given a diagnosis of tuberculosis in London in 2012 were born in the United Kingdom or had been living in the UK for at least two years

before their diagnosis, shows Public Health England's 2012 annual review of tuberculosis in London. A total of 3426 people were given a diagnosis in the capital, more cases than were reported in Belgium, the Netherlands, Greece, Norway, and Denmark combined.¹

Funding restored to Canadian drug safety body:

British Columbia's health ministry has reversed its decision to stop funding the University of British Columbia's drug safety watchdog the Therapeutics Initiative,² after pressure from doctors and safety experts.³ The initiative provides evidence based information on prescription drugs and education for health professionals.

UN calls for action to protect health workers in conflicts:

Numerous "hospitals have been targeted, clinics looted, and hundreds of health workers attacked" in conflicts around the world this year, warns the Safeguarding Health in Conflict coalition. The United Nations' special rapporteur on the right to health has said that action was urgently needed to end impunity in such crimes.⁴

Number of cholera cases reaches 176 in Mexican outbreak:

Mexico's health ministry has reported 176 confirmed cases of infection with the *Vibrio cholerae* O1 Ogawa toxigenic strain between 9 September and 25 October 2013. One person has died and 57 people have been hospitalised. This is the first local transmission of cholera recorded in Mexico since the 1991-2001 epidemic, which was caused by a different strain.⁵

Over half of diabetes patients aren't achieving blood pressure targets:

Only 48% of patients with diabetes in England and Wales met the blood pressure target of <140/80 mm Hg, the national diabetes audit 2011-12 has found. This was a slight rise from the 45% in 2010-11. Over half (57%) of patients with type 1 diabetes and over a third (37%) of those with type 2 diabetes did not have all the annual checks recommended by the National Institute for Health and Care Excellence.

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Childhood mortality varies threefold across UK authorities

Nigel Hawkes LONDON

The United Kingdom should feel "profoundly ashamed" of its record on child health, the chief medical officer for England has said.

Much more needed to be done for regional variation to be eliminated and for national performance to match that achieved by the best countries in Europe, Sally Davies told a press conference to introduce a new report on the health of young people up to the age of 25.¹ Some of the statistics, she asserted, were "absolutely shocking."

She said that five more children under the age of 14 die every day than would be the case if the UK matched the death rate in Sweden, which has the lowest rate in 11 European countries, and that childhood mortality between the ages of 12 months and 17 years varied threefold across different local authorities in the UK.



The difference in the death rate between the UK and Sweden means that, when the populations are taken into account, five more children die every day in the UK than would be the case if the rates were the same

Hunt's choice to chair Monitor withdraws

Adrian O'Dowd LONDON

The man whom the government wanted to chair England's healthcare regulator Monitor has dropped out of the process after MPs rejected his potential appointment.

Dominic Dodd, who is currently chairman of the Royal Free London NHS Foundation Trust, appeared before MPs on the parliamentary health select committee on 15 October as part of a pre-appointment hearing.¹

However, the committee took the unusual step of not endorsing Dodd, despite the fact that he was the Department of Health's preferred candidate.

The committee published its decision in a report on 24 October in which it said it believed that the role played by Monitor's chief executive, David Bennett, who has also served as



MPs rejected the choice of Dominic Dodd for Monitor

interim chairman since March 2011, has proved sufficiently strong.

"[Bennett] has filled the roles of both chair and chief executive and has led Monitor through the whole process of change brought about by the Health and Social Care Act 2012," says the report.

"Dr Bennett has both shaped and interpreted the role that Monitor now plays in the system, which makes the transition to another individual

taking on the chair an especially difficult one." The MPs did not think that Dodd could undertake the transition.

Shortly after the decision the health department said that Dodd had removed himself from being considered for the post. A department spokeswoman said, "We are considering our options for the best way forward."

Cite this as: *BMJ* 2013;347:f6507

together; and for a regular survey of the mental health of children and young adults.

“We need a renewed focus on children,” she said. “This report questions whether we have got the balance right in our society and should act as a wake-up call. The evidence is crystal clear and the opportunity is huge—investing in children is a certain way of improving the economic health of our nation, as well as our children’s wellbeing.”

Her lengthy report, running to 13 chapters, was written by a series of authors commissioned by the Department of Health. One chapter, written by Jason Strelitz of RAND Europe, makes the economic case for shifting to a preventive model for child healthcare, a theme strongly endorsed by Davies. It says that in 2011 in England and Wales 1386 infant deaths were caused by conditions related to immaturity, 205 deaths among those aged 28 days to 15 years had external causes, and there were 141 suicides among 15-19 year olds. Strelitz calculated that the total costs to society associated with prematurity amount to £2.48bn by the time the children are 18. The figure is quoted without any confidence intervals, as are the other estimates in the report.

Davies said that analysis showed that investment in early action earned returns in the range of 6-10%, yet only 4% of the health budget was spent on such preventive care. “Prevention pays,” she said.

The report was welcomed by Hilary Cass, president of the Royal College of Paediatrics and Child Health, who said it provided “a timely reminder of the challenges we face.” Hilary Emery, chief executive of the National Children’s Bureau, called for the UK to have greater expectations. “As a nation we must be more ambitious.”

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Simon Stevens advised Tony Blair on health policy before joining the private US UnitedHealth Group

Former New Labour health adviser is new chief executive of NHS England

Ingrid Torjesen LONDON

Simon Stevens, a former adviser on health to Tony Blair before becoming a senior executive of a large US private health insurance company, has been appointed as the new chief executive of NHS England.

Stevens, who is currently president of the global health division of the US based giant UnitedHealth Group, will take over from the

current NHS chief executive, David Nicholson, on 1 April 2014. In Britain he is best known as a health adviser to New Labour, where he helped formulate many of its key policies.

Stevens was health adviser to Blair from 2001 to 2004, having been an adviser in the Department of Health from 1997. Before this he worked in NHS management for more than 10 years, including as group manager at Guy’s and St Thomas’ NHS Foundation Trust.

Malcolm Grant, the chairman of NHS England, who announced the appointment, said that he had been “delighted by the calibre of the candidates who applied for the role,” which he described as “the top job in healthcare leadership in the world.”

“We wanted the best in the world, and we’ve got I think the best in the world,” Grant told BBC Radio 4’s *Today* news programme on Thursday 24 October. “We’ve got somebody who’s got experience both of the public health system in this country and of the best of American healthcare. The NHS has to be open to ideas from across the world.”

Chris Ham, chief executive of the health think tank the King’s Fund, who also advised New Labour on health as director of the Department of Health’s strategy unit from 2000 to 2004, said that he could not think of anyone who was better qualified for the role. “He will arrive in post with the NHS facing unprecedented financial and service pressures. Meeting these challenges will require leadership skills of the highest order.”

Ham added that although Stevens would still be the most senior leader in England’s national health system, he would not be the chief executive of the NHS.

● FEATURE, p15

Cite this as: *BMJ* 2013;347:f6464

Food firms’ pledge on saturated fat is “thinnest of thin interventions”

Matthew Limb LONDON

Experts have challenged the UK government’s claims that new pledges by food producers and retailers to reduce saturated fats in many products would substantially improve people’s health.

Tim Lang, a food policy professor at City University London, said that the undertakings to cut saturated fat were a small step forward but the “thinnest of thin interventions,” given the scale of the public health challenge.

He told the *BMJ*, “If something’s really important, like tackling obesity, it is folly to rely on weak, self selected agreements. We need a commitment to toughen up regulation.”

The government announced on

Saturday 26 October that “almost half” the food manufacturing and retail industry had signed up to its responsibility deal, the “saturated fat reduction pledge.”¹ It said that their combined commitments would “remove more than one and a half Olympic size swimming pools of saturated fat from the nation’s diet.”

Nestlé has said that it would remove 3800 tonnes of saturated fat from over a billion Kit Kat bars each year by “reformulating the recipe.”

Tesco said that it would remove 32 tonnes of saturated fat from products such as breadsticks, while Morrisons would remove some 50 tonnes by reformulating its own brand spreads.

Subway said it would reduce the

amount of saturated fat in its “Kids’ Pak” product by “more than 70%,” by substituting fruit and vegetables for biscuits and crisps.

The government said that cutting the amount of saturated fat people ate by just 15% could prevent around 2600 premature deaths every year from conditions such as cardiovascular disease, heart disease, and stroke.

The public health minister, Jane Ellison, said, “One in six male deaths and one in nine female deaths are from coronary heart disease. This is why it’s critical that we challenge the way we eat and that we all make changes where we can.

Aseem Malhotra, a cardiologist

who argued in the *BMJ* last week that the role of saturated fat as a major contributor to heart disease was a “myth,”² said that legislation, rather than voluntary agreement, was needed, particularly to reduce sugar content in foods, which was more harmful to health than saturated fat.

He said, “The saturated fat voluntary pledge by the food industry is nothing more than a drop in the ocean.”

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Fashion for swaddling increases babies' risk of hip abnormalities

Ingrid Torjesen LONDON

A resurgence in the popularity of swaddling babies is increasing the risk of developmental hip problems that could cause disability in middle age, a paediatric orthopaedic surgeon has warned in an editorial in the *Archives of Disease in Childhood*.¹

Swaddling involves binding or bundling babies in blankets to restrain their arms and extend their lower limbs. Historically the swaddling of infants was almost universal, but it went out of fashion in many parts of the world, although it remains common in the Middle East and among some ethnic groups.

However, the technique has recently become fashionable again in English speaking countries, because of its perceived calming effects. Nine in 10 infants in North America are now swaddled in the first six months of life, said Nicholas Clarke of University Hospital Southampton NHS Foundation Trust in his editorial, and demand for swaddling clothes rose by 61% in the United Kingdom from 2010 to 2011.

The fact that Prince George was wrapped in a

swaddling cloth during his first public appearance may have increased the fashion for these garments still further.²

Clarke said that a systemic review had indicated that swaddled infants tended to arouse less and sleep longer but added that a recent review on the management of infant colic had concluded that the current evidence did not support the use of swaddling in the management of colic.^{3 4}

Both reviews noted an association between swaddling and developmental dysplasia of the hip. This is because confining a baby by swaddling forces the hips to straighten and shift forward, raising the potential for misalignment and dislocation of the infant hip.

In Japan an educational programme to encourage grandmothers not to swaddle their grandchildren prompted a halving in the prevalence of hip dislocation, Clarke wrote.

The long term consequences of developmental dysplasia include an increase in the risk of osteoarthritis and hip replacement in middle age.

Cite this as: *BMJ* 2013;347:f6499

An educational programme about swaddling in Japan cut hip dislocation by half



Medical tourism is a profitable source of income for the NHS, study finds

Jacqui Wise LONDON

Private foreign patients are a lucrative source of income for the NHS, a new study has found.¹ And medical tourism could be a growth area for NHS trusts now that the cap on income generated from private patients has been removed and trusts can earn up to 49% of their income from private work.

The study published in the open access journal *PLoS One* also found that despite media reports to the contrary, the United Kingdom is now a net exporter of medical tourists. In 2010 an estimated 63 000 UK residents travelled abroad for treatment, compared with 52 000 coming to the UK for treatment.

The study focused on medical tourism, where people move to a different country with the intention of paying for treatment, rather than health tourism, where there is not always an intention to pay or where hospitals decide not to pursue charges.

The researchers obtained data from 18 NHS foundation trust hospitals through freedom of information requests. The private income generated from international tourists at these hospitals during 2010-11 was £42m. Despite only 7% of the private patients coming from outside the UK, they were responsible for almost a quarter of the hospitals' total private income.

Many of the medical tourists go to the large hospitals with international reputations for their specialism. For example, Great Ormond Street

DIY and gardening can prolong life in over 60s, study finds

Ingrid Torjesen LONDON

People aged over 60 years can cut their risk of heart attack and stroke and reduce their risk of death by as much as 30% by being generally active and indulging in regular home improvement activity or gardening, research published online in the *British Journal of Sports Medicine* has shown.¹

The researchers invited 4232 people aged 60 years living in Stockholm, Sweden, for a health check that assessed their cardiovascular risk and obtained information on lifestyle, such as diet, smoking, and alcohol intake, and level of physical activity. The participants were asked how often they had undertaken a range of daily life activities, such as gardening, home improvement, car maintenance, and blackberry picking, over the previous 12 months and whether they had taken any formal exercise.

People who had had a previous heart attack or stroke or who had heart failure were excluded, and the remainder were tracked for around 12.5 years.

At the start of the study the 60 year olds with a generally active daily life were found to have a much lower cardiovascular risk profile than people who were generally sedentary, irrespective of how much formal exercise they took. Specifically, more active people of both sexes had smaller waists and better concentrations of HDL cholesterol and triglycerides.

People who did a lot of formal exercise but tended to be sedentary the rest of the time had a similarly low cardiovascular risk profile. People who exercised regularly and were also physically active generally had the lowest cardiovascular risk profile of all.

During the 12.5 years of follow-up 476 people had their first fatal or non-fatal cardiovascular event, and

there were 383 deaths from all causes.

The researchers found that the highest level of daily physical activity was associated with a 27% lower risk of a heart attack or stroke (hazard ratio 0.73 (95% confidence interval 0.57 to 0.94)) and a 30% reduced risk of death from all causes (hazard ratio 0.7 (0.53 to 0.98)) when compared with the lowest level, irrespective of how much regular formal exercise was taken.

Elin Ekblom-Bak, of the Swedish School of Sport and Health Sciences at the Karolinska Institute, Stockholm, said, "Our findings are particularly important for older adults, because individuals in this age group tend, compared with other age groups, to spend a relatively greater proportion of their active day performing non-exercise physical activity, as they often find it difficult to achieve

Hospital for Sick Children reported income of more than £20m from 656 patients.

The researchers also analysed the UK International Passenger Survey, carried out interviews with returning UK medical tourists, policy makers, and NHS managers, and reviewed the published literature.

They found that while the level of patients travelling to the UK has remained relatively stable over the past decade, there has been a substantial increase in the number of UK residents travelling abroad for medical treatment such as cosmetic procedures, bariatric surgery, and fertility treatment. UK residents most commonly travel to other European countries for medical treatment, with Poland and Hungary becoming increasingly popular.

The researchers acknowledge a number of weaknesses with the study. The International Passenger Survey only surveys 0.2% of travellers entering and leaving the UK and does not give information on whether tourists are accessing treatment in the public or the private sector. In addition, not all tourists will admit to travelling for medical purposes.

Johanna Hanefeld, the study's lead author and lecturer in health systems economics at the London School of Hygiene and Tropical Medicine, said, "Our analysis shows that private foreign patients may be more lucrative than UK patients treated privately within the NHS.

This could be a strategic area for growth for NHS trusts wishing to expand private patient activities and increase income, especially following the NHS reforms which removed the cap on income generated from private patients."

Cite this as: *BMJ* 2013;347:f6456



Older people tend to find it difficult to achieve recommended levels of exercise intensity

recommended exercise intensity levels.

"In clinical practice, promoting everyday non-exercise physical activity is as important as recommending regular exercise for older adults for cardiovascular health and longevity."

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20TH CENTURY FOX FILM CORPORATION

A European film festival for health

Beth Hibbert OXFORD

Summer 2014 will mark a new European public health film festival. The three day event will take place in Oxford and will include talks and workshops alongside feature films and documentaries.

The event was launched on 26 October in Oxford with the showing of the 2005 satirical comedy *Thank You for Smoking*. The film follows a tobacco company chief spokesman, otherwise known as the devil, as he tries to spin the benefits of smoking while remaining a role model to his 12 year old son.

The festival aims to reach the public in a new way. *Thank You for Smoking* has already been shown to groups of schoolchildren by Smoke Free Oxford and seems to be a more effective way to engage students in public health issues than the standard "smoking kills" approaches.

John Ashton, president of the Faculty of Public Health of the Royal Colleges of Physicians and regional director of public health for northwest England, who spoke at the event, said that tobacco advertisers continued to exploit films to promote

smoking. Although in the first *Superman* film Clark Kent plucks a freshly lit cigarette from Lois Lane's hand, saying that it will damage her health, this message is countered in *Superman 2* with the product placement of a large Marlboro truck.

The epidemiologist Richard Peto, also speaking at the event, said that life expectancy among British men was 10 years longer than it was in 1960 because of a reduction in the prevalence of smoking but that worldwide there were still six million deaths from smoking each year.

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NHS is told to improve hospital complaints system

Ingrid Torjesen LONDON

An independent review of the hospital complaints system in England has demanded urgent action within the next 12 months to improve the way in which patients' complaints are handled, after a "decade of failure" to reform the process.¹

The review was commissioned by the prime minister, David Cameron, and England's health secretary, Jeremy Hunt, after Robert Francis's report into failings at Mid Staffordshire NHS Foundation Trust concluded that problems there would have been spotted earlier if patients' complaints had been listened to and acted on.

Francis emphasised that complaints were a warning sign of problems within hospitals. He called for a change in the NHS's culture so that patients and staff did not fear raising issues about care and for the introduction of a duty of candour on health organisations and profes-

sionals to ensure that they were open and honest with patients when mistakes had been made.²

The final report of the review of the NHS hospitals complaints system, published on Monday 28 October, says that NHS staff need to be trained to listen to complaints and how to act on them and that senior managers must take ultimate responsibility for dealing with complaints.

The report says that hospital chief executives should have responsibility for signing off complaints; boards should scrutinise all complaints and evaluate what action has been taken; and one board member, who is easily accessible to staff, should be responsible for handling whistleblowing. Most importantly, it says, trusts should publish an annual report stating what complaints have been made and what action had been taken.

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Iain Chalmers

Guilty and obsessional

In the latest in its series asking the movers and shakers of the medical world about work, life, and less serious matters, the *BMJ* spoke to a pioneer of evidence based medicine



PETER LOCKE

What was your earliest ambition?

To be a doctor, so it was a relief when I scraped into medical school, helped by nepotism. A wake-up call came when I failed my second MBBS physiology exam after having too much of a good time in swinging 60s London.

Who has been your biggest inspiration?

Archie Cochrane. His book *Effectiveness and Efficiency* showed me how evaluative research could help me to make sense of conflicting opinions among clinical “authorities” while also emphasising the importance of the less tangible aspects of good care.

What was the worst mistake in your career?

I’m spoilt for choice. The fact that some of my Palestinian child patients with measles suffered and probably died from bacterial superinfection because I had withheld antibiotics (as I had been instructed to at medical school) must rate as one of the worst.

What was your best career move?

It’s a toss-up: either a decision to work in a Palestinian refugee camp in Gaza for a couple of years or to accept the invitation to establish the National Perinatal Epidemiology Unit. My inexperience and naiveté on both occasions had some very negative consequences for me and for others, but I learnt a lot of hard and useful lessons.

IAIN CHALMERS is one of the founders of the Cochrane Collaboration, named after Archie Cochrane, who first dreamt of collecting and publishing critical reviews of knowledge from randomised controlled trials. Chalmers became director of the UK Cochrane Centre in 1992 and convened the meeting at which the international Cochrane Collaboration was inaugurated in 1993. Since 2003 he has been coordinator of the James Lind Initiative, which has used a variety of approaches to promote better research for better healthcare.

Who’s been the best and the worst health secretary in your lifetime?

Kenneth Robinson was the best, for introducing sound financial incentives to attract bright medical graduates to take up careers in general practice. There are several candidates for the worst.

Who is the person you would most like to thank and why?

I will never be able to thank my wife, Jan, enough for supporting me and putting up with my foibles.

To whom would you most like to apologise?

As just one of uncountable numbers of apologies due, I would like to apologise to the person who I implied (when aged about 12) had scratched a 10 inch LP of Tchaikovsky’s *1812 Overture* when, in fact, I had scratched it.

If you were given £1m, what would you spend it on?

I would give it to Ben Goldacre to help him continue to promote bullshit detection and to lobby for research to meet the shared needs of patients and clinicians.

What single unheralded change has made the most difference in your field in your lifetime?

Tim Berners-Lee’s invention of the web. Fantastic.

Do you support doctor assisted suicide?

Yes, and it should not be restricted to terminally ill people who ask for this help but should also be available to those “of sound mind” who ask for assistance because they are experiencing otherwise unrelievable suffering.

What book should every doctor read?

Archie Cochrane’s *Effectiveness and Efficiency* is still an important (and short) read.

What music would you like people to hear at a get together after your death?

I suppose I need to be consistent with the answer I gave when the *BMJ* asked this question previously (*BMJ* 2000;321:1577): Richard Strauss’s *Metamorphosen* and Mendelssohn’s *Octet*—although our drummer son has agreed to organise a rock gig in addition.

What is your guiltiest pleasure?

Eating more than I should.

Clarkson or Clark? Would you rather watch *Top Gear* or *Civilisation*?

Some programmes continue to match the standard of *Civilisation*, but if I didn’t watch so much crap on television I wouldn’t have so many piles of important unread books.

What is your most treasured possession?

Happiness, most of the time.

What personal ambition do you still have?

To witness the further development of effective, trustworthy, easy to use, up to date information systems that help patients and clinicians make evidence informed decisions about healthcare and to participate in controlled trials that answer important uncertainties.

Summarise your personality in three words

Guilty, obsessional, and frustrated.

What is your pet hate?

The perverse effects of filthy lucre in medicine.

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