THE MORECAMBE BAY INVESTIGATION

University Hospitals of Morecambe Bay NHS Foundation Trust (UHMBT)
Maternity and Neonatal Services Investigation

Thursday, 6 November 2014

Held at:
Park Hotel (Council Building)
East Cliff, Preston, PR1 3EA

Before:

Dr Bill Kirkup CBE – (Chair)
Mr Julian Brookes, Expert Adviser, Clinical Governance
Professor Stewart Forsyth, Expert Adviser, Paediatrics
Ms Jacqui Featherstone, Expert Adviser, Midwifery
Professor Jonathan Montgomery, Expert Adviser, Ethics
Dr Catherine Calderwood, Expert Adviser, Obstetrics

Ms Oonagh McIntosh, Secretary to the Investigation
Mr Nick Heaps, Deputy Secretary to the Investigation
Mr Paul Roberts, Evidence Manager for the Investigation

Panel Meeting

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7th Floor, 61 Southwark Street, London, SE1 0HL
Telephone 020 7269 0370

THE CHAIR: Are we good to go? Hello welcome thank you for coming to this meeting of the Morecambe Bay Investigation Panel. We have one or two apologies I think, don't we?

MS MCINTOSH: We do, we have apologies from Jimmy Walker, from Geraldine Walters, and just yesterday from Julian Brooks.

THE CHAIR: Thank you and matters arising from the last meeting?

MS MCINTOSH: Okay, we have three matters arising, one is about the Investigation's timeline and the Secretary of State has now granted his approval for an extension and that's been communicated to those who need to know and is obviously on our website and has an impact on the work, the evidence going into work that's being done. The second matter arising from the last meeting is the interview programme, although we discussed that as a substantive agenda item last time I've just put it under matters arising because I just think it might be helpful for you just to have a quick statistical update from Nick on the current position.

MR HEAPS: Okay, when we had last Panel meeting we'd done 70 interviews, had another 16 arranged and 17 outstanding. We've now interviewed 90 with another eight arranged but now have 18 outstanding. The overall totals for those are 103 on 9 October and today 116, so another 13 interviewees have been identified in the last, just under a month.

THE CHAIR: Yeah that is a sign that what we are doing is following up leads that have emerged from the evidence and we weren't aware of the advisability of interviewing those people at the start of the process and that has become evident as we've gone through. I think what we need to do is two things, one is recognise that that's an inevitable and correct part of the process and doesn't mean that we've failed to arrange interviews – which is a separate point that I may come back to – but the second thing is just to identify that it's actually a success of the programme.

MS MCINTOSH: It is, yes.

THE CHAIR: It might be daunting in view of the timescale but I think it's a sign of success.

DR CALDERWOOD: Just to ask Nick, is it that some of these people that hadn't replied are now coming forward or that we have reminded and are now making themselves available or?

MR HEAPS: It is a mixture Catherine, there are the new people who have been identified, plus we're making progress with the people we've had mind for a while.

DR CALDERWOOD: I do think that's another success measure if people are beginning to either cooperate when they weren't or make themselves available because I suppose there has been a recognition that they need to be seen and spoken to.

THE CHAIR: Yes we have undertaken between the Secretariat and myself, we've undertaken a fairly intensive programme with some of the people who expressed initial reluctance and that has taught us that we can't rush these things. It does take time.

PROF FORSYTH: I'm not sure if there's a lot of discussion going on between the different interviewees as well so we're finding out how did some people experience the interview and make a decision on the basis of that?

THE CHAIR: Yes.

MR HEAPS: I think it's probably just worth saying that this week and again next week we'll have days where we're not able to fill all the interview slots, so we're having days of two or three people and next week it looks like we have a day where we only have one person but I think it's inevitable as we get towards the end of the list of interviewees that despite our best efforts we can't fill days up.

THE CHAIR: Yes, I think other thing that's worth saying is that we do have a kind of regular internal review just to see what the next steps are to try and make the best use of everybody's time and to try and provide information that people do need ahead of them to come along for interview. Anything else on that one? [*Slight pause*] Okay, you said there was a third one?

MS MCINTOSH: Well, the third one is actually going to be a substantive agenda item and we did say at the last meeting that we'd look at having chronologies initially for each of the subgroups but that's a substantive agenda item and we'll get to it shortly.

THE CHAIR: Okay. The other thing that I wanted to say is that the slightly unfortunate adding two and two and making five that's been the interpretation of the linking of the item on reluctant interviewees at the last meeting – the extension of the timeline so there's a slightly tabloid presentation that we're extending the timeline because we can't get them to come in for interview and that really isn't the reason. The reason is additional interviewees and the complexity particularly of going through the processes after we have completed writing the report to make sure that it meets the legal requirements and that we've issued warning letters and waited a suitable

period for people to be able to respond to them and so on. That's actually the relevant factor.

DR CALDERWOOD: I think also, sorry, that there's emerging evidence from interviewees that makes us very sure that we don't want to write report without hearing as much as we can.

THE CHAIR: Absolutely.

DR CALDERWOOD: Which means there is an inevitable need to finish before we can hopefully start writing which we couldn't have imagined that timescale back when we didn't realise the scale of the number of cases or the interviews we were going to have.

THE CHAIR: Yes, thank you. Okay, we're done on that one then – reports from the subgroups? Stuart, would you like to lead off?

PROF FORSYTH: Well, as you are well aware, Chair, we've completed the case reviews, so they are complete as possible I think unless any other cases have emerged from the Trust that I don't know about [inaudible] of all the maternal stillbirths and neonatal deaths, of those there are 240 and out of that we went into more depth in 42 cases. So, we have this information and it's now being set out chronologically and we're going to be relating that to the other chronological events. When it comes to preparing for the report we just need to be quite clear about how we're going to present this information.

THE CHAIR: Yes, not just for the report as well, I think we're perhaps flagging up that we're also committed to providing individual feedback to people who have come to us and said that's what they would like, so that's a part of the process too and I'm feeling that remains confidential to affected individuals. Okay, anything on that one? Thank you. Jonathan?

PROF MONTGOMERY: Sir, I think we've got most of documentary evidence we think we are after. We've seen most of the people we think we need to see or are in the process of it. I think what's become identified is there are three specific gaps we haven't quite closed in on yet that we need to target.

In relation to the Strategic Health Authority we still haven't quite got to how they evaluated the connectedness or not of the SUIs. We heard earlier in the week her name but people have identified that they think that would be the person who would do that, so I think we've closed the gap on that question but we haven't quite got to the answer yet. Secondly, I think in relation to the decision-making in the

Care Quality Commission, we know about almost everything except the key phase of March 2010 and again earlier in the week we had an interview which helped us with everything up to that point and we have a couple of names, one in particular who we now need to pursue who we think could close that and thirdly I think we haven't quite got to the bottom of how Monitor dealt with the resurrection of the application and the passing of various things around there in that particular process but we have already arranged an interview with the Chief Executive of Monitor at the end of next week I think it is.

MR HEAPS: In three weeks time.

PROF MONTGOMERY: So, I think those are the three bits where we've closed down the question but we haven't quite got to the evidence we need to resolve it.

THE CHAIR: Okay, thank you. Anything on that one? Do we have anybody from the management – I don't think we do.

MS MCINTOSH: I think we do have a gap.

THE CHAIR: Yes, sorry about that.

PROF MONTGOMERY: I'm on it but I don't think it's done anything that I' m aware of particularly. I think there's a significant challenge on overlap between the external response and the governence group because our terms of reference, particularly focusing on the Trust response to those sorts of things. We met with current board, we had therefore something of their account of the government structures that are in place but I'm not sure I'm in the position to say any more than –

PROF FORSYTH: I'll just add that also likewise when we look at the clinical subgroup a lot of the chronology that we have in terms of cases needs to be linked into the chronology of action taken within Trust around maternity and neonatal emphasis. For example, the restructuring of the staffing issues etc. so that we need to work closely with the Trust group to align with the chronology and look at that from that perspective.

THE CHAIR: Sure. Okay, thank you, which takes us on to item 5, the chronology. Would you like to introduce this?

MS MCINTOSH: Yes certainly and I want to thank Panel members, who had a look at it this morning for their help and advice for identifying areas that needed to be amended but also just to let you know, this is the first stab at these chronologies. This is the first draft and this is just an opportunity for you to look and see for each of the subgroups, does it actually cover the areas. I think one subgroup came back

specifically with a list – Geraldine came back with a list of things that she specifically wanted in hers and yours, the clinical subgroup is largely dictated by the events that you reviewed in the case reviews but actually are they – do they look useful, helpful, yes there is overlap, do you want fine tuning and changing in any way for each of the subgroups and have you got views on an overarching chronology and how that might come together?

Now, we might not get answers to that last question today because we might need to see more of your own chronology further developed and further improved. One thing I just want to point out today is that at the rear of your papers as far as we possibly can, these have now been – the papers that we've got have been anonymised, the chronologies we've got. You do have a key which lists the cases. That key, Chairman, does not form part of the Panel meeting papers and therefore will not then be placed on public record for the working investigation. It's merely to aid the discussion today but obviously because the recording of this meeting can be listened to by any of families then it is crucial to respect people's confidentiality and case confidentiality that no individual names are mentioned other than cases that are already known to be in the public domain or the appointments of senior officials that's already in the public domain.

So, that's just a starter but if we just work our way through, I mean the clinical subgroup is the one that has got pretty straightforward information that's been provided by Stewart. Aside from the clinical subgroup's review I think if there's anything you want added to it, although we know we need to do more work on it, so that's that. The other two are following quite similar styles, which is the similar layout and presentation, which is the Trust Governance and the external response groups. We may well have too much information, we may well have trivial information to be guided by you, and so it's just a discussion really.

THE CHAIR: Yes, who would like to lead off? [*Pause*] We're all stunned at the amount of information I think.

DR CALDERWOOD: Maybe you've already said this but I was looking at it and I might have missed it but would there be an intention to include some of this in our final publication?

THE CHAIR: I think –

DR CALDERWOOD: Or is it too much detail to be –

THE CHAIR: I still – we had a conversation about the amount of detail and my concern that if we give any kind of detail then people will become identifiable and then some of that detail is properly confidential. I think that it would help the overall timeline enormously if we simply recorded an event on a date and didn't give any more information at all, not even on the underlying column here. I think we just say something happened on this particular date, you know, 'there was an intrapartum stillbirth on day x' or a 'maternal death on day 1' and leave it at that.

PROF MONTGOMERY: On that basis, Bill, I wonder if that is all that is needed because actually that gives you a sense of the timeline, it recalls the dates of each of the events and probably gives you as useful and digestive information for publication as anything.

DR CALDERWOOD: What I wonder though because of these numbers that Stewart has quoted, so we have looked at 240 cases, is look at whether it's straightforward to classify them but I feel that we would need to acknowledge that there were x-many maternal deaths, stillbirths and neonatal deaths and then in some cases where the baby is still alive but we might not be able to get a diagnosis - but I think to acknowledge that number, and you know my concerns about statistical comparisons that there is a very well-known published rate of these – you know, maternal death rate, stillbirth rate, and I don't know whether that would be helpful to have as a comparator. You would have to do it with a lot of explanation around it. Or you might decide that that actually wouldn't. The trouble is, if we don't do it, somebody else will and the somebody else will not use the same, you know, the definitions are different, and suddenly you have a very big headline that says it's double the something.

PROF MONTGOMERY: But those numbers appear on this chart in the little coloured lines. I honestly think a key to this chart could probably provide all that information in context.

MS MCINTOSH: It was just – I wondered whether or not, Catherine, if there's anything in the data pack that Hannah developed – well, I don't know whether there is but I hope there is work in the data analysis that Hannah did that will actually compliment this and support it but also if there's another piece of work to pull some of the sort of known figures together to map onto this then we could ask Hannah to do that for us. That would be good.

THE CHAIR: I think useful because I think Catherine's point is exactly right that if we don't do it somebody else will, and perhaps lacking some of the context and the background information.

DR CALDERWOOD: [Inaudible] these are the cases that we've done full reviews for but I think for all of these families, the 240 cases need to have the acknowledgement.

PROF MONTGOMERY: They're all in there in the coloured lines.

MS MCINTOSH: In the colour boxes, it's very tiny.

PROF MONTGOMERY: So the numbers are recorded –

DR CALDERWOOD: Oh there it is, okay.

PROF MONTGOMERY: So, I think if we thought about how to make this intelligible –

MS MCINTOSH: Bigger font or something.

PROF MONTGOMERY: The explanation to this presentation which works much better for me and is making better sense than the big spreadsheet that for the purposes of producing it has other information collected together but in terms of where we get to I think I'd like us to be able to use this to ask the question are there any points in this timeline at which the analysis that we've been able to do says there was an opportunity at this stage to see a pattern because that's one of the questions that'll be in my mind. When you compare it with the work that Hannah did, were there any points at which a statistical pattern might've emerged that could have been a trigger for further enquiries or do all those triggers have to come from the analysis on a case-by-case basis which then takes us into the silly responses and the root cause analysis. I think we need to be able to answer that question whether different information systems would prevent this issue from coming to light.

THE CHAIR: And indeed whether it's about information systems or whether it's about somebody applying a more qualitative judgement of some of the information.

PROF MONTGOMERY: Yes because one of the possibilities is that actually information systems would never have pulled this out –

THE CHAIR: Indeed.

PROF MONTGOMERY: Because it's an insufficient outlier given the numbers and the comparators and I think if that's the case we need to say that very clearly. If we believe there was a sufficient variation from the pattern we should also say why and what might have enabled people to bring that up.

THE CHAIR: Agreed and on a related point I think that one of other ways that these things come to light is if proper investigations of root cause analyses are done

which we may have questions about and I would like to ask Stewart whether we can do a kind of modified [Leicester approach?] to the 42 that we've looked at in detail and say where there were underlying factors that may have been associated or more probably associated with –

PROF FORSYTH: We can certainly do that. I think we've got to be careful because then you're going on to make that the sort of focus of getting into the detail of each of these cases and I think –

THE CHAIR: Absolutely, yeah.

PROF FORSYTH: I think that the key points are that there are two aspects to this data. One is sort of what working out perinatal mortality rates are, stillbirth rates are, etc. but also I think a key point is that it demonstrates the extent and scope of review that we've undertaken and I think that we've not just picked up a few cases, we've actually thoroughly investigated – well, we've screened over 200, so I think that people do need to see that this is a fairly thorough review of clinical activity and over a period of time and I think it's quite interesting just looking through these figures. We went through these cases blind so to speak in screening and yet we seemed to consistently pick out 20-something cases per year throughout the whole period, which it's not highly statistical information but it's actually quite a good indication that there are issues throughout the whole period, which I think was an interesting finding.

THE CHAIR: Yes exactly but I think we could refine it by reference to whether we found that there were underlying problems in these cases. At the minute all we know was that we requested a full review, which may in itself not indicate, it might just mean there was insufficient information to be able to decide.

PROF FORSYTH: And there were some where we didn't think there was a notable cause for –

THE CHAIR: Exactly and I think if we defined it by focusing on the ones where we thought that there was then it will be even more useful.

MS FEATHERSTONE: I think that's really important because if you just looked at it without any dialogue on this, you would think that we were picking out a particular number, that we were looking at the cases in an individual, so now this shows quite interesting as to the dialogue and why we looked at those cases in much more deeper review rather than we needed to pick so many cases it was the particular cases we were looking at.

THE CHAIR: Yes, absolutely.

DR CALDERWOOD: And I think what may be almost be more helpful than the statistical review is that I'm looking at 29 cases in 2008 and I would like to know what another similar sized unit would've had in one year. And actually I don't know, which makes me suspect, that isn't a comparator that people do and maybe that's a safety net that should be built in, that you have twinned with a similar unit with similar demographics that you can just [sense?] check because if they're doing 15 cases and you're doing 29. Far more sophisticated intelligent systems exist but I don't believe they would flag this. You could've built in any number of statistical algorithms and it never would've necessarily flagged something but just a simple phoning a friend might help.

MS MCINTOSH: And Hannah did identify I think right at the outset didn't she, I think she looked at a review of about seven Trusts with a similar birth rate and a similar geographical distant locations, so there are comparator hospitals. They're not exact comparators but –

PROF MONTGOMERY: I think there's something quite important there about the difference between a sort of benchmarking club approach which is all driven by data and the twinning arrangement which is more qualitative. If that is a solution we should say we think it would have better or different outcomes but if it wouldn't have done then we'd ask ourselves what might've done.

THE CHAIR: Absolutely, so it's a good chronology then?

PROF MONTGOMERY: Yes, I think it's very useful but I think we need to look at some imaginative ways to try and combine it because I think the overall picture of who knows and when hasn't emerged from that. One way to do that might be to kind of separate out the policy things. I think they could afford to go onto a separate list.

MS MCINTOSH: Yes.

PROF MONTGOMERY: Because when a particular policy is produced it is probably less relevant to the chronology.

I'm afraid I haven't had a chance to look at the external response chronology but I think my first observation is that it is really useful to have it all there for our purposes but rather like we've just discussed of the other ones, we need to understand what is useful presentation and I think by and large the external policies will not be anything other than clutter to our story. I think there are probably a few things, routine things that we haven't picked up, say the health assessments to the

health care commission to the CQC, which we have heard people made use of, the CNST submissions, so there are various terms of reference which if only to show that we've worked our way through, some of those I have started on as I've been reading things so I will compare the two. It got very, very cluttered so I sort of stopped but –

MS MCINTOSH: Sure, exactly.

PROF MONTGOMERY: So, I think the task of the external box is to take out some of it and also to pick up a few things which were not unusual external responses but were just part of the reporting pattern that do seem to have been used by people as an indication of things going well or the like and that's a task for me to sit down and work through on my existing spreadsheet on that. I'm absolutely going to use this as a useful exercise and I think we'll need a version a bit like the clinical one and maybe the question is if we asked ourselves, what are the 30 key events in that timeline so that we can present it and that would give us then something we could juxtapose with the clinical timeline and ask some questions about whether there are any missed opportunities that come from where things are but I think if we target the idea that there are probably only a limited number of things that we can focus on and usefully discuss and think about what are the most important ones. Once we've done that we can then ask whether there's some important ones that we missed out on. You know, it was 30 but it actually should've been 35 or 25 but we could start by saying if we had to identify what are the 30 most important parts of this chronology which would they be?

MS MCINTOSH: I wonder if there's something about looking at the summary findings, some of them, not all because not all will fit neatly in but there are key decisions that you've heard evidence about that you're still questioning but who, what, when, I suppose that comes in the narrative and not in the chronology, doesn't it?

PROF MONTGOMERY: But that makes me think there might be a timeline of missed opportunities that actually in addition to what we do in the mapping out of the three groups, a useful presentation might be at what point could people have done something different that might have had an impact. Now, that's not to say it was unreasonable for them to have done it at the time, that's a separate judgement we'd need to make but it would be good to identify stages of the chronology where there were opportunities – in the way that Cynthia Bower when she came and described where she'd felt that they'd missed opportunities to do things. I think we have to

make our judgement about whether we criticize people for the decision they made at that point, that even if it was understandable at the time it's still reasonable for us to say we could think again about how that could have operated differently and whether it should have done.

PROF FORSYTH: I think this is very much a reference document helping us to understand what happened when and some literal relationships and it will be useful when it comes to writing the report to be able to refer to that and make sure we've got everything. I think the chronology outlining the clinical reviews of the Trust management group, there's so many changes, incidents, management decisions [inaudible] helpful as well and clearly the evidence we have is that the clinical practice is often determined by Trust management decisions, so therefore we need to be able to see how they fit into the timeline as well. There were a number of things such as the reorganisation, the regarding of the midwives, etc. – I think that would be helpful as well and also some of the documents, again I need to speak with Catherine and Jacqui about the [inaudible] documents that need to go in to ensure that we're not expecting standards of care which weren't accepted at that time. I think we're [inaudible] documents that came out at a latter point of the period as opposed to the earlier part of the period.

THE CHAIR: Yes, although it does raise a slightly philosophical question about what people were supposed to do before the guidelines came out. Practice wasn't entirely prehistoric before they had guidelines.

PROF FORSYTH: Agreed and people seem to adopt that approach. So the timing of that and the discussion of whether the Trust are using the 2005 version or the 2008 version and –

THE CHAIR: Don't get me wrong, I think it's very relevant, it's just that I don't want to fall into the trap of saying because there wasn't a guideline on x we can't say yes but hang on, that clearly doesn't match the standards of professional practice.

PROF FORSYTH: We just have to be aware that that'll be a response I think.

THE CHAIR: Absolutely, it strikes me that we need two parallel things which then need to link up. One is further refining this in the way it's been discussed and trying to combine it in a way that's legible but secondly I need to embark on refining that list of bullet points that we've got and part of the refining of it is, we've now clearly got a lot of duplication and a lot of sort of x's and y's which also needs to be sorted

out but also we need to try and sharpen it up to make it inform what the key points are on this chronology.

MS MCINTOSH: Yes.

THE CHAIR: So if I undertake one and then –

MS MCINTOSH: We can undertake –

THE CHAIR: The first one and we'll bring them together as soon as we can.

MS MCINTOSH: Yes, that's fine. Obviously colleagues are just seeing this now so any comments anyone's got on it – and if you've got a different chronology developing just to help you put together the bit you are doing for any report writing, if you're saying what on earth happened around Agenda for Change or what on earth happened around CQC, if you want unique chronology or specifics then I'm sure we can do it.

THE CHAIR: I think we can usefully help.

MS MCINTOSH: Paul is looking at me now as if to say you could probably check with me before volunteering his team to do more but I think if it helps –

THE CHAIR: I think we could usefully have a separate chronology of reports that were done about Morecambe Bay because there are so many and getting the timeline of when they commissioned, when they were produced and how they were actioned would be enormously useful.

DR CALDERWOOD: I'm also noticing here and I haven't noted it in detail but there are several inquests / external reviews of some of our index cases and it might be useful to have them pulled together.

THE CHAIR: Yes, I think that might fit into the list actually, yeah.

PROF MONTGOMERY: So, in just connecting those things together, if the spreadsheet was filterable, that's saying if we identified a column which had the number of the cases in it, you could then just filter the spreadsheet and see all the bits that related to those things so that might be one way of us not producing a lot of different chronologies but using one chronology to be able to link things, so we had a column for NMC, we had a column for CQC and in all the new chronologies –

This is in Excel, is it?

MR ROBERTS: It is.

PROF MONTGOMERY: That's relatively straightforward –but there might be a way to not having a proliferation of chronologies but being able to give us one that can look like that and be printed out like that for key things.

MS MCINTOSH: And actually be looking at things for similarities between cases then you can keep them both in there, okay?

THE CHAIR: Alright, is that sufficient for us this morning?

MS MCINTOSH: Yes that's very helpful and any comments are very helpful indeed. Thank you.

THE CHAIR: That's great. I've lost my agenda now so – oh, we're on to any other business please. Okay, I'll start at the other end of the table as usual, Catherine? Stewart? Oonagh?

MS MCINTOSH: No.

THE CHAIR: Jacqui?

MS FEATHERSTONE: No.

THE CHAIR: Okay, date for next meeting to be confirmed.

MS MCINTOSH: Yeah, we haven't actually got dates in because at our last Panel meeting we hadn't got the extension from the Secretary of State so we will just be talking to you and those of you who have PAs to get dates for the Panel meeting in December and in January and early February.

THE CHAIR: Yes.

MS MCINTOSH: You're hesitant – well, I'm hesitant about the December one because actually I don't know if there's a value for the one in December but I think January, February –

THE CHAIR: I think January and I'm not sure about February either because I think we ought to be at the point where we're actually focusing on the arrangements for publication at that stage.

MS MCINTOSH: Okay, that's fine, so one for January.

THE CHAIR: So, we'll need some sort of conversation about how we do that but not necessarily a Panel meeting.

MS MCINTOSH: That's good.

THE CHAIR: So, I think we should focus on January.

MS MCINTOSH: That's brilliant, okay.

THE CHAIR: Okay? That brings me to a close as usual, thank you very much everybody.