

Re The Cochrane Collaboration

PRELIMINARY REPORT ON CERTAIN
COMPLAINTS/ISSUES: 12 SEPTEMBER 2018

A. Introduction

1. This Preliminary Report is produced by me, Thomas Grant QC, as an independent person appointed to conduct a formal legal review of certain complaints and issues that have recently arisen in relation to the Cochrane Collaboration (“**Cochrane**”). I understand that Cochrane is the leading global not-for-profit healthcare research organisation. Cochrane is legally established in the UK as a company limited by guarantee and a registered UK charity.
2. These complaints or issues have arisen in relation to Professor Peter Gøtzsche (“**PG**”). Further PG has made a complaint against Mark Wilson (“**MW**”), though that complaint, as subsequently elaborated, might also be said to extend to at least one of the Co-Chairs. I discuss this further below. I explain PG’s and MW’s roles in greater detail below, but in summary:
 - (1) PG is a Member of the Governing Body of Cochrane and therefore a “charity trustee” within the meaning of section 177 of the Charities Act 2011, which is an Act of Parliament which regulates UK charities. PG is also the director of The Nordic Cochrane Centre in Copenhagen (“**Cochrane Nordic**”).
 - (2) MW is Cochrane’s CEO and, as such, an employee of Cochrane.
3. I have been sent detailed Instructions dated 2 July 2018 (“the Instructions”) which were prepared by my Instructing Solicitors, Harbottle and Lewis LLP (“**H&L**”). These were accompanied by a tabbed file of documents (“the File”). The Instructions and the File have been provided to both MW and PG. I note that certain aspects of the Instructions are contested by PG. I deal with this further below. Although I have been assisted by the Instructions in understanding the background and issues this Report and its conclusions are entirely my own. References to [**Tabs**] below are to the tabbed documents in the File.

4. The complaints or issues are referred to in the Instructions as the “Complaints.” I shall maintain that phraseology without in any way prejudging any of the matters I am called upon to review.
5. On 13 June 2018 Cochrane’s Governing Board resolved, by majority, that each of the Complaints should be subject to a formal consideration and legal review by an independent third party, who was asked to:
 - (1) Establish the facts;
 - (2) Identify the legal basis of the issues in dispute; and
 - (3) Make recommendations in order to try and find a resolution amenable to all parties involved.
6. I am that independent third party. I set out my role, as I perceive it, below at Section H. It is important that the recipients of this Report understand the task I have been set and its limitations and understand the nature of my role.
7. The severe time constraints under which the Review has been undertaken, the substantial documentation which I have been provided, coupled with the complexity of the issues means that this is a Preliminary Report. I think that any further work would in any event benefit from further direction in the light of the Governing Board’s consideration of this Report.

B. Structure and Governance of Cochrane

8. I have no independent knowledge of Cochrane. I am instructed that Cochrane has a global reputation as the leading independent healthcare research organisation publishing independent research, studies and evidence to inform healthcare decision-making and providing learning products, resources and services for systematic healthcare reviews. I have been told that its status as an independent research organisation is of central relevance to the issues that have arisen.
9. The Articles of Association of Cochrane (“**the Articles**”), which were adopted by Special Resolution on 25 October 2016, are at Tab 1. The Articles provide for amongst other things:
 - (1) Cochrane’s Objects which are “the protection and preservation of public health through the preparation, maintenance and promotion of the accessibility of systematic reviews of the effects of health care or any other charitable activities, for the public benefit” (Art 2.1).
 - (2) The constitution and powers of its Governing Board¹ (Arts 13ff). In particular the business of Cochrane shall be managed by the Governing Board which may exercise all of the powers of Cochrane (Art 14.1). The Governing Board is made

¹ The Governing Board was previously known as the Steering Group; the name change occurred in 2016.

up of Elected Members and Appointed Members, and there are provisions for how such Members are elected or appointed. From 1 January 2017 Elected Members must constitute the majority. Art 16 provides mechanisms for the removal of a Member of the Governing Body.

- (3) For the appointment of a Chair or Co-Chair. Art 18 provides that a Chair or Co-Chair of Cochrane can be appointed by the Governing Body.
 - (4) For the proceedings of the Governing Board. Questions arising at Meetings are decided by a majority of votes, with the Chair having a casting vote in the event of equality (Art 19.2).
10. The following paragraphs derive largely from the Instructions, though I have supplemented them based on documents I have seen. I have also taken into account throughout this Report, and where appropriate, PG's criticisms of the Instructions.
 11. In practice (and as provided for by the Articles) the Governing Board is responsible for setting Cochrane's strategic direction and overseeing the work of the CEO, Editor in Chief, and Central Executive Team, which leads, coordinates and supports all the operational work across Cochrane groups to deliver the organization's strategic goals.
 12. The Governing Board is currently comprised of 13 Members, all of whom are Directors of the Company and "charity trustees" under English law. In keeping with the Articles, more than half of the Governing Board is elected by and from Cochrane's Members; the rest are appointed by the Board and approved by the Members. A copy of the Cochrane Governance Structure Flowchart is included at Tab 2.
 13. The global organisation is comprised of an international network and community of researchers, professionals, patients, carers and others interested in healthcare. At present there are a number of national entities which carry the Cochrane name, including Cochrane UK (the centre supporting Cochrane activities in the UK) and Cochrane Nordic, the centre supporting Cochrane activities in Nordic countries. Cochrane Nordic was founded in 1993.
 14. Although the national entities have access to and make use of Cochrane charity resources, they do not receive any direct funding from Cochrane itself; they are funded locally and employ their own staff via host institutions. For example, Cochrane UK is funded by the UK's National Institute for Health Research and hosted by the Oxford University Hospitals NHS Foundation Trust. Accordingly, the national entities have historically acted with a relative degree of autonomy and until recently there were no written agreements or memoranda of understanding between Cochrane and the national entities. I interpose to say that this question of autonomy seems to me central to the issues which have arisen.
 15. The structure of the global organisation, the relationship between Cochrane and the national entities, and the organisation's governance and policies, are currently

undergoing a process of formalisation. This effort is being driven by the Governing Board, which, in the Governing Board Charter referred to below, describes itself as “committed to high performance rather than simply ensuring regulatory compliance.”

16. Over the past two years, the process of formalisation has included implementation of the following agreements and policies:
 - (1) Collaboration Agreements to formalise the relationships between Cochrane and the national entities. The Collaboration Agreement with Cochrane Nordic is at Tab 3;
 - (2) Spokesperson Policy, which was originally adopted, so I understand, in early 2015 but which has been amended since (Tab 4);
 - (3) Grievance Procedure, which applies to all employees, whether as complainant or subject of a complaint (Tab 5);
 - (4) Code of Conduct for Trustees – i.e. those Members serve on the Governing Board, which was prepared on 19 February 2018 (Tab 6);
 - (5) Governing Board Charter, first prepared on 20 February 2018 (Tab 7); and
 - (6) Charter of Good Management Practice, adopted in February 2016 (Tab 8).

17. In the Governing Board Charter it is said that “Cochrane’s Governing Board plays a key strategic role in the organisation and bears final responsibility for everything undertaken in Cochrane’s name. In practical terms it oversees the performance of the [CEO], its Editor-in –Chief, their staff in the Central Executive Team and those working for the wider organisation.”

18. I am instructed that whilst the Collaboration Agreement with Cochrane Nordic (Tab 3) has not been signed on behalf of Cochrane Nordic, the terms have been agreed in writing by the Director of Cochrane Nordic (i.e. PG) through email correspondence; accordingly the agreement is legally binding. Certainly I note that PG in his Submission (which I discuss below) has treated the Collaboration Agreement as legally effective (see for instance at p.64). I note the following provisions:
 - (1) It was stated on its face to begin on 2 February 2017 (clause 1).
 - (2) Cochrane Nordic is bound to support Cochrane’s mission, principles, organisational strategies and goals as defined by Cochrane’s Governing Board (clause 2).
 - (3) Cochrane agrees to support the activities of Cochrane Nordic according to its available resources (clause 3).
 - (4) The “Director of the Cochrane Centre” (i.e. PG) agrees to adhere to Cochrane’s managerial and performance accountability structures and to all adopted Cochrane’s policies and procedures. The Director is accountable to the Governing Board (through the CEO, i.e. MW) for the Centre’s Cochrane activities (clause 4).
 - (5) There is a series of obligations assumed by “Cochrane, its Chief Executive Officer and its Central Executive” (clauses 6 to 14).

- (6) There is a series of obligations assumed by the Director of Cochrane Nordic (clauses 15 to 20).
- (7) Finally, there is a series of provisions (clauses 22 to 25) relating to “Dispute Resolution and Performance Management. I discuss some of those below when considering the Third Complaint.

C. Background to the Complaints

PG

19. PG is a founding Member of Cochrane. PG established Cochrane Nordic in 1993 and has been its Director ever since. PG has been a member of the Cochrane Governing Board and so a charity trustee under English charity law since 31 January 2017, when he was elected to the Board. PG is not a Cochrane employee; he has held the title of Professor of Clinical Research Design and Analysis at the University of Copenhagen since 2010. Cochrane Nordic is hosted by the Rigshospitalet in Copenhagen. It is clear that PG is an academic of very considerable eminence who has published widely. He is known for the vigorous espousal of views which some might describe as controversial (I do not mean this in any way pejoratively). I do not believe that the sincerity of his views and the rigour and quality of his academic work is in issue.

MW

20. MW is the current CEO of Cochrane in succession to its first CEO, Nick Royle, who left Cochrane in 2012. MW is an employee of Cochrane and his contract of employment, headed “Service Agreement”, is at Tab 9. I note the following provisions of this Agreement:
 - (1) MW’s employment stated on 12 November 2012 (clause 1.1).
 - (2) It was provided that MW would formally report to the Steering Group (now the Governing Board) and operationally via the Co-Chairs in the first instance (clause 2.1).
 - (3) Clause 2.2 contains typical obligations one would expect to see assumed by a CEO (e.g. fidelity, diligence, compliance with directions/instructions, keeping the Co-Chairs informed of activities, disclosure etc).
 - (4) Clause 9 contains provisions relating to “Disciplinary Rules and Complaints Procedure.”

Overview

21. In summary, I am instructed that²:
 - (1) Based on a number of complaints that have been made to Cochrane by third parties over the years a question has arisen as to whether PG’s actions in

² The summary below derives from paras 17 to 19 of the Instructions.

publishing certain statements and papers amount to a breach of his obligations owed to Cochrane both as a Centre Director and as a Trustee, in particular the Spokesperson Policy (the “**First Complaint**”). The allegations are disputed by PG.

- (2) MW, in his capacity as CEO and PG’s line manager, has been responsible for addressing the complaints that make up the First Complaint on behalf of Cochrane and in this context has raised issues relating to the First Complaint with PG on a number of occasions over the past few years. PG has subsequently raised his own complaint in respect of MW’s actions (the “**Second Complaint**”).
- (3) Separately, an issue has also arisen as to whether PG may have breached his obligations as a Trustee by involving the Governing Board in personal matters, namely the issue between PG and MW (the “**Third Complaint**”).

Backdrop to the First Complaint

22. I am instructed that the First Complaint is based on claims made to Cochrane that PG has:
 - (1) Made public statements and published papers that are potentially damaging to Cochrane’s reputation;
 - (2) Made public statements in respect of his personal views which have the potential to be misinterpreted / have been misinterpreted as representing Cochrane, thus undermining Cochrane’s reputation as an independent research organisation; and
 - (3) That in so doing, PG has been pursuing his own interests and scientific career over the interests of the Cochrane organisation.
23. Tabs 12 to 20 are said in the Instructions to contain the detail of the chronology and claims that have been made since 2003 in respect of PG’s conduct and the communications of these issues to PG. A summary document prepared by Professor Martin Burton (“MB”) purports to set out the position in April 2018 and is at Tab 18.

2003 issue

24. The first recorded issue is dated 14 April 2003 (Tab 12) (Cochrane’s electronic records do not date back any further than 2003). This is a letter dated 14 April 2003 from Professor Jim Neilson, then the Co-Chair of the Steering Group. It is said there that the Steering Group was concerned that PG’s name was one which had cropped up on a recurring basis in the context of controversies within Cochrane that have led to tensions between, and upset among, members of Cochrane. These related to 3 papers authored by PG, one of which was yet to be published. In the two published papers PG had listed Nordic Cochrane as his professional address. At least one of the papers criticized the quality of Cochrane Reviews. Prof Neilson detected a common theme, that PG was pursuing his scientific career against the interests of Cochrane. PG responded on 5 June

2003. His response recognised the Steering Group’s concern and stated that he would like to avoid further upsets in the future, for “example by applying more sensitivity as you suggest.” PG apologised for one matter. Nonetheless he set out an explanation of each of the incidents referenced by Prof Neilson.

2014 Book issue

25. On 14 March 2014 MW, the then Co-Chairs (Jeremy Grimshaw and Lisa Bero) and the Editor-in-Chief (David Tovey) wrote to PG following the publication of his book – entitled “Deadly Medicines and Organised Crime: How big pharma has corrupted healthcare” – (and a related video) in which, they said, PG appeared to advocate that every patient taking psychotropic medication should stop taking their medication and that they would be healthier if they ceased to take the medicine. The letter continued (Tab 13):

“You are aware that this is a highly charged and sensitive issue. We have had representations from individuals and organisations asking whether Cochrane supports your views on this matter.”

26. In the letter the key point which was made was not that PG should not express his views, but whether he was perceived to be writing in a personal capacity or on behalf of Cochrane. A caption on the video referred to PG as “co-founder of the Cochrane Collaboration.” The point was made that a clear distinction had to be made at all times between views and positions held by Cochrane as an organisation and those held individually by the various figures holding senior positions in Cochrane. It was said that PG had exposed Cochrane to reputational risk by the perception that the views expressed in the book were those of Cochrane. PG was asked to ensure that in the future his personal views were not presented in any way such that they could be perceived to represent the Cochrane view.
27. That letter followed a series of communications which are gathered in a timeline at Tab 13. I do not propose to set out the full correspondence, which appears to have been prompted by an article written by PG in a Danish newspaper called *Politiken* in January 2014. However it is clear that health professionals had expressed concern to Cochrane that PG was voicing controversial opinions in a way that suggested that he was speaking as a representative of Cochrane Nordic. It is clear that this prompted an internal debate within Cochrane concerning the need for a policy on public pronouncements made by those associated with Cochrane.
28. PG responded to Cochrane’s letter on 20 March 2014 stating that he understood the concerns expressed and that he had removed the link to the book from the Nordic Cochrane website. He also agreed that “we should be clear about when we are presenting our own personal opinions...and when we are speaking on behalf of

[Cochrane].” He went on to clarify what he was actually advocating in his book in relation to use or non-use of psychotropic drugs.

29. I should interpose here that on 20 March 2014 MW, the Co-Chairs and Dr Tovey wrote to certain Danish Professors concerning PG’s book in response to a letter dated 5 March 2014 written by them questioning whether that book represented the views of Cochrane. That letter makes clear that PG was speaking only for himself and his views were not those of Cochrane. In his Submission (discussed below), at p.17, 20 and 25, PG criticizes this letter as having been written without consultation and causing him and Cochrane Nordic reputational harm. It is also said that this letter was effectively written by MW. Based on my consideration of the documents and interview with MW I conclude that the letter was appropriately written; that attempts to contact PG before it was sent failed because PG was incommunicado in Panama and it was reasonably considered important to issue the letter in short order; and that the letter was indeed endorsed by all the co-signatories.

2015 issues relating to the BMJ and MailOnline

30. On 9 June 2015 MW and the then Co-Chairs (Professors Farquhar and Bero) wrote to PG in relation to his comments published in the print version of the British Medical Journal which criticised Cochrane’s Editor-in-Chief David Tovey, and three senior Co-ordinating Editors (Tab 14). This letter had been prompted by a letter from PG published in the BMJ dated 2 June 2015 in which PG had referred to “the Cochrane editors’ denigration of my research” and had identified himself as affiliated to Cochrane Nordic. It was further said that “unsurprisingly”, journalists and others had interpreted the Cochrane editors’ “denigration” of his research as a “thinly disguised attempt at protecting psychiatry’s guild interests, and some even suspect that they also tried to protect the drug industry.” I understand that such an accusation levelled at Cochrane editors is a very serious one indeed given that independence and integrity are two of the cornerstones of Cochrane’s mission. To say the least these were unfortunate words.
31. In the letter of 9 June 2015 MW and the Co-Chairs stated that they considered that PG had “descended into an unwarranted and unfair criticism of [PG’s] colleagues.” PG was reminded of the necessity to comply with the Spokesperson Policy and was asked not to use his title of ‘Director, Nordic Cochrane Centre’ unless speaking or writing directly about Cochrane projects. It was made clear that should PG fail to respond to the requests made in the letter then that could result in the deregistration of Cochrane Nordic.
32. It seems that the BMJ quickly amended PG’s letter to remove the first and second sentences, which contained the material which had been the principal subject of the Cochrane letter. However a hard copy of the original version was in the meantime printed.

33. At a meeting on 7 July 2015 between MW, PG and Dr Tovey, PG agreed to write an apology to the persons referenced in his letter. He apparently agreed that “this problem must not happen again” and there was discussion about the circumstances in which PG’s directorship of Cochrane Nordic could be deployed in articles written by PG or in other media fora. PG pointed out that the Spokesperson policy as it then stood was not crystal clear and apparently agreed to consult with Julie Wood in case of doubt. There was also discussion about PG’s forthcoming book on psychiatry and MW expressed concern that the 2014 debate might be reignited
34. After the meeting there was an email exchange between PG and MW/Dr Tovey. On 8 July 2015 PG sent a draft text for a rapid response in relation to the 6 June 2015 issue of the BMJ (which had contained PG’s original letter). PG also mentioned that he was considering sending some parts of the text of his forthcoming book on a confidential basis. MW responded enclosing a minute of the 7 July 2015 meeting and commented on the draft text which PG had sent earlier that day, on the basis that it contained no apology, nor a withdrawal of what was perceived as the offending passage in the original letter sent by PG to the BMJ.
35. There were further emails between PG and MW about these matters. In essence:
- (1) PG’s proposed text to the BMJ did not contain the apology/withdrawal sought in the 9 June 2015 letter and which PG had, so MW perceived it, promised in the 7 July 2015 meeting.
 - (2) After further emails it appears that agreement was reached as to the form of the minutes for the 7 July 2015 meeting (I have assumed the copy in the File at Tab 14 is the agreed version) and of the rapid response to the BMJ.
 - (3) PG concluded the email exchange as follows: “thanks so much for your kind understanding. I am very relieved that we may now consider the case closed.”
 - (4) The rapid response which was eventually published on 12 July 2015 bearing PG’s name contained the following words:³

“In the paper version of BMJ on 6 June, I replied to David Tovey, Cochrane’s Editor in Chief, and Rachel Churchill, Clive Adams and Geraldine Macdonald (Cochrane editors responsible for Cochrane Groups specialising in mental health topics) that journalists and others had interpreted their rapid response (1)⁴ to my Maudsley debate paper (2) as an attempt at protecting psychiatry’s guild interests, and that some had even suspected that they tried to protect the drug industry (3).

As I did not intend to question my four Cochrane colleagues’ integrity, I withdraw this statement to avoid any misunderstandings and I apologize for any hurt and confusion caused. The fact is that all of us in Cochrane

³ This is not in the file attached to the Instructions but I have obtained the text from the BMJ website.

⁴ I have omitted footnotes.

do our best to keep industry influence out of our work, which we regard as essential for the trustworthiness of our reviews.

I had two main messages in my BMJ paper about the Maudsley debate, which are my personal views after having gone through the science: psychiatric drugs are the third leading cause of death; and we would have a healthier and more long-lived population if we only used 2% of the drugs we currently use. Tovey et al. felt I went too far with this recommendation. I believe that my impending book (4) will fully justify my assertions.”

36. Shortly thereafter, on 15 September 2015, in conjunction with the publication of his new book *Deadly Psychiatry and Organised Denial*, PG published an article in the *Mail Online* (Tab 15). Its broad thrust may be ascertained from its heading: “Prescription pills are Britain’s third biggest killer: Side-effects of drugs taken for insomnia and anxiety kill thousands. Why do doctor hand them out like smarties?” PG highlighted what he considered to be the massive over-prescription of psychiatric drugs and the catastrophic effects they had on patients. In the article he wrote:

“As an investigator for the independent Cochrane Collaboration – an international body that assesses medical research – my role is to look forensically at the evidence for treatments....Previously this has led me to challenging widely-held assumptions about the benefits of breast cancer screening....”

The article continued by asserting that PG knew about certain flaws in drug trials because “an analysis of trials by Cochrane Collaboration found that when the placebo was designed to cause similar side-effects to the drug, the psychiatrists reported just as good result from both groups.”

37. In September 2015 the Co-Chairs, MW and Dr Tovey issued a press statement in response to this article to make clear that PG was not conducting this work on behalf of Cochrane and that the views of PG on the benefits and harms of psychiatric drugs were not those of Cochrane (Tab 15).

2016 EMA issue

38. On 26 May 2016 PG made a Complaint (“**the EMA Complaint**”), written on Cochrane Nordic letter head, to the European Medicines Agency concerning alleged maladministration relating to its Assessment Report dated 11 November 2015 concerning the safety of vaccines against human papilloma virus. The EMA Complaint was signed by PG in part in his capacity as “Director of the Nordic Cochrane Centre.” It was posted on the Nordic Cochrane website. The basis of the complaint is very detailed and involved and I am in no position to assess its validity other than to acknowledge that it was patently written in good faith. The only question which

potentially arises from it is whether making it under the auspices of Cochrane Nordic involved a breach of the Spokesperson policy.

39. The fact of this EMA Complaint generated a certain amount of correspondence between Cochrane and PG. Cochrane received requests from journalists asking whether the EMA Complaint constituted official Cochrane policy. Ms Wood wrote on 10 June 2016 stating that PG had breached the Spokesperson Policy. In response PG denied that he had broken the Policy.
40. Finally on 22 August 2016 MW, the then Co-Chairs and Ms Wood wrote an email to PG setting out their concluded view that the EMA Complaint constituted a further breach by PG of the Spokesperson Policy, although they accepted that PG had in good faith interpreted the Policy in an alternative way; and that accordingly the Policy required amending (Tab 16).
41. In the email it was stated that: "In order to avoid any future misunderstandings, we need you in any communication which you make using your affiliation as Director, Nordic Cochrane Centre, or on NCC headed correspondence, that you make clear that the views expressed are your personal ones where they are not explicitly those of Cochrane...." Reference was made to what had been agreed in the 7 July 2015 meeting, as recorded in the agreed minutes which are in the File and which I have mentioned above.
42. It seems that as a result of this correspondence Cochrane's Spokesman Policy was changed in September 2016 to the version at Tab 4. It was approved by the Governing Board at the Seoul meeting. I discuss the Policy below.

2017 RTE issue

43. In November 2016 PG was interviewed by the Irish broadcaster RTE concerning his position on the HPV vaccine and the EMA Complaint (and his further complaint to the Ombudsman). PG subsequently complained to RTE about the broadcast.
44. On 6 January 2017 MW wrote to PG in respect of PG's use of his Cochrane title in connection with the interview given to the RTE television channel in Ireland and PG's subsequent correspondence with RTE (Tab 17). In that email MW referred to earlier incidents (i.e. those mentioned above) and said;

"As result of these incidents, in meetings and correspondence with the Co-Chairs, [Dr Tovey] and myself you agreed to adhere to a set of obligations and behaviours in future. These agreements were made between the Cochrane leadership and yourself in lieu of other actions being taken against you as part of Cochrane's management and governance arrangements. These undertakings remain in force. They are set out in the letters to you from the Cochrane

leadership of 14 March 2004, 9 June 2015 and the Minutes of our meeting of 7 July 2015.”

45. I quote this at length because, as will become apparent, an issue has arisen whether those agreements have been lifted as a result of the 2017 Geneva Board meeting.

D. More Recent issues

46. Most recently, three specific claims about PG’s conduct have been brought to MW’s attention in his capacity as CEO. These have led to this review.

Complaint by Dr Fuller Torrey

47. First, Dr Fuller Torrey, Associate Director for Research at the Stanley Medical Research Institute in the United States, wrote to MW on 1 and 2 March 2018 (Tab 19). This correspondence was prompted by a letter Dr Torrey had received from PG dated 16 February 2018 in which he had sought data in relation to a TIPS study in which, apparently, a number of young people had died. I know nothing of the subject matter of the letter but I infer from it that (1) the Stanley MRI had funded it; (2) PG was sceptical about it. The letter was written on Cochrane Nordic letter head and was signed by PG as “Director” of Cochrane Nordic. The letter contained the following passages;

“We believe funders have an ethical obligation to ensure that information, which is of great importance for public health, and which has been collected in the funded study, gets published. That would be a great service to psychiatry, the patients, and everyone else with an interest in this vitally important issue. When young people who are receiving antipsychotics die, we need to know why they died in order to reduce the risk of death in future.

You may consider this a Freedom of Information request, which means that if your organisation does not have detailed information on the deaths in the TIPS study, we expect your organisation to obtain this information from Hegelstad the primary author of the study] and to send it to us. Anything short of this would be unethical in our view, and we are convinced that patients with psychotic disorders agree with us (I am Protector for the Hearing voices Network in Denmark).”

48. In his emails Dr Torrey referred to the credibility of Cochrane resting upon the assumption of objectivity among those who are evaluating its research but said that that objectivity was in doubt in relation to PG because he identified himself as both the Director of Cochrane Nordic and also as the ‘Protector of the Hearing Voices Network in Demark’, an organisation which promoted, so Dr Torrey stated, the belief that auditory hallucinations were merely one end of a normal behavioural spectrum, so casting doubt on whether schizophrenia actually existed as a disease; and that hearing

voices was caused by trauma in childhood, for which there was no solid evidence. Dr Torrey also mentioned that the Network “encouraged individuals who were taking antipsychotics for their schizophrenia to stop taking their medication.” In Dr Torrey’s view these matters demonstrated a “clear lack of objectivity” on the part of PG such that “I would personally not find any Cochrane publication on mental illness to be credible.” This which had the effect, he claimed, of “impugning your [Cochrane’s] credibility which is your most important asset”. Dr Torrey confirmed that this was a formal complaint.

Tweet by Professor Anton Pottegard

49. Secondly, Anton Pottegård, Associate professor at University of Southern Denmark, sent a tweet on 8 March 2018 (Tab 19) questioning whether PG had adequately distinguished his personal views on psychotropics from those of Cochrane. In particular it appears that PG had in the notes for a “deprescribing symposium” which was to be held on 16 March 2018 referred to himself by reference to his relationship with Cochrane. Cochrane responded on Twitter the next day stating “Cochrane takes seriously all feedback from our community, and we have shared our comments with senior leadership for further action. If you would like to submit a formal statement directly, please use our website.”
50. Professor Pottegard has not made a formal complaint. There have been no further communications, so far as I am aware, to or from Professor Pottegard.

MW raises these matters with PG in March 2018

51. MW raised these two issues with PG by an email dated 15 March 2018 (Tab 19). PG produced some proposed draft responses to Dr Torrey and Professor Pottegard which he sent on 18 March 2018 to MW for his consideration.

Letter from Professor Anton Loonen

52. Thirdly, Professor Anton Loonen wrote to Cochrane on 19 March 2018 (Tab 20) regarding PG’s conduct when acting as an expert for the defence in a very serious criminal trial in 2016 in Holland in which a woman was accused of killing her two young children. Prof Loonen expressed concerns about PG’s conduct as an expert, questioning his expertise. He also noted that PG had written the report on the stationery of Cochrane Nordic, with its motto (the Cochrane motto) “Trusted evidence. Informed decisions. Better health.” The report was signed by PG partially as “Director of the Nordic Cochrane Centre....” Professor Loonen inferred that “Apparently the Nordic Cochrane Centre endorsed [PG’s] findings in that criminal case. This is however, questionable for me, because, to my knowledge, the Cochrane organisation is not active in the domain of individual forensic psychiatry.” He goes on to mention that PG had

PG had stated that he had been released at the Geneva meeting by the Trustees from the express obligations that had previously been instated upon him – presumably those sought to be imposed by the letters of 14 March 2014, 9 June 2015 and 6 January 2017, and those matters agreed by him on 7 July 2015, which letters/matters I have discussed above. MW sought clarification about what had happened at the Geneva Board Only session, which of course MW had not been present at. Nobody had informed MW of any relaxation.

57. I note that in that email MW also reported the view of Cochrane’s in-house lawyer, Beth Collins, which was that PG’s breach of the Spokesperson policy to be “flagrant.”
58. Although I have not seen the response to this email, I note that the Co-Chairs’ position was that PG had not been so released at the Geneva meeting (see their 24 April 2018 “Summary of Issues” document – at Tab 18 – discussed below).
59. In any event, I am instructed that there is a lack of consensus as to what was agreed at the Board Only meeting which was held in Geneva in April 2017. Further:
 - (1) There is a question as to whether the Board Members present at that meeting were aware at the time of either the fact of the letters dated 14 March 2014 and 9 June 2015 (etc) or their contents.
 - (2) The Board Only part of the meeting is not formally minuted, although PG apparently told MW at the meeting on 21 March 2018 that the annulment of the additional agreements *was* minuted.
60. Thereafter MW wrote to PG on 11 April 2018 setting out his conclusions on the three new matters mentioned above (Tab 20). These were, in summary:
 - (1) As regards the Torrey complaint PG had breached Cochrane’s Spokesperson Policy and undertakings given in July 2015 (this is a reference I believe to the 7 July 2015 meeting, as recorded in the minutes dated 1 August 2015).
 - (2) As regards the Pottegard matter, PG was not in breach.
 - (3) As regards the Loonen matter, in mandating a Dutch attorney to submit a complaint against Professor Loonen, PG was in breach.

I do not propose to set out in detail the reasoning behind MW’s conclusions given that one of my tasks is actually to come to my own conclusions. However I have had regard to them.
61. PG made comments upon this email (and upon draft letters produced by MW to be sent to Dr Torrey and Professor Pottegard), which are italicized on the document. He refuted MW’s conclusions. Likewise I have had regard to PG’s comments, and deal with some of them below.
62. As I understand it, attached to MW’s email to PG dated 11 April 2018 were draft responses to both Dr Torrey and Professor Pottegard, both also dated 11 April 2018. PG thereafter annotated both drafts with his comments. The difference of approach

between MW and PG is evident from the draft amended response to Dr Torrey. In particular MW's draft said that PG "did not make sufficiently clear in this case that his request for data from the TIPS trial was for his personal research projects as the Professor of Clinical Research Design and Analysis at the University of Copenhagen." PG's response is that this is entirely incorrect. "The research projects which we carry out at the Nordic Cochrane Centre are not personal research projects. And the project is not related to my professorship at the University of Copenhagen; it is part of our research portfolio in psychiatry at our centre, which consists of Cochrane reviews in psychiatry as well as other research in psychiatry."

63. In summary, following the 21 March 2018 meeting PG has made clear that he disputes both the historic and the recent allegations on the basis that:
- (1) The facts upon which the claims are based are disputed by PG;
 - (2) The Spokesperson Policy was and remains ambiguous;
 - (3) PG considers that the Spokesperson Policy has not been applied in the same way to everybody and that he has been singled out and treated unfairly; and
 - (4) PG considers that he was released by agreement with the Governing Board from the express obligations stated in the letters from MW and the then Co-Chairs sent to PG on 14 March 2014 and 9 June 2015, during 'Board only time' (i.e. attended by Trustees only and not the Central Executive Team) following a meeting of the Governing Board in April 2017.

E. The Current Position

64. In response to MW's 11 April 2018 email on the same day PG wrote an email to all the Members of the Board referring to MW's email (which I have summarised above) and complaining about the time limit MW had imposed and that it contravened the apparent Governing Board's decision at Lisbon on 23 March 2018 that the allegations against PG and PG's response would need to be considered by the Board before MW took action (I do not know whether the Governing Board indeed so concluded: no doubt the Governing Board knows what it did or did not conclude then). PG's email was headed "Mark Wilson has sent a very unpleasant email today threatening to close my centre." I consider PG's email of 11 April 2018 in greater detail when I come to my conclusions on Complaint Three.
65. I understand that the Co-Chairs tried to encourage the Board Members not to read PG's 11 April 2018 email or respond to it. I also understand that MW wrote to MB and Professor Farquhar on the same day stating that "In my view this is an outrageous email. I addressed the email [dated 11 April] only to Peter as his line manager, so his response (without copying the Board) is unacceptable. It is also full of factual inaccuracies..."
66. PG wrote a further email to the Board Members on 16 April 2018, sending them MW's draft replies to Dr Torrey and Professor Pottgard, and his proposed amendments (I have explained these above).

67. MW responded to these emails to PG on 20 April 2018 (Document L, Tab 18). In that email MW wrote that “It is clear to me that there is no possibility of agreement between us about your interpretation of and behaviour towards the Cochrane Spokesperson Policy in these cases or in general.” MW said that he stood by his draft responses to Dr Torrey and Professor Pottegar  but that given the differences between them he would not send them until the Governing Board had considered the matter. He had concluded that all the issues should be referred to the Governing Board. The responses remain unsent.
68. In response to this situation, on 20 April 2018 the Co-Chairs wrote an email to PG and MW seeking a way forward to try to resolve the current position (Document A, Tab 18). The proposal contained in that email stated in summary:
- (1) The existence of historic discussions with PG was noted as well as disagreements about what was said, meant, understood etc.
 - (2) The situation need to be resolved and there was a need to identify a process, conducted by a third party, which was contained in the attached document (Document B, Tab 18).
 - (3) That document identified MW’s position and PG’s complaint against MW (which would subsequently be formalised: see below); proposed a review by an independent third party, who would provide a confidential report to the Governing Board.
69. In response to that email MW responded indicating his assent: PG responded, on the same day, making it clear that he disagreed with the plan and that the whole Governing Board needed to deal with the issue, in accordance with his rights under the Collaboration Agreement.
70. In the result my Instructions have been formulated broadly in accordance with the proposal referred to above. They were agreed by a majority of the Governing Board: see below.
71. The Co-Chairs wrote a Summary of Issues on 24 April 2018 (Tab 18) setting out a summary of these recent events.
72. On 26 April 2018 PG prepared a document which sets out the detail of a series of complaints against MW (although they seem to go beyond issues relating to MW’s conduct), which have been collectively described in the Instructions as the Second Complaint (Tab 21). I shall maintain that description here.
73. In summary, in that document PG has raised the following complaints to the Co-Chairs (for ease of reference I have paginated the document). I have set out them out in some detail because it seems to me that part of my task is to come to conclusions about them.

- (1) It is said that the 20 April 2018 plan propounded by the Co-Chairs is defective in a variety of ways (passim), including in relation to the appointment of an independent third party.⁵ It is alleged that the Co-Chairs are not impartial in relation to the dispute between MW and PG (pp 2-3, p.5).
- (2) The 11 April 2018 email from MW to PG (which I have mentioned above) is referred to (p.3) and is described as “management by fear” (p.4, p.12).
- (3) It is said that the Co-Chairs have allowed MW’s complaints to become “part of their plan” (p.4). It is also said that the Co-Chairs are too close to MW and too influenced by him; even that MB is afraid of MW (p.4).
- (4) That MW acted inappropriately towards PG on 23 March 2018 by shouting and losing his temper, and that MW had accused PG of lying (p.5) – PG describes this as “bullying behaviour”.
- (5) That MW is responsible for deliberately misinterpreting the Spokesperson Policy against PG and asserting that there are separate rules for PG compared to everyone else (p.5, p.8);
- (6) PG states his perception of what happened at the Geneva meeting in April 2017 and makes complaints about it and about the conduct of Lisa Bero (pp. 6-8). In particular he says that after a period of time when PG was asked to leave the meeting he returned to be told “There were no restrictions: it was clear that I could use my letterhead for non-Cochrane issues...” though PG “should be sure to give a disclaimer if the letter could be seen as controversial.”
- (7) Various governance issues, in particular a failure to act fairly or to set and follow due process (in particular pp.12-14).

The above is a summary of the Second Complaint. I deal with it in greater detail below when I come to my conclusions.

74. I describe the Third Complaint below in the section which deals with its determination. I do not think I need to set it out here.

F. The Instructions

75. At a meeting held on 13 June 2018 the Governing Board decided to appoint independent counsel to carry out a review on the terms of the Instructions. By those Instructions I was asked to undertake a formal legal review in relation to each of the First, Second

⁵ Further points made by PG are: (1) that the Proposal had not been discussed or agreed by the rest of the Governing Board; (2) that due process had not been followed; (3) that the Co-Chairs are not impartial in the dispute between PG and MW; (4) that the appointment of an independent reviewer is not in accordance with the procedure for dispute resolution outlined in the Collaboration Agreements; (5) that the selection by the Co-Chairs of the particular individual would be neither impartial nor in accordance with due process; (6) that the Governing Board is both capable of resolving the dispute itself and in possession of greater knowledge to enable it to do so than any third party; (7) that the events of the Governing Board meeting in April 2017, which PG interprets as having released him from certain obligations, are highly relevant to the resolution of the dispute; and (8) That the most appropriate course of action is for the Governing Board to resolve the dispute itself.

and Third Complaints and to report in writing to the Governing Board in relation to the findings. This Preliminary Report is (part of) that review.

76. In respect of each of the Complaints I was asked, at para 43 of the Instructions, to:
- (1) Establish the relevant facts underpinning the Complaint;
 - (2) Identify the precise legal nature and basis of the Complaint and conduct a legal review of the facts and issues in dispute;
 - (3) Make recommendations to the Governing Board based on the governance policies in effect at the relevant time as to:
 - (i) whether any formal grievance has been raised and if so against whom and on what legal basis;
 - (ii) whether, on the facts established by me, there has been a breach of (i) the law, (ii) any of Cochrane's governance policies and (iii) Charity Commission regulations; and
 - (iii) what options are available to the Governing Board to achieve resolution of any grievance / breach; and
 - (4) Consider whether any issues arise from a regulatory perspective, including whether the Charity Commission should be notified of the Complaint.
77. In undertaking the review I have been asked, at para 45 of the Instructions, to have regard to the following:
- (1) Cochrane's obligations at law;
 - (2) Cochrane's obligations pursuant to its governance policies and Memorandum and Articles of Association;
 - (3) Any regulatory and reporting requirements that arise as a result of Cochrane's status as a registered Charity, and any relevant guidance issued by the Charity Commission, including in particular the Guidance dated 3 May 2018 "*The essential trustee: what you need to know, what you need to do*" (included at Tab 11);
 - (4) The potential reputational and media considerations; and
 - (5) Cochrane's commitment as an organisation to transparent governance (see point 6 of Goal 4 of Cochrane's Strategy to 2020, included at Tab 10).
78. I am also invited to identify any areas of potential improvement in relation to corporate governance, Board constitution and/or the procedure for appointment and election of Trustees and to make any other appropriate recommendations as to next steps.
79. I should immediately again make clear that in the timetable imposed upon all parties, including me, has been tight, in order to allow for a preliminary Report to be produced in time for the Board Meeting starting on 13 September in Edinburgh. Further the amount of material placed before me is voluminous and the issues very involved. In the time available I have not been able to consider all the matters above.

G. Events Subsequent to Instructions

80. Since I received the Instructions there has been correspondence between H&L on the one hand and MW and PG on the other in relation to the review process. I do not set out the totality of that correspondence here.
81. The Instructions and the accompanying File were sent to MW and PG under cover of a letter dated 23 July 2018. In that letter it was stated that I had been appointed to carry out a review to assist the Governing Board. In response to that letter both MW and PG indicated that they wished to make representations to me concerning the matters raised in the Instructions.
82. H&L wrote a letter on 15 August 2018 to both MW and PG seeking their responses by 30 August 2018 and stating that I might wish to interview them orally in the week commencing 3 September 2018. Arrangements were subsequently made for those interviews to take place on 6 and 7 September 2018.
83. In response to that letter:
- (1) MW produced a written response on 23 August 2018.
 - (2) PG produced a written response on 30 August 2018.
- I will refer to these documents as either MW or PG's "Submission".
84. I am grateful to both MW and PG for their Submissions. PG's response is a very long document. I have read it very carefully.
85. I interviewed MW in person on 6 and 10 September 2018. I was due to interview PG via skype (at his preference) on 7 September 2018. However on 6 September 2018 PG cancelled that interview because he wished lawyers to be present and also because he believed that it was unnecessary given the length of his Submission. Although PG subsequently said that he would answer any written questions I might have I decided that I did not wish to ask any written questions, for amongst other reasons that I did not feel written answers would be a substitute for a face-to-face interview.

H. My Role and Preliminary Points

86. I should clarify my task as I perceive it:
- (1) First, I am not appointed as an arbitrator or expert. My instruction is not pursuant to a formal dispute resolution mechanism.
 - (2) This review does not have any of the formality or procedural safeguards of a court hearing or an arbitration. In it far less formal than that. Were it do so it would otherwise be liable to become very unwieldy indeed. PG sought a contribution to legal costs within a limit of £200,000 (p.66 of the Submission); a request which was rejected by Cochrane and a figure which dwarfs the current budgeted legal expenditure on this review. It will be immediately apparent that

a more formalised quasi-dispute resolution process could be very expensive indeed, which could raise questions about the proper use of charitable funds.

- (3) Instead in this Report I am seeking to set out the views I have formed on the matters before me as a result of a rigorous assessment of the documents. In coming to those views I have been assisted by the interviews I have conducted. There are of course limitations to the review I have conducted, as will be obvious from the circumstances in which it was undertaken. I have sought to be very clear about the precise nature of the process so that those reading this Report can understand those limitations.
- (4) My views are not binding on any party. I am not imposing any judgment on any party. The Governing Board, to whom this document will be provided, is free to reject all and any of its conclusions and to proceed as it sees fit, subject to its wider obligations.
- (5) This document is to be sent to the Governing Board, of which PG is a Member, and to MW (and to H&L). It will not be disseminated any more widely. This is a stipulation I have insisted on and is the basis for my production of this Report.

87. In view of certain comments made by PG in his Submission I wish to make clear that I have no prior connection with any of the participants in the facts and matters underlying this Review. Until I started this Review I had neither met nor heard of any of them. Nor do I have any opinions either way on any of the broader issues running through some of the matters discussed. I do not practice in medical-related fields of law. As I understand it I was initially identified as a potential appointee not by the Co-Chairs but by H&L.
88. I should note that PG's Submission goes much wider than the Three Complaints. He seeks to demonstrate in his Submission amongst other things that "a lack of democratic and collaborative leadership at [Cochrane] has diminished its core principles of openness, transparency, honesty and fairness." This is not something I can address. Although I have sought to deal, as best I can, with as many of the points in PG's Submission as I think appropriate, there are some which are I cannot and should not venture a view on.

I. The Spokesperson Policy

89. It is now appropriate to consider the Spokesperson Policy (Tab 4) in more detail. It is said that this Policy has been breached by PG in the three recent instances. As I have mentioned above it was first introduced in 2015 but updated in September 2016 in the light of the issues discussed in Section C above.
90. The Policy makes clear (pp 1-2) that "it is important we establish clear guidance about who can speak officially on behalf of Cochrane and the circumstances in which it is appropriate to do so. This Policy clarifies who can represent, write and speak officially on behalf of Cochrane and how they should do it. For the purpose of this policy we

define an official spokesperson as an individual who has the authority to speak formally on behalf of Cochrane....”

91. I note the following provisions:

- (1) “In short, Cochrane Collaborators have the liberty to say whatever they like within the bounds of the principles [of] the collaboration; you just can’t say whatever you like *on behalf of Cochrane*.”
- (2) “In balancing our obligations to Cochrane with our academic freedom as individuals, the more senior an individual is within Cochrane, the greater their obligation to clarify in what capacity they are speaking – in their Cochrane capacity, in another professional capacity, or in a person capacity. The best practice is for everyone in Cochrane to clarify which ‘hat’ they are wearing when they speak.
- (3) “If you are expressing a view about Cochrane-related issues you should state clearly that you are speaking in a personal (or other professional) capacity unless you have been expressly authorised to represent Cochrane.”
- (4) “If you have multiple affiliations or positions... if you do use your Cochrane affiliation along with another title, or if Cochrane is the only title or affiliation you have, then it is incumbent upon you to state unequivocally and clearly that the views are your own and not those of Cochrane. This cannot be implied but must be stated explicitly. This is to avoid any misunderstanding or inaccurate assumptions on the part of the audience.”
- (5) “In a specific country or region, the spokesperson will be the Director of the Cochrane Centre....”

92. I now proceed to arrive at my Conclusions in respect of the Three Complaints.

J. Conclusion: The First Complaint

93. I have set out the relevant facts above.

The Historic Issues

94. An initial question arises whether the earlier issues discussed at Section C are part of the Complaint.

95. I should say that PG devotes considerable detail in his Submission to events prior to 2018. So:

- (1) At pp 12-17 he responds to the 2003 issue (as I have defined it above).
- (2) At pp 17-21 he responds to the 2014 issue.
- (3) At pp 21-26 he responds to the 2015 issue.
- (4) At pp 26-28 he responds to the *Daily Mail* issue.
- (5) At pp 28-33 he responds to the EMA Complaint issue
- (6) At pp 33-34 he responds to the RTE issue.

96. Given that these events are referred to my Instructions I understand why PG wished to set out his position clearly about those earlier events. However, my view is that all these events are historic and the parties resolved them at the time, or decided to let them lie. I do not believe that it serves any useful purpose to go over this old ground, other than to consider whether they support PG's complaint that they demonstrate that MW is antagonistic towards him etc. Further: (1) I am not sure whether it would fair on PG to come to conclusions on matters which lie in the past; and (2) in any event I do not have time to deal with these issues in the time constraints imposed upon me.
97. I also note what MW says in his Submission. He writes (at p.1):
- “What is described as the “First Complaint” is, to me, a straightforward conclusion on the fundamental question of did [PG] break Spokesperson Policy in the three instances that were raised by external parties.”
98. I am currently not proposing to make any determination adverse to PG in respect of them. Moreover at the time of these issues the Collaboration Agreement was not in force.
99. However I would say this:
- (1) I have concluded, having read all the material put before me, that in each case MW's response to the issue raised was sincere and reasonable.
 - (2) What that material demonstrates is that in my view MW showed himself to be wholly professional, fair and objective, notwithstanding what he reasonably perceived as PG's multiple breaches of the Spokesperson Policy as it then stood.

The Current Issues

100. The issue has been framed as whether on the three occasions in 2018 identified above PG acted in breach of the Spokesperson Policy and other specific requirements laid down for him. I think that given the uncertainty concerning the status of the specific requirements imposed on PG in the light of the Geneva meeting (which I discuss in detail below) I cannot proceed on the basis that they are still in force.
101. In fact I think the issue may be framed differently and more fundamentally. By clause 2 of the Collaboration Agreement it is provided that Cochrane Nordic is bound to support Cochrane's mission, principles, organisational strategies and goals as defined by Cochrane's Governing Board as defined by Cochrane's Governing Board; and to fulfil the core functions of a Cochrane Centre as set out in *Implementing Strategy to 2020: Cochrane Centres, Branches & Networks – New Functions and Structures* document and as described on the Centres' portal on the Cochrane Community website and in Cochrane Policies. By clause 4 the director of Cochrane Nordic agreed to adhere amongst other things to all adopted Cochrane policies and procedures.

102. The core functions of a Cochrane centre are to be found in the document headed “Functions of Centre” which MW provided me with.⁶
103. Having looked at that document it seems to me that it defines clearly what the function and role of Cochrane Centres. It seems to me that against the backdrop of that document the Director of a Centre cannot, *in that capacity*, do anything which does not promote those tiers of function, as they are elaborated in detail in the pages that follow the “Functions at a glance” table at para 1.1.
104. It follows that I respectfully disagree with PG’s articulated approach concerning what he, as director of Cochrane Nordic Cochrane, and Nordic Cochrane itself, can and cannot do. In particular:
- (1) In PG’s comments on MW’s draft letter to Dr Torrey PG wrote, at p.3 (Tab 19), that “in Geneva, the Board accepted that I use my letterhead also for non-Cochrane related matters.” This is a significant step further than PG’s position that the Board released him from special provisions particular to him (which I address below). If correct then the Board has actually placed PG in a more privileged position than other Centre Directors because it means – so it would appear - that PG is not subject to the full force of clause 2 and 4 of the Collaboration Agreement. I would be very surprised if the Board had agreed this (however if it has done then my conclusions in this section are invalidated). Assuming that the Board have *not* agreed this then PG’s position seems to me to involve a misconception of the role of Cochrane centres. In my view the Cochrane letterhead or the Cochrane designation can *only* be used for communications or work which promote the functions of the Centre as defined. PG cannot define those functions in accordance with his own interests and specialisms. Those functions are defined in the document I have mentioned (and possibly others).
 - (2) I presume that the core functions set out in the “Functions of Centre” document do not permit Cochrane Centres to carry out whatever research they choose to do. That research must be consistent with Cochrane methodological development. It follows that I respectfully disagree with what I think PG suggests at p.1 of the draft letter to Dr Torrey that a Cochrane centre can further whatever research interests its director might have.
 - (3) It seems to me that a fundamental question is engaged by p.8 of PG’s 26 April 2018 document (Tab 21). PG seems to there state (in the second and third paragraphs) that he is essentially free to use his affiliation to and directorship of Cochrane in his work generally. Hence PG objects to MW having insisted that PG should not use his “affiliation when I write articles about psychiatric drugs.” But, as I read the “Functions of Centre” document, taken in conjunction with

⁶ The link is at <https://community.cochrane.org/sites/default/files/uploads/inline-files/Functions%20of%20geographic%20oriented%20Groups.pdf>.

the Collaboration Agreement, PG can *only* use that affiliation when promoting and furthering Cochrane interests.

- (4) PG also says at p.2 of his comments on MW's 11 April email (Tab 20) that he can "authorise myself to speak on behalf of my centre". Again this raises a fundamental question as to the level of autonomy PG enjoys as director of Cochrane Nordic and indeed the level of autonomy that Cochrane Nordic itself enjoys. I respectfully think PG is wrong here; PG can only speak on behalf of the Centre and/or by reference to his Cochrane affiliation if by doing he promotes the Centre's defined functions.
- (5) It will be seen that there is a profound disjunction of perceptions between MW and PG as to the level of autonomy of Cochrane Centres. My view is that PG has misunderstood that position. In essence Cochrane Centres can only fulfil the functions defined in the "Functions of Centres" document.

105. Seen through this lens then it seems to me that PG acted in breach of the Collaboration Agreement when he wrote the letter to Dr Torrey and when he acted as an expert witness in the Dutch criminal proceedings. In particular:

- (1) The letter to Dr Torrey involves, as I understand it, the pursuit of non-Cochrane related work. It does not promote the core functions of the Centres. In any event PG's use of the pronouns "we" and "us" suggests that the views expressed are Cochrane's views. That does not fulfil the core functions.
- (2) Even more clearly, it seems to me that acting as an expert witness in a criminal trial (and then complaining about Dr Loonen thereafter) patently has nothing whatsoever to do with the promotion of the core functions. PG was acting as an expert witness and presumably was personally paid in that capacity. The expert report prepared by PG (a redacted version of which is at appendix 2 to PG's Submission) was on Cochrane Nordic notepaper and was signed by PG as Director of Cochrane Nordic. I cannot see how that has anything to do with the functions of a Cochrane Centre.
- (3) As regards the Pottgard issue it seems to me trivial. In any my wider views are clear.

106. Notwithstanding my conclusions above I am not sure that PG deserves censure for what I think are breaches of the Collaboration Agreement. It is not clear to me that his position has ever been analysed in the way I have endeavoured to do so above and I am sure that PG has not thought about it in this way. Further it seems to me that the matters I have discussed above involve a fundamental question as to the limits of what Centres and Centre directors can do. It may be said that the "Functions of Centres" document is not exhaustive of function. My respectful view is that the issues raised by this review require the Governing Board ultimately to come to a conclusion about what are those limits and set them out clearly in a policy. The philosophy of PG and the policy which MW has articulated and followed are at odds; rather than see this as a disciplinary matter it may be more constructive to treat it as a crossroads at which the Board must decide its vision for what Centres/Centre directors can and cannot do. One way or the

other that vision needs, I believe, to be articulated in a clear way which provides PG (and others) with very clear guidance. It may be that H&L would be best placed to advise on wording.

Spokesperson Policy

107. I come now to the Spokesperson Policy. PG makes an initial point that the Spokesperson Policy is highly ambiguous (p.3, Submission). He supports that point through an empirical study he has undertaken which yielded a diversity of responses, albeit the majority tended to think that in each case PG had not violated the Policy, and near unanimity that the Policy was difficult to interpret and could be improved (pp 3-9 and passim).
108. I must say that I have some sympathy for PG's position here. I will take the example of Dr Torrey. In his decision email of 11 April 2018 (Tab 18, Document F) MW stated at p.1 that, as regards the letter sent by PG to Dr Torrey PG had breached the Spokesperson Policy in so far as it required him to "state clearly that you are speaking in a personal or other professional capacity unless you are speaking in a personal or other professional capacity unless you have been expressly authorised to represent Cochrane." These words are quoted from p.2 of the Policy. They appear under the heading "How to make clear you are speaking in a personal capacity about Cochrane." The full text of the first paragraph below that heading is as follows:
- "If you are expressing a view about Cochrane-related issues you should state clearly that you are speaking in a personal (or other professional) capacity unless you have been expressly authorised to represent Cochrane."
109. One of the rhetorical questions PG poses at p.9 of his Submission is "What is a Cochrane-related issue? It is not possible to distinguish sharply between Cochrane-related activities and other activities." I have some sympathy with this point. It is not absolutely clear to me that when he wrote the letter to Dr Torrey PG was "expressing a view about Cochrane-related issues." I think the phrase "Cochrane-related issues" needs closer definition.
110. The other provision that MW quotes in his 11 April email is the next paragraph of the Policy. But that paragraph seems to me to be a continuation of the paragraph before; i.e. it relates to the situation where the posited person is "expressing a view about Cochrane-related issues."
111. On p.1 of the Spokesperson Policy it states that "This Policy clarifies who can represent, write and speak officially on behalf of Cochrane and how they should do it." PG might well say that this has nothing to do with what he was doing in that letter to Dr Torrey. He was not speaking or purporting to "speak officially on behalf of Cochrane."

112. I should immediately say that I have great sympathy for MW when he came to write the 11 April 2018 email. It may be said with some force that PG broke the spirit of the Spokesperson Policy. My own view is that MW was quite entitled to take the view that the letter to Dr Torrey was objectionable. But there is a difference between breaking the spirit rather than the letter of a provision. I do not think that PG can be clearly said to have acted in breach of the Spokesperson Policy when he wrote to Dr Torrey. But I would personally advocate amending the Spokesperson Policy so that in the future it is crystal clear that such letters *would* be a contravention. That of course is a matter for the Governing Board.
113. My conclusion is the same in relation to the expert report and the subsequent complaint against Professor Loonen in the Dutch proceedings. PG was there plainly not speaking about “Cochrane-related issues.” I do not think it can be said that he was speaking officially on behalf of Cochrane. As a result I do not think the provision MW expressly relied upon in his 11 April 2018 email (being the same one that he relied upon as regards the Dr Torrey issue) can be said to have been breached. But again, it seems to me that it is readily understandable why MW found PG’s behaviour objectionable. For what it is worth it seems to me that Cochrane should not countenance its note paper etc being used for expert opinions in court proceedings. The solution here is to amend the Spokesperson Policy to make it clear that such behaviours are unacceptable. Again it may be that H&L are well placed to devise appropriate wording.
114. PG also gives instances of the Spokesperson Policy having been violated by other “senior Cochrane people” without complaint (pp.10-11). These are involved instances which I have insufficient information to come to a firm view on. However I think that any review of the Spokesperson Policy, such as I advocate, should take into account these instances. In each case has the author infringed the policy underlying the Spokesperson Policy? If not, why not? The Policy needs to be drafted so as to make clear what behaviours are acceptable. But at present there is a clear disjunction as to the perception of Cochrane’s role between MW and perhaps the Co-Chairs and that of PG and, it would appear from his Submission, others in the organisation whom he has approached (see e.g at pp.11-12). A good example relates to a historic issue: the 2016 EMA Complaint. In Ms Wood’s letter to PG she had suggested that he had breached the Policy. His response (quoted at p.30 of his Submission) was that “Our letter to the EMA is not about a Cochrane-related issue but about administrative issues in an EU institution.” This again raises the question of what is a “Cochrane-related issue.” As an outsider I find the concept difficult to identify clearly.
115. So again it seems to me that the First Complaint raises much wider, and more profound, questions about the nature of Cochrane as an organisation. These are touched on in PG’s Submission. It is not for me to answer those questions: they are questions of policy and philosophy. But again the 2016 EMA Complaint provides a good example. Should that complaint have been written on Cochrane notepaper or not? If the answer is “no” (and I am not suggesting it should be “yes” – that is a matter for Cochrane) then a policy

needs to spell this out clearly. I am not sure that the Spokesperson Policy currently does so. Although it was this very issue which prompted the alteration in the Policy (see MW's email dated 22 August 2016), I do not think that the alternation entirely clears up the doubt. And I do not think it would be fair to hold PG in breach of a document which is not crystal clear as to what may or may not be done.

116. So in conclusion I do find the First Complaint well founded, albeit on a different basis to that which has been articulated and in circumstances where, because of doubts concerning the drafting of the relevant documents, I am not sure it be would fair to censure PG.
117. A final point on the extra constraints which were imposed on PG. In general I think it is an imperfect solution to seek to impose ad hoc requirements on individuals, although there they were very well-intentioned. The precise legal status of those requirements is unclear and their ad hoc nature gives rise to the issue which has arisen as to what was or was not agreed in Geneva. I should say that I have great sympathy for the gravamen of the letters which were written to PG and which MW co-authored. I think the solution is to import those points into a brightline policy which is applicable to all.

K. Conclusion: The Second Complaint

118. I have outlined PG's contentions as contained in his 26 April document above. He expands upon these in his Submission.
119. I will first of all address the points made in the 26 April document, so far as I can. I will then deal with the further issues raised in the Submission. I note that there are a very large number of matters covered in these documents. In the time available I cannot address every point made; and I suspect that it would in any event be disproportionate to do so. I will deal with those points which strike me as ones of substance.

PG's 26 April 2018 document

120. As mentioned above I have added page numbers to my version of this document. I shall refer to those page numbers. Anyone reading this Report is invited to do likewise to ease following my discussion below.
121. **MB's Plan: pp 2-8 passim.** At various points in these pages PG sets out his criticisms of MB's "Proposal for Review", which was attached to his 20 April 2018 email. These points may have been superseded given the 13 June 2018 decision by the Board. In any event:
- (1) I am satisfied that the Proposal was advanced by MB (and Professor Farquhar) in good faith.
 - (2) I am satisfied that MB (and, although I have not interviewed Professor Farquhar I have no reason to distinguish her position from that of MB) is wholly impartial.

- (3) Its provisions have in no way influenced me.
122. I wish to make it clear immediately that although PG has at various stages impeached MB's conduct in various ways, during my interview with him I was impressed by MB's obvious integrity and impartiality. Moreover every document I have seen corroborates my view. I say this because I have come to the view, in accordance with PG's own strongly-stated position, that his Submission should be forwarded to the Governing Board. This is not least because I cannot see how the Governing Board could understand this Review without seeing the Submission. That Submission contains a number of adverse comments on MB.
123. **Management By Fear: p.4.** MW's 11 April 2018 email is described as "management by fear". I deal with this issue below, but I should say that I reject the suggestion that MW's 11 April 2018 email is open to criticism. Whether or not MW reached the right conclusion (a separate matter dealt with above) his letter was in my view entirely appropriate. The reference to deregistration simply raised a point which had been raised in the letter of 9 June 2015 (which is discussed above).
124. **Connection between Co-Chairs and CEO: p.4.** PG raises an issue as to the relationship between the Co-Chairs and the CEO. I will deal with this below.
125. **The meeting on 23 March 2018 in Lisbon: p.4.** PG raises the events between him and MW, which were witnessed by Professor Meerpohl. He complains of MW's "bullying behaviour" that day. My conclusions on this incident are as follows:
- (1) As mentioned above, MW had met PG on 21 March 2018 in Lisbon to discuss the issues which had been raised in respect of PG.
 - (2) During that meeting MW came to the honest and reasonable view that PG had accepted that he had acted in breach of the Spokesperson Policy and that that acceptance formed a basis for moving forward.
 - (3) PG does not believe that he did accept this.
 - (4) In my view, and having long experience of disputed meetings, it is very easy in such meetings for two people to come away with differing perceptions of what was agreed, where each perception is honestly and reasonably held. Although I did not get to interview PG on this subject I am prepared to accept that he honestly and reasonably believed that he had not accepted that he had acted in breach of the Spokesperson Policy at that meeting.
 - (5) When PG asserted on 23 March 2018 that he had not taken the stance MW believed he had taken two days earlier, MW honestly and reasonably took the view that PG was resiling from his position.
 - (6) MW became angry about this and raised his voice towards PG. The fact that he did this needs to be seen in the light of continuing issues relating to PG over many years, which have been highlighted above. In particular MW could well have thought to the tortuous process of seeking closure in relation to the 2015

BMJ issue where it might be said that PG could have assisted more strenuously in that process.

- (7) Although it is ultimately a matter for the Governing Board, I believe that this is an isolated incident which was understandable in the circumstances. While unfortunate I would tend to see it as a relatively minor incident which does not merit further action.

This issue relates to a further issue concerning the minutes of the earlier 21 March 2018 meeting which I discuss below when considering PG's Submission.

126. I should say here that over well in excess of four hours of interviews with MW I was impressed by his fairness, objectivity and open demeanour. Nothing I read undermined that impression.
127. **Events in Geneva in 2017: p.7.** PG refers to the meeting in Geneva in 2017 when, during Board Only time, there was a debate about PG's conduct and what constraints he was subject to. PG discusses this further at p 38-39 of his Submission. I have highlighted the facts surrounding this above.
128. The question of what was discussed during that Board Only time, and what was discussed, is contentious. In particular:
- (1) It will be recalled that MW wrote an email to MB and Professor Farquhar on 28 March 2018 (Tab 18) asking them whether the "additional requirements the Cochrane leadership...had required in addition to the responsibilities of the Spokesperson Policy" had been, as PG claimed, lifted in Geneva. MW asked this because he had not been informed by the Co-Chairs of any alteration in this regard.
 - (2) MB has written in his Summary of Issues document (Tab 18) that neither he nor Professor Farquhar believe that there was any "release" of PG at the Geneva meeting.
 - (3) PG on the other hand believes that during that Board Only time he was so released. He has set out his version of events at p.7 of the 26 April document. I do not repeat it here but in essence PG says that he was told that he was free to use his Cochrane Nordic letterhead for non-Cochrane issues and there was "no problem so long as I abided by the Spokesperson Policy."
 - (4) The minutes themselves, which PG quotes, are equivocal.
129. Although I do not doubt the sincerity of MB's view as to what was decided in Geneva, at the time he was not a Co-Chair. His memory of precisely what happened in a fluid situation is understandably imperfect, as he himself accepts. I very much suspect that in fact the Board did not intend to release PG from the prior constraints he was subject to. I think there is force in what MB says at the third paragraph of page 3 of his Summary of Issues document at Tab 18. However, without interviewing other members present I am not prepared to come to a final conclusion on the question of what was or was not decided at the Geneva meeting. What was agreed will be better known to many

of the recipients of this Report, who were actually present at the meeting. I am willing to accept that PG sincerely believes that he was so released. On the other hand MW has throughout sincerely and reasonably believed that PG was still subject to the earlier restraints. MW was never told of any alteration in PG's position as a result of the Geneva meeting.

130. I should say that it may be that the Governing Board wishes to clarify what it decided or did not decide last year, or what the position should be going forward.
131. There are other points raised by PG in his 26 April 2018 document which I address elsewhere.

PG's Submission (dated 30 August 2018)

132. PG makes certain discrete complaints in his Submission which I will consider under the rubric of the Second Complaint. I should make it clear that I do not deal with every point made in the Submission. To do so would be disproportionate and in any event I am subject to time constraints which make it impossible. Some of the points have of course already been addressed above.
133. **MW's attitude towards PG.** PG is concerned that MW has a predisposition against him. In fact he goes rather further. At p.1 he says that he believes that he has been the subject of "witch-hunt, personal attacks and bullying" by MW. At p.9 he says that MW "virtually always finds me guilty." I have found no evidence to support these suggestions. I have interviewed MW at some length and reviewed extensive documentation. My conclusion is that MW is honestly and reasonably seeking to ensure that Cochrane policies are complied with in a consistent way. Although MW has been frustrated (whether rightly or wrongly is a different question) by PG's conduct over the years in my view MW has shown restraint and professionalism throughout. The one potential exception is the altercation on 23 March 2018 but, as I have already stated, I treat this as a minor issue.
134. **Historic matters.** At pp 12-34 PG deals at length with events from the past. As I have said above I do not think it fair to make any findings on these matters and do not propose to do so. I have read PG's Submission here with great care and recognise that he sincerely and passionately believes in the correctness of his position.
135. **Lisbon, 2018.** A number of points are made at pp 34-39 of PG's Submission which I think I should address.
136. At p.34 PG makes clear that he denies that he had accepted on 21 Mach 2018 in his meeting with MW that he had breached the Spokesperson Policy. I have dealt with this point above and made clear that in my view there is an honest misunderstanding between MW and PG.

137. I mention in passing a point made by PG at p.34 that the letterhead on PG's 26 April letter at Tab 21 has been deleted and so the document has been "tampered with." I see nothing sinister in this at all.
138. PG goes on at pp 34-36 to refer to "CEO Mark Wilson's multiple tampering with the evidence." This relates to the meeting MW and PG had on 21 March 2018 in Lisbon. It is said that the minutes of this meeting have been "seriously tampered⁷ with", probably by MW. I find that the position is as follows:
- (1) MW wished to meet PG to discuss the recent complaints or issues which had been raised and which are discussed above.
 - (2) They met on 21 March 2018. Sarah Watson, Cochrane's Head of Finance & Core Services attended purely to take a minute of the meeting. Ms Watson is a senior and responsible member of staff.
 - (3) The meeting took place. I have explained above that there are different, reasonably held perceptions of what happened. There is no purpose in coming to a final view on the matter as to what was agreed or not agreed. The meeting was not a legally binding occasion.
 - (4) Ms Watson then produced proposed minutes of the meeting. She sent them to MW (as one would expect) who made certain suggested amendments to the minute (again as is perfectly normal) which he then sent back to Ms Watson. The minutes were then finalised.
 - (5) The minutes were sent to PG under cover of MW's email of 11 April 2018. PG made clear that he did not think there were accurate. Again, this is standard.
 - (6) The precise details of PGs' objections to the minutes are immaterial. During fluid discussions people have different perceptions and recollections.
 - (7) I unequivocally reject the suggestion made by PG that he "assumes" (p.35) MW tampered with the minutes. This is tantamount to saying that MW consciously and dishonestly ensured that the minutes recorded statements by PG which he knew PG had not made or excluded material statements which he knew PG had made. This is a very serious allegation which I think it is important I make clear I wholly reject.
139. It is then said by PG at pp 36-39 of his Submission that MB has tampered with the evidence and sought to censor member debate. I set out my views on these points below:
- (1) I reject the suggestion that MB's "Summary of Issues prepared by client" document (Tab 18) is "seriously misleading" (which I take to mean that MB has consciously sought to mislead in his drafting of it). It is not a document written by a lawyer and it was MB's sincere attempt to provide an overview. The fact that PG has a different take on some of the points made in it is unsurprising; but it does not mean that MB has acted in any way improperly.

⁷ This is a serious word. It may be that because English is not PG's first language that he is unaware of its primary meaning

- (2) Similarly I reject the suggestion that MB has engaged in “deliberate misrepresentation of the evidence”. This is a very serious allegation against a eminent figure which I wish to make clear I unequivocally reject.
 - (3) My conclusion is that the summary of issues which was created by MB and which is at Tab 18 is a document which was created with honest and sincere purpose. PG disagrees with the way some aspects of it are presented; he is entitled to. But it was not intended to constitute a definitive account of events.
 - (4) When Dr Meerpohl and PG raised the issue of the altercation with MW at the Board Only time MB sought to stop discussions about it. In my view he was right to do so.
 - (5) MB’s statement in the Summary of Issues concerning what had been or not been agreed in Geneva the year before concerning whether PG was subject to particular constraints was sincerely and reasonably made. I reject the notion that he either has an extremely poor memory or is deliberately tampering with evidence. I have set out my views on the Geneva meeting above.
140. **The three recent cases.** At pp 39-42 PG addresses the matters which form the subject of the First Complaint, which I have already addressed above when setting out my Conclusions on the First Complaint.
141. **11 April 2018 correspondence.** As regards the points made at pp 42-43 I deal with many of them below when addressing the Third Complaint. I have already passed some comment on this email. I should make clear here that as regards MW’s email of 11 April 2018:
- (1) In my view that email was a perfectly proper email to write, regardless of the correctness or otherwise of its conclusions.
 - (2) I am not sure where the number of 13,504 words or 42 pages comes from. The email was 3 pages long (see at Tab 18) and there were attached 2 short draft letters to Dr Torrey and Professor Pottegard.
 - (3) I reject the suggestion at p.36 that MW misled anyone when he wrote that he had checked with the Co-Chairs as to what had been or not been agreed in Geneva. MW was simply there relaying what he had been told.
 - (4) I think the timescale for responses was appropriate.
142. As regards PG’s letter of 26 April 2018 and the points made at pp 43-44 of the Submission, I deal with these issues elsewhere.

Other Matters

143. At pp 44-56 of PG’s Submission there are two long sections headed “**Serious abuse and mismanagement in Cochrane**” and “**Other serious problems with Cochrane governance.**” This includes a substantial allegation of the tampering with the Board minutes in Geneva in 2017 (pp.47-51). This goes much further than PG’s complaint in his 26 April 2018 document (Tab 21) and seems to involve allegations of bad faith

against both MW and the then Co-chairs. I have felt it right to seek to address these points and do so below.

144. **Serious abuse and management in Cochrane?** At p.46 PG alleges that MB has “favoured the position of his line manager, CEO Mark Wilson” over his own. It is also suggested that MB feels “safer to side with his superior over me.” Similar points are made elsewhere in the Submission. For instance it is said that MB is fearful of MW (p.44). These feeds into a wider point made by PG that MW operates a style of “management by fear.” (see e.g. p.44). I have spoken to MB and MW at some length about these very serious accusations and my clear view is as follows:
- (1) MB (amongst other distinguished positions) is an eminent Professor of Otolaryngology at Oxford University. The idea that he should intentionally set aside or subordinate his independence is inherently unlikely.
 - (2) Without intending any disrespect to MW I cannot see how anyone could be frightened of him; least of all PG, who is I very much suspect is a man of great (and, if I may so, deserved) self-confidence and unlikely to be intimidated by anyone.
 - (3) I am in any event absolutely satisfied that there is no substance in these points. MW explained to me his perception of his role as the “servant of the board.” My view about the relations between MW and the Co-Chairs is that they are healthy and properly reflect the governance arrangements of Cochrane.
 - (4) I further reject the suggestion, made at p.46, that MW is “controlling the Board”, though I am sure that the Board members who read this document will be in a better position to assess the validity of this assertion than me.
145. **Tampering with April 2017 Geneva Minutes?** At p.47 to 51 PG makes a complaint about “serious tampering” with the minutes for the April 2017 Geneva Board meeting. It is alleged (at p.47) that “The Board approved of minutes they knew were wrong in relation” to the need for a fair and transparent complaints procedure. It is also suggested by PG that MW prepared the minutes in a way which was “seriously misleading” (p.48).
146. In summary what I understand to have happened was as follows:
- (1) At the Board meeting PG raised a question relating to how complaints should be handled by Cochrane.
 - (2) There was a debate at the meeting about this. Various views were expressed. I accept that MW raised the point he refers to at p.5 of his Submission concerning whistleblowing. This was an entirely appropriate point to make.
 - (3) In late May MW sent out the draft minutes to the members of the Governing Board for consideration. He told me that he had already sent the minutes to the Co-Chairs for their approval before sending them out to all the members. Those minutes were drafted in the first instance by Lucie Binder with input from MW.
 - (4) There was clearly a debate about the minutes so far as they related to item 13.2; many views were expressed.

- (5) As a result post-hoc notes were included to note the views of PG and Gerald Gartlehner.
147. It is standard for there to be after the event disputes about how meetings should be minuted. I do not believe it would serve any useful purpose for me to go into precisely what was actually said or agreed at the Geneva meeting; that would be disproportionate. It seems to me the pertinent question is whether MW acted in bad faith or somehow tampered with the Minutes. That is a serious allegation. It is one which I reject. I make a number of points:
- (1) How one goes about drafting minutes can be a difficult task. It involves synthesising what is often a fluid, many-voiced meeting.
 - (2) MW and Ms Binder undertook that task in a bona fide way.
 - (3) The idea that there was tampering is wholly inconsistent with the minutes having been sent in the first instance to the Co-Chairs for their provisional approval. Were the minutes “seriously misleading” then the Co-Chairs would have immediately rejected them.
 - (4) Further the idea of tampering is also entirely inconsistent with the fact that the minutes were then sent out in draft to the whole Board.
 - (5) Finally if the minutes were “seriously misleading” or even “misleading” then plainly the Board would not have voted (by majority) to approve them, unless it be said that that majority were colluding in a large conspiracy to “tamper” with minutes. That proposition only needs to be stated to be rejected (although it appears that PG actually does advance it – see para 145 above).
148. I unequivocally reject the allegation at the end of p.51 of PG’s Submission. I do so in those clear terms because it is a very serious allegation which the Board will see at its Edinburgh meeting.
149. At pp.52-56 there is a heading “**Other Serious problems with Cochrane governance**” in which various issues are raised.
- (1) At p.52 under the heading “Tampering with the minutes from 13 June 2018”, PG complains that the version of the 13 June Board minutes he received had been redacted so as to exclude identification of those voting for or against the approval of the Independent Review. I have asked MB about this and I am satisfied that this redaction was carried out under bona fide legal advice from H&L LLP. I do not believe that there has been any tampering. There is a very substantial difference between redaction and tampering. Nor do I think that MB misled PG or has acted in bad faith.
 - (2) There is a complaint, at p.53, directed against the Co-Chairs, that they take Members aside one-by-one. I am not sure how well-equipped I am to deal with this point, which is primarily one of management style. However, for what it is worth, and although I cannot comment on the individual instance provided, my view is that this is a normal incident of running a board.

- (3) At p.54 there is a complaint about the continued existence on the Cochrane website of the 18 September 2015 statement (a copy is at tab 15). I should that my view is that the statement itself was a reasonable and bona fide document which properly reflected the sincere and reasonable views of its signatories. It seems to me that its continuing existence on the Cochrane website is a matter which lies outside my review. It is a matte for the Governing Board and I do not propose to comment on it further.
- (4) At p.55 there is complaint that MW has failed to sustain Cochrane’s collaborative spirit. This complaint is very wide-ranging and relates to the culture of Cochrane. I am certainly in no position to offer any proper conclusions on the matter other than to record that MW and MB vigorously disputed the points made here.
150. At pp 56-58 PG poses the question “**Is Gotzsche exposed to a show trial?**” All I can say is that I have sought to discharge my review conscientiously and independently. Although the time scales in which the review has been conducted have been tight, I am satisfied that each participant has had a proper opportunity to respond. PG has produced a 66 page Submission which deals in great detail with the issues before me.
151. **Are the Instructions partial?** At pp 58-64 PG complains that the Instructions are not impartial. As with the rest of his Submission I have read very carefully his criticisms contained in these pages. I have not been persuaded that the Instructions are not impartial. Further even if the instructions were partial I am satisfied that such partiality was not intentional and in any event has been cured by PG’s Submission. I wish to make clear that I have treated the Instructions merely as guidance to assist me in understanding the issues. I have not been influenced in my conclusions by anything stated in those Instructions. I should also clarify that MW was not in any way involved in their preparation. The Instructions were prepared by H&L.

Conclusion on Second Complaint

152. In summary, treating the Second Complaint in a compendious way as a variety of complaints made against both MW and MB, I have concluded that it is not made out. My conclusion is that the criticisms made against MW and MB are not well-founded. I wish to go further, in view of the serious allegations which have been made against both these men. Based on everything I have read and heard I have come away impressed by MW and MB’s professionalism, integrity and dedication. I understand that, as regards MW, that impression is shared by many within Cochrane. It occurs to me that many of the criticism of them may have made by PG in “the heat of the moment” and that he may, on reflection, wish to resile from them. I feel obliged to record my surprise at the tone adopted by PG in his Submission and that he felt able to level multiple allegations of bad faith against professional persons.

153. It will be seen from MW's Submission that he believes that PG is deeply opposed to his vision for Cochrane, an opposition which spills over into personal animus. As explained above I was unable to interview PG, and therefore do not feel that I should come to any final conclusion on this. But there does seem to *prima facie* evidence to support MW's position.

L. Conclusion: The Third Complaint

154. What is described as "the Third Complaint" is explained at paras 39 to 41 of the Instructions. In summary it concerns:

- (1) PG's decision to disclose the fact of the dispute between himself at the Board Only meeting on 28 March 2018 (in fact I think that this meeting took place on 23rd March and the reference to 28 March is a mistake).
 - (2) PG's emails dated 11 April and 16 April 2018 to the Governing Board.
- These events have already been recounted in the narrative set out above.

155. At para 40 of the Instructions it is said that the enquiry into the complaints made against PG was being undertaken by MW as PG's "line manager" in accordance with Cochrane's Charter of Good Management Practice dated February 2016. That document is at Tab 8. Having looked at that document I do not think it imposes any duty on PG, who I do not think could be described as a Cochrane manager, though it seems to impose duties on MW.

156. Para 41 of the Instructions refers to the dispute resolution procedure of the Collaboration Agreement at Tab 3.

- (1) Para 22 of that Agreement provides that in the event of a dispute between the CEO and the NCC Director on Cochrane-related business or issues, both will make every good faith effort to resolve it amicably within six weeks. The CEO and/or the Centre Director may call upon the Centre Directors' Executive to advise on the resolution of the dispute.
- (2) Para 23 provides that if following attempts at a resolution of the dispute, the Cochrane Director remains opposed to the decision he/she may appeal it to the Cochrane Governing Board. If the Centre Directors' position is supported by a majority of the Cochrane Centre Directors' Executive, then this will be made clear to the Governing Board. The decision of the Governing Board will be final.

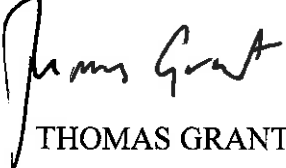
157. PG responds to the Third Complaint at pp 42-43 and 64 of his Submission.

158. The precise status of the Third Complaint is not clear to me. Neither MW nor MB described themselves as the complainant: i.e. they have not formally themselves raised a complaint about PG's conduct as described above. Nonetheless during my oral interviews:

- (1) MB explained that he thought it had been inappropriate for PG to raise the issue of the altercation (I use that term in a neutral way) which had occurred between MW and PG at the Board Only meeting later that day.
 - (2) MW explained that he thought that PG's emails had been inappropriate. This was consistent with the view that he had expressed contemporaneously to MB.
159. In my view, whilst I do not doubt the sincerity and reasonableness of MB and MW's positions, in so far as there is a Third Complaint against PG (I shall assume that there is one), I do not think it is made out. My reasons are as follows:
- (1) The only potentially relevant provisions are the paragraphs of the Collaboration Agreement which I have quoted above.
 - (2) PG could reasonably treat MW's email of 11 April 2018 as a "decision" in relation to a dispute between MW and PG. It is not clear to me how the six weeks resolution period has any traction in such a situation. MW had come to a conclusion which was either right or wrong; there was nothing to resolve. All that PG could do was appeal to the Governing Board.
 - (3) As mentioned earlier in this Report, MW had written on 11 April 2018 setting out his conclusion that PG had breached the Spokesperson Policy in two instances. He enclosed the two letters he proposed to send to Dr Torrey and Professor Pottgard. Although MW sought PG's input into those letters it is clear that that input was not in relation to the substance of their contents. MW had arrived at his conclusion.
 - (4) In those circumstances PG was entitled to appeal. He did so in an informal and emotive way (i.e. via the email headed "Mark Wilson has sent a very unpleasant email today threatening to close my centre"), but he was concerned that unless he acted promptly letters he disagreed with would be sent out.
 - (5) I have been influenced by the matters discussed in the immediately below paragraph.
160. I should say that I find paras 22 and 23 somewhat opaque in their meaning. A six weeks resolution period as prescribed by para 22 makes sense in the event of a dispute; indeed one often comes across similar provisions in commercial contracts. But it only makes sense where there has been no final decision. If there has been such a decision then there is nothing to resolve amicably. Hence the first sentence of para 23 seems to me to be internally contradictory; it elides the existence of a dispute with the existence of a decision without explaining their interaction.
161. I should make it clear that nothing in this section of my Report involves any personal criticism of MW nor does it involve any adverse conclusion on the merits of his decisions.
162. I should also say that I agree with PG's point at the top of p.59 of his Submission. I do not think he breached his obligations as a Trustee by involving the Governing Board in "personal matters." Indeed I agree with him that these were not "personal matters."

M. End Note

163. I am conscious that this document is very long. To paraphrase a well-known saying, I have not had time to make it any shorter.⁸ I am conscious that PG has made a very large number of points which he expects me to address. I have endeavoured to address them so far as I am able. I have done so referential to the pagination of PG's document to make it easier for the recipients of this document to see my conclusions and what points and contentions I am actually responding to. Also I have been concerned not to synthesise PG's points too much out of concern that PG might take the view that I was eliding them together or not properly addressing them head-on.
164. I am also conscious that there are some wider points in the Instructions which I have yet to address. The need to produce a document by 12 September 2018 has made that impossible. I would happily consider those further hereafter. It may well be that having read this Report the Instructions can be narrowed down.


THOMAS GRANT QC

Maitland Chambers, Lincoln's Inn, London

12 September 2018

⁸ Blaise Pascal, *Lettres Provinciales*, 16th Letter, 4 December, 1656: "Je n'ai fait celle-ci plus longue que parce que je n'ai pas eu le loisir de la faire plus courte."