

Our Ref: 3/507

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Mr M. Wilson



BY SPECIAL DELIVERY / FEDEX

23 July 2018

Dear Sirs

We are instructed by The Cochrane Collaboration ("**Cochrane**") in relation to governance issues. We write to you in your respective capacities, Mr Wilson as CEO of Cochrane, and Professor Gøtzsche as a Trustee and Member of Cochrane's Governing Board and Director of The Nordic Cochrane Centre.

The purpose of this letter is to inform you that the Governing Board has been made aware of issues which relate to the governance of Cochrane in which you are both involved.

At the Board Meeting held on 13 June 2018, the Governing Board adopted a resolution to appoint independent legal Counsel to **carry out a review in order to assist the Governing Board with the resolution of these issues**. Following the Board Meeting, Thomas Grant QC of Maitland Chambers, Lincoln's Inn, London has been appointed to carry out that review.

We enclose for your information copies of the following documents:

1. The Board Minute;
2. Instructions to Counsel and accompanying Papers; and
3. A copy of Thomas Grant's CV.

The scope of Counsel's instruction was approved by the Governing Board, as follows:

- To **carry out a fact-finding exercise in relation to the claims that have been made and to make a determination in relation to the facts on the balance of probabilities**.

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Peter Gøtzsche
Mark Wilson

23 July 2018

- To advise in relation to the applicable legal and regulatory backdrop and the obligations that arise.
- To advise as to whether in Counsel's opinion there has been a breach of any legal, governance or regulatory obligation.
- To make recommendations to the Governing Board in relation to its options for **resolving the issues and responding to any breach.**

We should make clear that (a) Counsel's report will be provided to the Governing Board and yourselves but to no-one else; and (b) Counsel's report will not be binding upon the Governing Board, albeit they will take it into account.

In the interests of fairness and due process it is important for both of you to be given an opportunity to consider both the documentation that is enclosed and the manner in which you would wish to respond to the claims that have been made. You will note at paragraph 47.b of the Instructions that we have asked Counsel to consider whether he wishes to **conduct oral interviews** with either of you. Before Counsel reaches a decision in this regard he has first asked for your views in relation to process. He will then consider those when reaching his decision on this particular matter.

We would therefore ask for your comments upon the following: (i) **how you wish to present** your substantive responses to the claims and as to whether or not you wish to be provided an opportunity make oral representations and/or to be interviewed by Counsel; and (ii) if you wish to be interviewed, the timeframe in which you would be able to attend an interview in London.

Accordingly we should be grateful if you would respond to us in relation to these points by no later than **Monday 6 August 2018**. We will then pass your responses on to Counsel. If there is a reason why you will be unable to comply with this timeframe or this would prove prejudicial to you in any way please let us know as soon as possible.

We look forward to hearing from you.

Yours faithfully



Harbottle & Lewis LLP

Enc.

10 Co-Chairs Report - Part 2

PG, SW, LB and VB left the meeting before the start of this item.

Introducing it, MB described the history of events since the last Board meeting. In brief, after MW referred the matter of an alleged breach of the Spokesperson Policy by PG to the Co-Chairs, and in the light of PG's complaint directly to the Board about actions taken by MW, the Co-Chairs made a proposal to both MW and PG. The proposal was that an Independent Review be undertaken, with the Reviewer making recommendations to the Board in the form of a confidential Report. The Co-Chairs also sought legal advice on behalf of the Trustees. The proposal was accepted by MW but not by PG.

The lawyers asked for, and were given, all the documents they requested in order to offer their advice. This included the Articles of Association, Governing Board Charter, Code of Conduct of Trustees, etc. as well as e-mails received by the CEO and formal correspondence between PG, previous Co-Chairs, and the current and previous CEO dating back to 2003.

The legal advice received by the Co-Chairs was that the lawyers would prepare a proposal for an independent review by Counsel [a senior lawyer] to be presented to the Board at the meeting on the 13th June 2018 along with a document setting out their advice. They advised that for reasons of fairness, these should be confidential. These are the two documents tabled with this item.

MB asked for questions and comments and in the discussion that followed the matters that were discussed included the following: the timeline for the review, the resource implications, the reasons why the original proposal for a review were not acceptable to one party, the rationale for seeking legal advice, the risks (both internal and external) of both undertaking the review and not doing so, the reputation of the Charity (both if it did not undertake the review and if it did). It was emphasised that this was not a proposal to "take legal action". Rather, the focus on this stage was to identify the key legal and factual points that need to be addressed, to follow due process, to be fair and equitable to all parties, and in doing so, to enable the Trustees to be confident that they were fulfilling their legal and fiduciary obligations.

Some members expressed views in favour of the proposal. These included observations that this was the only course of action available, given the professional advice received, and that the Board did not have the resources, expertise or procedures to sort matters out for itself. In supporting the proposal, the issues of reputational risk were raised and it was explained that the lawyers had significant experience in this area. Other board members had contrary views. They questioned whether the proposal was in the best interests of the Charity. A view was expressed that this was not a legal issue but one involving conflict and that therefore a conflict resolution approach was required. Concern was expressed that this will be seen as Cochrane "getting lawyers involved against a Centre Director", and that this was not good for the reputation of the organisation.

The vote was called at 22:01 BST.

RESOLUTION: "The Board approves the establishment of the Independent Review, as outlined in the legal advice received and with the terms of reference proposed in the accompanying document, and delegated to the Co-Chairs all powers relating to the establishment, handling and management of the Independent Review, provided that the Co-Chairs act at all times in accordance with the legal advice received."

8 Yes 4 No 0 Abstain