

**Instructions to Counsel  
In the Matter of The Cochrane Collaboration**

**Introduction**

1. Instructing Solicitors act for The Cochrane Collaboration ("**Cochrane**"). 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. An issue has arisen between a Trustee of Cochrane, who is also the Director of The Nordic Cochrane Centre ("**Cochrane Nordic**"), and Cochrane's CEO. In summary, each has raised a complaint relating to the conduct of the other (the "**Complaints**").
3. Cochrane's Governing Board has resolved that each of the Complaints should be subject to a formal consideration and legal review by an independent third party, who is asked to:
  - a. establish the facts;
  - b. identify the legal basis of the issues in dispute; and
  - c. make recommendations in order to try and find a resolution amenable to all parties involved.
4. Counsel is asked to have regard to Cochrane's commitment as an organisation to transparency and to consider Cochrane's obligations both (i) at law (ii) pursuant to Cochrane's governance structure and policies, in particular Cochrane's Memorandum and Articles of Association and (iii) from the perspective of UK Charity Commission regulation.
5. Counsel is sent with these Instructions one lever arch file of indexed documents which comprise the relevant papers in this matter so far.

**Structure and Governance of Cochrane**

6. 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. Its status as an independent research organisation is of central relevance to the issues that have arisen.
7. At the centre of the organisation is the Governing Board (previously known as the Steering Group), which 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. Cochrane's Articles of Association are enclosed at Tab 1.

8. The Governing Board is currently comprised of 13 Trustees, all of whom are both Directors of the Company and Trustees of the Charity. More than half of the Trustees are 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.
9. 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).
10. Although the national entities use Cochrane charity resources, they do not receive any direct funding from the charity; 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.
11. 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 and is highly relevant to what follows as it is in this context that Counsel is being asked to undertake this review.
12. Over the past two years, the process of formalisation has included implementation of the following agreements and policies:
  - a. Collaboration Agreements to formalise the relationships between Cochrane and the national entities. The Collaboration Agreement with Cochrane Nordic is at Tab 3;
  - b. Spokesperson Policy (Tab 4);
  - c. Grievance Procedure (Tab 5);
  - d. Code of Conduct of Trustees (Tab 6);
  - e. Governing Board Charter (Tab 7); and
  - f. Charter of Good Management Practice (Tab 8).
13. Whilst Counsel will note that the Collaboration Agreement with Cochrane Nordic has not been signed on behalf of Cochrane Nordic, the terms have been agreed in writing by the Director of Cochrane Nordic through email correspondence; accordingly the agreement is legally binding.



14. Counsel is requested to review all of the above documents, to consider the obligations to which they give rise, and to have regard to the Complaints in this context.

#### Background to the Complaints

15. Peter Gøtzsche ("PG") is a founding member of Cochrane. PG established Cochrane Nordic in 1993 and has led it since. PG has been a Trustee and member of the Cochrane Governing Board since 31 January 2017. 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 and works at Cochrane Nordic hosted by Rigshospitalet in Copenhagen.
16. Mark Wilson ("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 is included at Tab 9.
17. In summary, 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 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.
18. MW, in his capacity as CEO and PG's line manager, has been responsible for addressing the complaints 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**").
19. 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**").

#### The First Complaint

20. The First Complaint is based on claims made to Cochrane that PG has:
  - a. made public statements and published papers that are potentially damaging to Cochrane's reputation;
  - b. 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
  - c. that in so doing, PG has been pursuing his own interests and scientific career over the interests of the Cochrane organisation.

21. Counsel is asked to read Tabs 12 to 20 for 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 the client which sets out the position at the point of our instruction in April 2018 is enclosed at Tab 18.
22. The first recorded complaint is dated 14 April 2003 (Tab 12) (Cochrane's electronic records do not date back any further than 2003). Subsequent historic issues are recorded as follows:
- a. On 14 March 2014 MW and the then-Co-Chairs wrote to PG following the publication of a book and video in which PG appeared to advocate that every patient taking psychotropic medication should stop taking their medication. PG was notified that Cochrane had received concerns from a number of individuals and organisations who were asking if Cochrane supported PG's views on this topic (Tab 13).
  - b. On 9 June 2015 MW and the then-Co-Chairs 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 and three senior Co-ordinating Editors. 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 (Tab 14).
  - c. On 22 August 2016 MW and the then-Co-Chairs wrote to PG in respect of what they considered 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).
  - d. On 6 January 2017 MW wrote to PG in respect of PG's use of his Cochrane title in connection with an interview given to the RTE television channel in Ireland and PG's subsequent correspondence with RTE (Tab 17).
23. Most recently, three specific claims about PG's conduct have been brought to MW's attention in his capacity as CEO:
- a. Dr Fuller Torrey wrote to MW on 1 and 2 March 2018 (Tab 19) concerning PG's identification of himself as both the Director of Cochrane Nordic and also as the 'Protector of the Hearing Voices Network in Demark', which in Dr Torrey's view demonstrates a *"clear lack of objectivity"* on the part of PG which has the effect of *"impugning your [Cochrane's] credibility which is your most important asset"*;
  - b. Anton Pottegård Tweeted on 8 March 2018 (Tab 19) questioning whether PG had adequately distinguished his personal views on psychotropics from those of Cochrane; and



- c. Professor Anton Loonen wrote to Cochrane on 19 March 2018 (Tab 20) regarding PG's conduct when acting as an expert in a criminal trial in 2016 and thereafter, alleging in particular that PG had provided his own (potentially controversial) opinions to the Court on Cochrane branded paper and purported to act in his capacity as Director of Cochrane Nordic, thus raising concerns as to the impartiality and independence of Cochrane as an organisation.
24. In general terms it would appear that both CEOs, in conjunction with the respective Co-Chairs at the relevant times, have taken the view that PG's actions have brought him into conflict with the aims and practices of Cochrane and its governance procedure, specifically the Spokesperson Policy (Tab 4). This states in particular that:
  - a. *"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";* and
  - b. *"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."*
25. Counsel will note that such actions, if proved, would also amount to a breach of the Code of Conduct for Trustees in particular Clauses 3.1 (Selflessness), 3.2 (Integrity) and 3.3 (Objectivity) and 3.7 (Leadership), although this document was not formally adopted until 21 March 2018.
26. In particular, concerns have been raised that the failure by a Cochrane member to adequately distinguish their own personal views from the views of the organisation is damaging to the reputation of Cochrane, as such actions call into question the credibility of the entire Cochrane organisation. In the context of the complaints that have been made in relation to PG's actions in this regard, see by way of example the complaint by Dr Fuller Torrey (Tab 19) and also MW's email to the Co-Chairs dated 28 March 2018 (Document E at Tab 18).
27. As a result of statements made by PG, Cochrane has on more than one occasion considered it necessary to issue public statements clarifying its position (see by way of example the statement issued on 18 September 2015 relating to PG's comments in *MailOnline* (Tab 15) and the statement issued on 3 May 2018 in response to the Tweet by Anton Pottegård concerning PG's comments concerning the benefits and harms of psychiatric drugs (Tab 19)).
28. The Spokesperson Policy has been in force since May 2015 but was amended in September 2016 to reflect concerns that had been raised by PG that the policy was not sufficiently clear. Counsel is referred to the following documents which chronicle this development:

- a. The draft Minutes of the Meeting on 7 July 2015 at which the issue was discussed (Tab 14);
  - b. The email correspondence between PG, MW and others following the Meeting on 7 July 2015 (Tab 14); and
  - c. The email from MW to PG dated 22 August 2016 (Tab 16).
29. MW wrote to PG on 15 March 2018 notifying him of the issues that had been raised by Dr Torrey and Anton Pottegård (Tab 23) and subsequently to notify him in respect of the Loonen complaint.
30. MW subsequently requested a face-to-face meeting with PG to discuss these issues.
  - a. The meeting took place on 21 March 2018 and a copy of the draft Minutes (which are not agreed) is included at Tab 18, Document D.
  - b. The meeting was also attended by Cochrane's Head of Finance and Core Services, Sarah Watson, who took the Minutes, and at PG's request, fellow Trustee, Joerg Meerpohl, and the Deputy Director of Cochrane Nordic, Juhl Jørgensen.
  - c. It has transpired subsequently that there is an issue between PG and MW as to what exactly was said and agreed at the meeting. MW's position is that at the meeting PG acknowledged that he had recently breached of the Spokesperson Policy. PG's position is that he has neither breached the Spokesperson Policy and nor did he accept at the meeting that he had done so.
31. Following the meeting PG has made clear that he disputes both the historic and the recent allegations on the basis that:
  - a. The facts upon which the claims are based are disputed by PG;
  - b. The Spokesperson Policy was (at least until September 2016 when it was amended) ambiguous;
  - c. 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
  - d. 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.

32. Counsel is asked to read in particular the following documents which set out in detail PG's position:

- a. Email dated 11 April 2018 from PG to the Governing Board (Tab 22);
- b. Document setting out PG's responses in respect of the issue raised by Dr Torrey (Tab 19);
- c. Document setting out PG's responses in respect of the issue raised by Anton Pottgård (Tab 19); and
- d. Document setting out PG's responses to MW's email dated 11 April 2018 (Tab 20).

33. Counsel should be aware that there is a lack of consensus as to what was agreed at the Board Only meeting in April 2017:-

- a. PG's position is that he was released at this meeting by the Trustees from the express obligations that had been instated upon him by the letters 14 March 2014 and 9 June 2015.
- b. There is a question as to whether the Trustees present at that meeting were aware at the time of either the fact of the letters dated 14 March 2014 and 9 June 2015 or their contents.
- c. The Board Only part of meetings is not formally Minuted.
- d. There have in any event been issues historically regarding the agreement of Minutes. Counsel is referred by way of example to the email correspondence between PG, MW and David Tovey between July and August 2015 relating to the Minutes of a Meeting on 9 July 2015).

#### The Second Complaint

34. The Second Complaint is based on complaints made by PG relating to the handling of the First Complaint. Counsel is referred to the document dated 26 April 2018 prepared by PG which sets out the detail of his complaints (Tab 21).

35. In summary, PG has raised the following claims to the Co-Chairs (MW has not seen the complaint):

- a. Allegations of *"bullying behaviour"* and *"management by fear"* on the part of MW, in particular:
  - i. That MW acted inappropriately towards PG on 23 March 2018 by shouting and losing his temper, and that MW had accused PG of lying; and



- ii. That MW's email to PG sent on 11 April 2018 was threatening and inappropriate;
  - b. 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;
  - c. That the Co-Chairs are too close to MW, are easily influenced by him and are not impartial; and
  - d. Various governance issues, in particular a failure to act fairly or to set and follow due process.
36. Some of these issues were first raised during the Board Only part of the meeting on 28 March 2018 (not Minuted):-
- a. Joerg Meerpohl made the Trustees aware of both the fact that PG was the subject of several complaints and that there had been a recent disagreement between PG and MW. Whilst Dr Meerpohl was critical of MW's behaviour, he confirmed at the meeting that he did not wish to make a formal complaint.
  - b. The Trustees were then also subsequently apprised by PG of his position.
37. Following the meeting, the Co-Chairs sent to both PG and MW a 'Proposal for Review' on 20 April 2018 (Document B at Tab 18) in an attempt to try and reach a resolution of the dispute between them. MW accepted the Proposal.
38. PG does not agree to the Proposal. His reasons are set out in detail in the document dated 26 April 2018 (Tab 21) and include the following:
- a. That the Proposal had not been discussed or agreed by the rest of the Governing Board;
  - b. That due process had not been followed;
  - c. That the Co-Chairs are not impartial in the dispute between PG and MW;
  - d. That the appointment of an independent reviewer is not in accordance with the procedure for dispute resolution outlined in the Collaboration Agreements;
  - e. That the selection by the Co-Chairs of the particular individual would be neither impartial nor in accordance with due process;
  - f. 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;



- g. 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
- h. That the most appropriate course of action is for the Governing Board to resolve the dispute itself.

### **The Third Complaint**

39. The Third Complaint relates to PG's actions in disclosing the fact and details of the dispute between himself and MW to the Governing Board:

- a. First, at the Board Only meeting on 28 March 2018; and
- b. Subsequently, through his emails to the Trustees sent on 11 April 2018 (Tab 22) and 16 April 2018 (Tab 22). Instructing Solicitors understand that several Trustees replied to these emails highlighting that it was not appropriate for them to see such material at this stage.

40. Counsel should be aware 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 (Tab 8).

41. Counsel is referred to the dispute resolution procedure in the event of a dispute between the CEO and a Centre Director, which is set out at clauses 22 to 25 of the Collaboration Agreement (Tab 3) and which states that:

- a. In the event of a dispute between the CEO and a Centre Director they are required to make every good faith effort to resolve the dispute between themselves for a period of six weeks; and
- b. A route of appeal to the Governing Board is available only after the expiry of the six week resolution period and following an attempt in the first instance by the Centre Directors' Executive to resolve the dispute.

### **Action**

42. Counsel is asked to undertake a formal legal review in relation to each of the First, Second and Third Complaints and to report in writing to the Governing Board in relation to the findings.

43. In respect of each of the Complaints Counsel is asked to:-

- a. Establish the relevant facts underpinning the Complaint;

- b. Identify the precise legal nature and basis of the Complaint and conduct a legal review of the facts and issues in dispute;
  - c. 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 Counsel, 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
  - d. Consider whether any issues arise from a regulatory perspective, including whether the Charity Commission should be notified of the Complaint.
44. In the interests of fairness to all parties, Counsel is asked to consider any oral or written representations that PG and MW wish to make.
45. In undertaking the review Counsel is requested to have regard to the following:
- a. Cochrane's obligations at law;
  - b. Cochrane's obligations pursuant to its governance policies and Memorandum and Articles of Association;
  - c. 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);
  - d. The potential reputational and media considerations; and
  - e. 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).
46. Counsel is 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.



47. Prior to commencing the substantive review, Counsel is asked to contact Natasha Hibbert of Instructing Solicitors on 020 7667 5107 to confirm the following:

- a. The timeline for the review;
- b. Whether Counsel wishes to interview any of the parties, in particular PG or MW, and if so to agree the practicalities around that;
- c. The format of the report; and
- d. To answer any queries that Counsel may have.

**Harbottle & Lewis LLP**  
**2 July 2018**