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Dear colleagues in the Cochrane Iberoamérica Network,

We are writing in response to your letter to Cochrane members dated October 3rd 2018 about recent events. The Governing Board would like you to know that we hear your concerns and appreciate your bringing them to our attention.

You raise a number of points and we will try and address them in this letter. We should also welcome the opportunity to meet by phone conference with the leaders of Cochrane Iberoamérica to discuss your concerns further if you wish, as many of you were not on any of the three Board Webinars we held last week to explain our position and answer questions from the Cochrane community.

Cochrane Governance as a Charity and the role of Trustees

The generic principles of good governance are universal and whatever Cochrane's legal constitution, and wherever our legal and charitable base is located, these would apply. Twenty-five years ago, Cochrane's founders established it as a UK charity, and a UK Company. We are therefore bound by UK law to follow the rules set out by the Charity Commission¹. The members of the Governing Board are the Trustees of the Charity and the duties and Code of Conduct of Trustees are very clearly defined. They are ultimately responsible, as individuals and as a group, for ensuring that the Charity delivers its mission and in a way that honours its principles, values and obligations. As the people who are legally responsible for Cochrane, the members of the Governing Board take these responsibilities for governance very seriously.

This is particularly important in the light of events in recent years. There have been a number of instances where UK charities (some with a global dimension such as Cochrane's) have run into difficulties related to governance. In some cases, charities have put their own reputation above the interests of their beneficiaries, with disastrous consequences. To be more specific, they have been afraid to take actions against members of their organisations who have acted wrongly, for fear that those actions might adversely affect the reputation of the charity. They have "swept misbehaviour under the carpet" and been strongly criticised for doing so. This is the context in which we, as Cochrane's Trustees, are acting.

Whilst Cochrane may once have been seen as a "federation" of relatively autonomous entities, that model is no longer tenable in the governance environment of 2018. Anybody who wants to use the Cochrane name and logo must accept and abide by the rules and regulations of the Charity.

¹ <https://www.gov.uk/government/organisations/charity-commission/about/publication-scheme>

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There are also a few principles around being Trustees that we should like to draw to your attention because there seems to be some confusion about them:

- The Trustees make collective decisions, democratically, by a majority vote, according to our governing document (the “Articles of Association”). “*Decisions do not usually have to be unanimous ... but once the trustees have made a decision, they must all comply with it, including any who disagree.... Ultimately, you may feel that you have to resign in order to distance yourself from the decision.*”²
- Individuals become Trustees either by *election* or *appointment*. However, the moment they join the Board they are expected to act “in the best interests of the Charity” above all. Trustees do *not* represent those who voted for them: “*You must avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body.*”³
- Across the Cochrane community there seems to be an understanding that Trustees will promote the interests of those who voted for them or their own constituents. This is incorrect.
- The former Steering Group was an entirely elected Board, whose members were elected from a variety of constituencies. Even then, the Board members were supposed only to act in the interests of the Charity as a whole.
- Charity Boards in which all members are elected are becoming increasingly rare and this format is no longer seen as optimal in terms of good governance.

Leadership

Your letter mentions that you do not want Cochrane “to become an organization that passively accepts the decisions made by its leaders ... without enough collective mechanisms for discussion, contrast and control.”

Cochrane has many mechanisms for collective discussion and debate, not least of which is the democratically elected Council, whose members advise and assist the Board. Unlike the Trustees, members of Council *can* promote the interests of those who elected them.

In addition to governance, the Board’s second major role is setting the overarching strategy for the organization. The Board also recruits and oversees the Central Executive Team (CET), who – acting on behalf of the Board – operationalize that strategy. If anybody within the organization feels that the CET are not acting in accordance with the Board’s instructions, they must say so. They may write to the Board at any time. However, the Board has not recently received any complaints that the CET are acting counter to the Board’s instructions. On the contrary, many compliments have been received, from both the Cochrane community and external stakeholders, about the high-quality work of the CET.

Process

In your letter, you express doubts that the process has been “sufficiently appropriate and coherent with the principles of Cochrane”. We respectfully disagree with that suggestion. Indeed, we were diligent in following “due

² <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/the-essential-trustee-what-you-need-to-know-what-you-need-to-do>, Section 6.2

³ <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/the-essential-trustee-what-you-need-to-know-what-you-need-to-do>, Section 6

process” as advised by Cochrane’s legal advisors. “*You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.*”⁴ Moreover, from the start of the recent process we emphasized to the legal advisors guiding us Cochrane’s wish to be a transparent organization.

In June 2018, Cochrane’s legal advisors told us that the issues that had arisen gave rise to “serious legal concerns”. The issues involved not only complaints against Professor Gøtzsche but also complaints made by him, against a member of the Senior Management Team. In light of the nature of the issues (in particular the need to respect the privacy of all those individuals complained about) they emphasised the importance of confidentiality. They advised that an independent review be undertaken of all the various complaints “bearing in mind Cochrane’s commitment to transparency and its Trustees’ obligations and responsibilities as a charity”. We quote this, to emphasise that from the start, the Trustees wanted the process to be as transparent as possible *while respecting the privacy and confidentiality of all those involved*.

It is extremely unlikely that a Board, when faced with the “serious legal concerns” that had been identified, would reject the advice of its own lawyers. In fact, as a Board we are convinced that to have rejected that advice earlier this year would have been an abrogation of our duties as Trustees to serve the best interests of the Charity. We submit that fear of the consequences of the review is not sufficient reason to ignore the lawyers’ advice. It is this sort of thinking that had resulted in so much trouble for other UK charities in recent years. As a result of *not* dealing with serious issues, these charities have faced censure and criticism, tarnishing their reputation much more than might otherwise have been the case had they dealt properly with the problems in a timely fashion. In these cases, putting “flexibility, equanimity and generosity” above the best interests of the organization has proved disastrous.

The Independent Review

The Independent Review was undertaken by a senior barrister (“Counsel”). In the English legal system, barristers are independent lawyers. The barrister acted as a completely independent “third party”. We absolutely reject any suggestion that he was biased in any way.

Those involved in the review had the opportunity to provide their written input and did so. There was also an opportunity to have an in-person interview with Counsel. Professor Gøtzsche did not accept this invitation.

As far as the Board are concerned Counsel’s report remains confidential and will not be published. Notwithstanding this, we are aware that Professor Gøtzsche has breached confidentiality and his ongoing obligations as a former Trustee by selectively publishing confidential and personal material related to this matter.

Cochrane’s Image

The Board has received many notes of support from individuals and organizations with respect to the current events. We have been complimented on the way we have followed due process and the result. It has been disappointing to see how many people within and outside Cochrane have jumped to conclusions based on incomplete and biased information. The lack of respect for the privacy of individuals against whom the most

⁴ <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/the-essential-trustee-what-you-need-to-know-what-you-need-to-do>, Section 6

outrageous allegations have been made has been troubling and hurtful to say the least. Furthermore, since mid-September, Professor Gøtzsche has actively tarnished Cochrane's reputation, and continues to do so, by issuing a series of public statements on his website which have breached his obligations of confidentiality as a Trustee and continued the pattern of behaviours which led to the Board's initial decision.

In contrast, many of our members, funders and partners want Cochrane to be the sort of organization that will not accept or condone the sorts of unacceptable behaviours that Professor Gøtzsche has demonstrated over a long period and continues to do so. We believe that Cochrane's willingness to tackle problems of this nature are reflective of an organization that really "lives up to its values", makes it more attractive to individuals to join and stay, and to funders to support, rather than less so. This is especially true of the next generation of younger people whom Cochrane seeks to attract, and who are put off by out-dated and inappropriate patterns of behaviour that may have been tolerated 20 years ago in academia but no longer⁵.

Your suggestions

1. As outlined in the webinars on Friday, and in our report to the Charity Commission, elections for Trustees (four in total) will be held before the end of the year 2018 and early in 2019. The Board will also fill the 3 vacant appointed places to bring the Board back to 13 members.
2. We believe it is not in the charity's best interests to undertake another independent review.
3. The independent review brought to light a number of deficiencies in some of our documentation, specifically the Spokesperson Policy and the Collaboration Agreements.

Consequences for Centres

The Centre Director community is clearly very concerned about events; more so than many other groups within Cochrane. We understand those concerns and will be happy to talk with you further about them. There will undoubtedly be changes as a result of these events and those changes may impact on Centres and their Associates and Affiliates.

As you highlight in your letter, our mechanisms and the associated processes should be transparent and auditable. We agree that the existing Collaboration Agreement is deficient in this respect and we look forward to working with you so that it can be revised and improved. It is important to note that some aspects of the agreement that have now been found to be deficient were introduced in 2016 at the specific request of Centre Directors, led by Professor Gøtzsche and not opposed by the Centre Directors Executive at the time. There will always be a critical issue of accountability. Any group or individual that uses Cochrane's name and logo has to be accountable to Cochrane. That means being accountable to the Board through the person to whom the Board has given oversight; for the Centres, this is the CEO.

These groups and individuals must follow all Cochrane's policies and practices, and act at all times in the best interest of the organization (Cochrane – the UK-based charity) and the charity's objects – "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"⁶. To

⁵ See for example: <https://www.theguardian.com/education/2018/sep/28/academics-uk-universities-accused-bullying-students-colleagues>

⁶ Articles of Association of The Cochrane Collaboration, Article 2.1.

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ensure clarity, transparency and auditability this will require legally binding agreements to be put in place between Cochrane and the various Cochrane groups, including Centres and their Associates and Affiliates. We look forward to working closely together with you in this matter and sincerely hope that many of you, if not all of you, will be able to “sign up” to this way of working. The Collaboration is at its best when we all work together for our common goals and to achieve our vision of a world of improved health where decisions about health and health care are informed by high-quality, relevant and up-to-date synthesized research evidence.

Yours sincerely,

Cochrane Governing Board

Martin Burton (Co-Chair)

Marguerite Koster (Co-Chair)

Jan Clarkson

Nicky Cullum

Gladys Faba

Tracey Howe

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