

THE MORECAMBE BAY
MATERNITY AND NEONATAL SERVICES INVESTIGATION

Wednesday, 15 January 2014

Held at:
Royal Lancaster Infirmary, Lancaster

Before:

Dr Bill Kirkup CBE -- Chairman
Professor Geraldine Walters -- Expert Adviser, Nursing
Mr Julian Brookes -- Expert Adviser, Governance
Professor Stewart Forsyth -- Expert Adviser, Paediatrics
Ms Jacqui Featherstone -- Expert Adviser, Midwifery

Ms Oonagh McIntosh -- Secretary to the Investigation
Miss Hannah Knight -- Analyst to the Investigation
[REDACTED] -- Investigation Evidence Team
Mr Tom Bacon -- Deputy Secretary to the Investigation

Ubiquis
7th Floor, 61 Southwark Street, London SE1 0HL
Telephone: 00 44 207 269 0370

1 (11.00 a.m.)

2 CHAIR: Thank you and welcome. I hope that you all had reasonably successful journeys
3 getting here, however you've managed it. And I should say: season's greetings and
4 happy new year to everybody as well. Thanks to the Trust for providing a meeting
5 room and some sandwiches and coffee...

6 Right, we've done the fire alarm bit, so that's all right. We do have a tight timetable
7 because we've got the programme visits, so we need to press on through these.

8 Apologies from Catherine [Calderwood] and Jonathan [Montgomery], although I think
9 both are hoping to join in with some of the later proceedings by video link or telephone,
10 depending on what we can get working – it's probably the telephone actually. I don't
11 have any other Apologies, and I think everybody else is here. Thank you.

12 Item 3 is 'Notes of the previous meeting and matters arising.' And can I ask
13 Oonagh to take us through these?

14 MS McINTOSH: Certainly. You'll find, in your papers, two brief summaries of our last two
15 Panel Meetings. We've always said we will put something onto the website, and we've
16 always been quite certain that we're not going to put detailed accounts on. And as we
17 spend time, we're diverting in what we do. Also we don't want people pre-empting the
18 outcome of the Investigation and prejudging any discussions that have happened – and
19 they might only be part of a fuller discussion that needs to happen elsewhere and with
20 other people.

21 So the summaries are very short and sweet. It would be helpful if, today, we
22 could just have some agreement of what you want by way of summary on the website.
23 If this is too short, then say so. If you think anything else needs to be added, then please
24 say so.

1 It will obviously become different when we are hearing evidence from any
2 witness. We've always said, at that point, we will say, for example, 'The panel heard
3 evidence from Oonagh McIntosh in respect of term of reference 1, 2 and 5' – because
4 that would only be one witness in terms of three terms of reference and we wouldn't
5 want people pre-judging the evidence that had been given, which of course might need
6 to be added to or expanded or discussed further.

7 So this is just the summary of your discussions. I think it is fair that people
8 know that you are discussing procedural matters and actually the timescales, the plans,
9 and the work that has got to be undertaken. And if anyone had any questions, they
10 would no doubt come back to us about it. But I think we need to get something onto
11 the website. It feeds into the paper that we are going to discuss later about views and
12 perceptions. So it would be useful to know whether or not... how members are content
13 with the draft.

14 CHAIR: Comments?

15 PROF WALTERS: Is a transcript available somewhere?

16 MS McINTOSH: The transcript is available for the Panel, but not for the public. You will
17 see later that the transcript will form part of the record of the Investigation's work
18 when, at the end, we hand papers and documents over to the Department of Health,
19 which will ultimately be available for the public record. But they will have to be gone
20 through very carefully for redaction issues. But they're not available at the moment,
21 Geraldine, no.

22 PROF WALTERS: I wonder if it's a bit too short. I don't think it should be long, but I just
23 wondered if it's perhaps a bit too short.

24 MS McINTOSH: For example, if you said, 'Procedure and practical arrangements,' and the

1 first one, 28 November – and actually explained what they were – so what the
2 procedure was about, how the panel will operate, how we would exchange information
3 – just go into that in a bit more detail, at that level?

4 PROF WALTERS: I don't know. I mean, what does everybody else think?

5 MS FEATHERSTONE: I think probably... And if the family come back and start asking
6 questions, if the transcript is not available, how are we going to get back to them about
7 those questions then?

8 MS McINTOSH: It's sort of a bit chicken and egg. Maybe if we come back to this at the
9 end because if we look at the paper on sharing information and evidence – and the
10 approach we're adopting to what we place in the public record – then that will form part
11 of the protocol for how we operate. And then I think it's fair that that protocol would
12 go on the website. And then people would be able to read the two together. So it's a
13 very fair point, Jacqui, but I think maybe we'll just hold that one and come back to it.

14 CHAIR: And I think there's a natural tension here between us wanting to be open and
15 transparent, but my reservation – which I think I've expressed right from the outset –
16 that what we don't want people doing is predicting how the end of this is going to turn
17 out. We don't want people second-guessing the findings at an early stage because it
18 won't be helpful. It will lead to false expectations, potentially, and it will make a kind
19 of already potentially unpleasant story, that's got the potential... We had a bit of a
20 ruction over the weekend that there was going to be some pretty critical stuff in one of
21 the Sunday newspapers. It's got that propensity to kick off along those lines. And the
22 more we put in, the more chance there is of somebody misinterpreting and trying to run
23 a story on the basis of it and trying to cause discord.

24 MR BROOKES: I've got two suggestions, and hopefully this is helpful. In terms of the

1 length – actually in terms of the first meetings – I'm not sure what else we could add
2 helpfully, but I do agree that, as we move into other things, it would be helpful to make
3 sure we've covered the ground. I would suggest... are the agendas to the meetings
4 public?

5 MS McINTOSH: Today's has been put on the website, and we can put, retrospectively, the
6 others—

7 MR BROOKES: I'm just thinking, that the note should give an impression of the stuff which
8 we've covered. And the only other thing I would suggest is that if there are particular
9 actions or concerns which require action – like safety issues that have arisen during
10 things – we should note those because that will require action. And it's not something
11 that is specifically to do with the terms of reference; it is something that has arisen out
12 of the evidence. And that might be something which we would want to consider
13 thinking about being put in it.

14 And my only other bit was: once we've got agreement about the kind of
15 format, we should try and get this out as soon as after the meeting as possible so that
16 there is a feeling of momentum behind the meeting.

17 MS McINTOSH: Can you give me an example of a safety issue?

18 MR BROOKES: Well, for example... I don't think necessarily from the relatives we've had,
19 but if we hear something – for example, this afternoon – which gives us serious
20 concerns about – or we see something which gives us serious concerns about the
21 clinical safety of this service we are looking at, we need to make sure that's been
22 properly noted. Is that something we should actually be saying, 'yes, we've noted
23 concerns about this'? Because it demonstrates that we are reacting to a proper safety
24 issue in an effective way. It's a question. I don't know. I'm almost talking myself out

1 of it now. But you know what I mean. I feel that if those things come up, we need to
2 be seen to have acted on them as well as just acted on them, if you see what I mean.

3 CHAIR: I can absolutely see the point that, in the record of the previous meeting, there ought
4 to be some reference to the fact that we sought to go and have a look at the unit and its
5 current functioning because that made sense after the fact that today has changed and it
6 gives some of the background to it. I think that's right. What I think we'd have to be a
7 little bit careful about is sort of recording something like a safety concern and then not
8 immediately being able to follow-up and say exactly what the action plan was, because
9 I think we'd be—

10 MS McINTOSH: And also, if we came across a safety concern now, it is outwith our terms
11 of reference because we finished in June. Our terms of reference goes to June. We'd
12 have to back that onto the Department of Health, wouldn't we? That would have to be
13 something we could justifiably raise, but it wouldn't be—

14 MR BROOKES: But we could say 'There were issues which we found about X which have
15 been forwarded to so and so...' And that's all I'm saying. I'm not suggesting that we go
16 into the details of the case. But we need to be seen to be reacting appropriately to
17 anything we find which causes concern, even if it's not within the terms of reference.

18 PROF WALTERS: Going back to this then, and picking up your point, I wonder if we could
19 just have the agenda and then perhaps just a couple of lines under each item,
20 summarising.

21 MS McINTOSH: Yes.

22 PROF FORSYTH: I think any sort of report we put in has got to match up with the agenda.
23 I'm just looking at today's agenda, for example. We've got an item on 'Panel response
24 to queries raised by the families on procedural matters.' Now how are we going to

1 word that in our report that's going to go on the website?

2 CHAIR: I think we just record what were the general topics of concern and say that we
3 addressed them.

4 PROF FORSYTH: I first thought the idea of putting the agenda on was a good idea, but I'm
5 beginning to wonder if it is because that may lead us into all sorts of things and wider
6 discussions going on out there that we don't really want to get involved in.

7 MS McINTOSH: But I think, in a way, the people who are sort of monitoring our progress
8 are those families who have raised the issues. And if we don't sort of present them
9 back – that there's been some recognition and it's been discussed and it's been
10 discussed as a panel – if we just... it goes into a vacuum. It's very difficult, I know,
11 but...

12 PROF FORSYTH: Also, there's going to be further discussion on how we manage the
13 families so we need to sort of probably come back to this.

14 MR BROOKES: That's why I started my comment with 'Are the agendas public?' because if
15 our intention is to publicise the agendas, we need to make sure that – you're absolutely
16 right – that we can demonstrate that we have considered issues under those items.
17 Some of those might be very generic. It's a difficult one.

18 CHAIR: Anything which has arisen in relation to the families or is about any dialogue with
19 the families is in the public domain anyhow. Some of the emails that I was dealing
20 with on Friday night and Saturday morning were being copied to two or three
21 journalists, including television journalists. I wasn't; I took them all off and said, 'It's
22 up to you who you share this with. I'm only replying to people I know.'

23 But the original emails, expressing all the concerns and the reservations and all
24 the rest of it, are all out in the public domain anyway.

1 MS FEATHERSTONE: So based on that, I would say that the agenda does need to be in it.
2 And it does need to match the summary of the discussion, most definitely.

3 MS McINTOSH: If we have a go of drafting again and recirculated by email this week, and
4 with a view to getting it up onto the website for Monday, these two, and then we'll
5 work on today's, would that be acceptable?

6 [There is agreement]

7 MS McINTOSH: Okay. We'll do that. That's a helpful steer, thank you. You've also got an
8 item on paper 3.2, which I think nearly all of you have contributed to, so thanks – and
9 Hannah has been pulling this together – which is the key questions relating to the
10 Investigation's terms of reference. We had this on the agenda at the last meeting and it
11 is now kind of growing and getting a better shape.

12 What we were talking about yesterday was that we are not entirely certain –
13 and it is really your decision as to whether all of those questions are sitting under the
14 right term of reference and whether or not there is some sort of consistency – whether
15 or not some go into sort of – some are macro, some are micro. All of this is going to
16 help shape the report. And it is just quite important that we kind of have the brainstorm
17 now and we actually get this into some sort of order now.

18 Obviously there will be questions added to it because as you interview
19 witnesses and... as the Chairman has always said, we go where the evidence leads. So
20 we anticipate it will need to be reshaped. But can we start from something that we are
21 as confident as possible about... that is as comprehensive as possible. Not necessarily
22 confident, but as comprehensive as possible.

23 And actually, Geraldine, you had said, in your email, it would be good to have
24 a quick discussion about this. If it would help to have the discussion, that would be

1 good now because that would help shape things. But if, again, people want to take it
2 away and reflect, then equally good.

3 CHAIR: What would you prefer?

4 PROF WALTERS: I think it would be quite useful to have a discussion now.

5 MS KNIGHT: I think what we would like to do as the next step would be to have a sort of
6 table with all the questions, and then what sources of data would be needed for them,
7 and then who's taking responsibility for each question.

8 MR BROOKES: And how are they cross-referenced to the terms of reference.

9 MS KNIGHT: Yes.

10 PROF FORSYTH: I think it may be helpful. Basically, I saw it as an *aide memoire* now, and
11 not sort of well down the road thinking, 'Why did we not sort of think about this? And
12 that has implications for that...' and whatever. So, as you say, do the brainstorming
13 now, but obviously there will be some flexibility as we move on.

14 Clearly there's going to be some overlap between some of the different terms
15 of references because they're not absolutely completely distinct entities. And I think
16 that some of the questions, everyone is coming at it a slightly different way from their
17 own particular interests, – and that's what this is all about. It really sort of helps to give
18 it much greater strength and be much more comprehensive.

19 I'm certainly happy to look at where the questions all are. I think the question
20 that Julian was asking was – are the questions for us or--?

21 MR BROOKES: That's exactly what I was going to raise. There's a mixture at the moment.

22 Some of these are questions to us. If you go to, for example, 6.1 – 'Does the
23 Investigation need to establish...?' That's a question to us. 'Does it need to
24 establish...?' What I was looking at was what were the key questions I'd be wanting to

1 ask the organisations that we were seeing. That's different. But they're obviously
2 linked.

3 PROF FORSYTH: They are linked. The questions that we wanted answers to, we would
4 therefore have to ask...

5 MR BROOKES: Well the answer is 'yes' and then you did this... So then what are the
6 questions that we would ask if the answer is 'yes', I suppose. So it's that tree of things.

7 PROF FORSYTH: Yes.

8 CHAIR: Do people feel that we're almost there or are we just beginning on this business of
9 identifying the questions?

10 PROF WALTERS: I think you have to get some answers on some of them before you know
11 whether the further ones are right, don't you. But they all look sensible. We could
12 keep making these lists ever-longer.

13 PROF FORSYTH: I mean, there's overlap in the questions as well. I think we're probably
14 going to find that...

15 MS KNIGHT: At 1.1, for example, these are all – the sub-questions are all about whether the
16 Trust is an outlier on certain things – mortality and morbidity. But there would need to
17 be another sub-question under that, which actually involves reviewing each case and
18 saying, 'Was there substandard care for this case? Could this step have been avoided?'
19 So that sort of case-note review aspect of it is not covered under Term of Reference 1
20 at the moment.

21 PROF WALTERS: But Term of Reference 1, I suppose, is really trying to get at 'Should this
22 have been recognised by anybody looking at it at a macro level?' – I feel. And then the
23 thing about the individual cases is – it's this whole thing about 'Were the individual
24 cases handled correctly at the time?' and actually would anybody – sort of a Bolam test

1 – ‘If anybody had been looking at this would they have noticed before the public
2 noticed that there was a problem?’ So there are two. There’s the individual cases
3 angle, which there’d be in any Trust...

4 CHAIR: But those two overlap as well, don’t they? Because what happened in any one
5 individual case may ought to have been sufficiently clear that people said, ‘There’s a
6 potential problem here. We need to investigate this.’ But if that wasn’t the case then it
7 may be that the second or the third or the fourth or the fifth one should have brought
8 people to the point where they said, ‘There’s a problem here. We need to investigate
9 this.’

10 PROF WALTERS: Yes. They’re pretty close together, aren’t they? Because when you get
11 individual cases, you’ve obviously got to address any concerns that are associated with
12 one individual case, even if that’s the only one that’s ever happened. If you got two, it
13 might suggest, well this is still not quite right, but actually are we the same as
14 everybody else, that this is a human error that’s very difficult to address. Whereas if
15 you’re an outlier, then that suggests that your whole service – somebody should have
16 been looking at it. I think there’s like a sort of pyramid of activity that you should
17 undertake, going from the single case to a repeat case which makes it quite clear.

18 MR BROOKES: And *vice versa* as well.

19 CHAIR: I absolutely agree with that. What concerns me a little bit though is that the
20 comparative information isn’t necessarily there, and if it isn’t there it’s not necessarily
21 readily available. So where do you know where a cluster turns from just a random
22 cluster into evidence of something systematically failing?

23 PROF WALTERS: But in that early data we looked at, it shows, particularly if you look at
24 Barrow.

1 MS KNIGHT: I suppose that would be where... on the specific outcomes that you want to
2 look at. We've got quite a good list emerging here, and I'm going to take each one and
3 see what national data is available. I will show something later.

4 MR BROOKES: But you apply a reasonable test, don't you – as a reasonable board member
5 or as a reasonable person, looking at this, could you have spotted something? And
6 there will be things which will be blatantly obvious and some which are quite difficult
7 to judge one way or the other. We don't know until we look into those. So there's a
8 reasonableness issue to this.

9 And it's the distinction I was trying to make in the governance things as well.
10 I'm distinguishing between – 'does the organisation have good assurance and
11 governance systems in place which it can reasonably rely on?' – that's one thing. The
12 second thing then is: 'Were those systems being followed, either in individual cases or
13 in individual services?' And finally: 'Even if they were being followed, in these
14 individual cases were they followed?' if you see what I mean.

15 So those are the kind of levels of distinction that I was making in my mind.
16 Because each of those brings different sets of responsibilities and criticisms potentially
17 about what's happening.

18 PROF WALTERS: But am I wrong in thinking, Hannah – that data that you showed at the
19 last meeting, it showed that Barrow was an outlier... enough to prompt a few questions,
20 I thought.

21 MS KNIGHT: I hadn't done risk adjustment or anything at that stage. But that's what will
22 begin to emerge. And I'll show you something for unassisted delivery rates earlier,
23 which has been then adjusted for case mix, and shows – in a funnel plot format – the
24 position of the Trust compared with all others.

1 CHAIR: Excellent. There's a kind of sub-issue lurking here though, which is that – that is
2 really interesting and important for us to look at, but we have to be careful about
3 assuming that the Trust would have been able to do that themselves. That might be
4 quite difficult.

5 MR BROOKES: It's the reasonableness...

6 CHAIR: Yes. The other thing that, it strikes me, listening to the conversation, that there's a
7 strong iterative element around these questions, and that actually it might not be a bad
8 idea if we ask Hannah to take what we've got at the moment and come back with an
9 assessment on the kind of data sources and what's possible, and then go round the loop
10 again.

11 MR BROOKES: I agree. We don't know what we don't know yet.

12 CHAIR: Exactly.

13 MS FEATHERSTONE: And you're right – we are making assumptions, because you assume
14 that what you do normally is what would have been done then – just from dashboards
15 and what's on Dr Foster – that is escalated through various forums now. So I was
16 making assumptions, but, yes, it's made me think that...

17 CHAIR: Not in 2004...

18 MS FEATHERSTONE: No.

19 PROF WALTERS: But this does go from 2004 to 2009, and there was a lot happening
20 around that time. Could we see those reports? There would be data. And I think it's
21 important that we see what they saw.

22 MR BROOKES: Exactly.

23 MS FEATHERSTONE: There is data, but, again, we are making assumptions that – was it
24 raised?

1 MR BROOKES: There is a chronology in terms of reasonableness as well, if you see what I
2 mean, in that – what could we have reasonably expected in 2004 and what we could
3 reasonably expect in 2010. It might be very different because things have moved on.
4 So we just need to apply that sort of appropriate...

5 MS FEATHERSTONE: Yes. And understand that.

6 CHAIR: Any other comments? Well should we resolve to ask Hannah if she would take us
7 around the next stage on the cycle, and then we will come back to it.

8 MS McINTOSH: That's really helpful, thank you. Can I just go to a couple more points?
9 Obviously you've got the actions that are outstanding, and some of them are forming
10 substantive agenda items. One of them is about the delineated map of the Trust's
11 catchment area.

12 NHS England have – we had a meeting with them just before Christmas – and
13 they have agreed... or actually offered and are content to come and give a presentation
14 on commissioning. And it's something that has been raised by several of you, in
15 various agenda items, to actually give us a sort of potted history of the commissioning
16 approaches from 2004 to 2013. So hopefully they'll be coming to our next Panel
17 Meeting. And one of the things they will be doing is actually looking at the
18 geographical areas, and who was commissioning what from the Trust. So actually, if
19 you don't mind, we'll just roll that over to the next one because actually it will be
20 encapsulated in that. And that fits in with Hannah's kind of plans too.

21 There are a couple of other points from previous meetings that remain
22 outstanding, and some of them tie in with what would go into the public domain. And
23 again it links back to what we are going to discuss later and the legal advice that we've
24 had about how we manage documents.

1 A couple of other things. I want to just talk about evidence recovery. And
2 actually Julian has spoken to me separately about this. And I'm sure several of you
3 might have questions or queries. We've now written out to - [REDACTED] 17 organisations. I
4 think? It's growing by the day. 17 organisations, asking for their evidence. It will start
5 coming in quite swiftly. And obviously we'll be looking at putting that onto Huddle.

6 There's a lot of material already on Huddle. And I thought it would be good to
7 actually just catch up. Has there been time for anyone to look at Huddle? You had a
8 session with Jo and with Paul the last time we were together. Are you able to navigate
9 it? Is it useful? Julian has some questions and queries about it that I think will be
10 really helpful to discuss now because other people might have encountered the same
11 things. We are suddenly going to have a lot more evidence on there. You need to
12 know how to use the system and feel comfortable with the system. There's no point if
13 you're not. So I think if we could have five minutes on that, that would be grand.

14 CHAIR: Okay.

15 MS FEATHERSTONE: I've really struggled with it. And in fact I've had lots of emails
16 backwards and forwards with Jo even to get on it. But I'm on it now. But I am having
17 difficulty navigating around it. And I did just speak to [REDACTED] and we were going to try to
18 have a one-to-one at the next session because I am struggling with it. But I can get onto
19 it, and I've looked at the latest things that [REDACTED] has put on. But it's the...

20 MS McINTOSH: It's the earlier ones.

21 MS FEATHERSTONE: Yes.

22 MS McINTOSH: That's fine. If we can build time in for that, that would be great.

23 PROF WALTERS: I've got onto it, but we had a conversation earlier about - the question is,
24 what is relevant at this stage to actually look at? So we've had a discussion about

1 whether we could sort of flag 'this is something useful, if everyone could look at it',
2 rather than 'this is background information'. And then when we know what we're all
3 supposed to be looking at, to have it sort of steered. So I think I can get round it, but
4 there may be things in it that I don't know I don't know about.

5 [REDACTED] The notifications... they've got a standard spiel. But what I said was that
6 once we know who's looking at what, we can put it for specific people's attention. Or
7 if it is for everybody, then I will put that on, so that it makes it a bit more specific when
8 you get the email – so you'll know straight away whether it's something that you'll
9 need to look at or whether you can just delete it.

10 CHAIR: I think that will be really helpful.

11 MR BROOKES: Just some things with it... I get on it okay. It helps using Firefox. That
12 makes things a little bit easier. I do find at times though – you know you've got your
13 tabs on right-hand top, which has got all your files – if I click on that, I get nothing. So
14 that's one thing.

15 If I then think, oh I'll search, and I search on governance, I get every document
16 with the word 'governance' in it. And I can see on the front page all the new things that
17 have been put on and that you've put on, and I can click on those and they seem to
18 work. But I seem to have this thing in the middle, where I can't see the bit in between
19 that.

20 [REDACTED] So when you go into a workspace and you're clicking on files, it's not
21 bringing anything up. I mean some of them, to be fair, haven't got any files on there.

22 MR BROOKES: I'm just not finding anything in files at all.

23 [REDACTED] Right, okay.

24 MR BROOKES: So that's obviously been a problem. And I don't know if that's just me.

1 And it may just be something that I'm not doing right. I find the viewing panel really
2 difficult. And I asked that right away. I don't think there's much we can do about that,
3 is there?

4 [REDACTED] No, unfortunately that is—

5 MR BROOKES: Because it is quite small. And with my eyes, I'd like to have something a
6 little bit bigger. So can we transport those – from a governance point of view,
7 transporting documents out of there was something that I was really worried about
8 doing, so I haven't done. So understanding what we can and can't do about that –
9 because reading some of those documents is really quite hard just on the viewing page.

10 [REDACTED] The viewing pane is set, so we can't do anything about that, but we did check
11 with Huddle about downloading documents and whether it retains it on your hard drive
12 anywhere in a temporary file, and she said not. She said, 'If you do download a
13 document...' – because obviously you can view it a lot easier if you download it – once
14 you then click off it, it deletes it automatically, so there are no security issues there.

15 MR BROOKES: My only other thing was similar to what was just being said – it's about
16 tagging and about sophistication in terms of how we put stuff together. So having
17 everything I need to look at under 'governance' would be great, because I'd know
18 where to go. And tagging for 'this might be of interest to you' – as stuff starts coming
19 in, would be really, really helpful – because there is so much already on there, it would
20 take me a month to read it all. And, frankly, therefore, we've got to be very selective
21 about what we need to look at. And having as much signposting and support on that
22 would be really, really helpful.

23 CHAIR: Stewart?

24 PROF FORSYTH: I have managed to get onto it, and read what I think I should be reading.

1 A very basic thing: the green tick sign which sort of says 'read' or something – R-E-A-
2 D. Are you able to sort of use that to sort of click for your own reference that you've
3 read a document?

4 [REDACTED] That's a very good question and it's one I don't know the answer to, but I will
5 have a look and see.

6 PROF FORSYTH: It would be nice. Again, it's all just making it easier for us to target... so
7 if something comes in, if we've read it, ticked it. And I think that it will be important
8 to flag up 'this is a particularly important document for Julian or myself or Catherine or
9 somebody...' I see there's another two gone on this morning. By the time we get
10 home, there'll probably be more on. And so it would be helpful for people who are
11 putting these documents on to say 'this might be of particular interest to blah, blah,
12 blah' – particularly if we are then going to be reporting back at meetings and things like
13 that, we can say, well we've definitely read that document that was particularly flagged
14 up for our attention. All that, just so we're not all reading everything.

15 Apart from that, also, the symbol in the middle of my password means I've got
16 to copy it off my Word symbol and then paste it into the password, which is a bit—

17 [REDACTED] How very odd.

18 MR BROOKES: Can't you change the password?

19 MS FEATHERSTONE: This is why I think I might be in the wrong place entirely because I
20 just made up my own password.

21 MR BACON: I think the decision has now been taken to take that password off the
22 documents related to the police investigation, in view of all logging in to Huddle with
23 your user-specific passwords.

24 PROF FORSYTH: I don't know how I use it. I've got a password. So I put my name in, and

1 then another box comes up, and I put in [the password], and then I click that and I'm
2 off. So I don't have another password.

3 [REDACTED] That doesn't sound like the right log-in.

4 MR BACON: Let's take it offline. We'll arrange a phone call for one of us to talk you
5 through it.

6 [REDACTED] We'll sort it out, don't worry.

7 MR BROOKES: My suggestion is that we should move back to parchment and quills.

8 PROF FORSYTH: I thought I was doing quite well.

9 CHAIR: I think you're doing very well. I'm afraid I now have to admit that I have
10 completely let the side down because, as [REDACTED] knows – because she's got all the stats there
11 – I haven't logged on. I do know that I can use Huddle because I've used it before.
12 But, having said that, I really do need to make sure I can use this particular operational
13 panel.

14 MR BACON: And as a general offer to the panel, if somebody from the Secretariat needs to
15 come to you to sit with you for half a day to help you navigate for the early stages, and
16 show you where stuff is, then that would be a good use of our time because it's there to
17 help you to go through all of that information. And so we need to make it as
18 user-friendly for you as possible.

19 [REDACTED] There is actually, if you go onto it, there is a Huddle help. If you click on that
20 – and there is a number – because they obviously are far more experienced in it than we
21 are, and I would probably recommend that if you are really struggling, give them a call.
22 They are very, very helpful. And what they can do is, they can do a web-X with you, so
23 they can see what you can see. They did that with [REDACTED] and I because when we first—

24 MR BROOKES: That might be quite useful for me because I'm obviously doing something

1 wrong.

2 [REDACTED] That's probably the easiest way of doing it.

3 MS FEATHERSTONE: I don't think any of us are... We're all doing something very
4 different, aren't we?

5 [REDACTED] As much as I will come and sit with you and show you what I know, the
6 Huddle help people will probably know considerably more than I do.

7 CHAIR: Okay. That's very helpful feedback from everybody, thank you. And I promise to
8 try it out before the next meeting.

9 MS McINTOSH: And then while we're on evidence recovery, obviously all the organisations
10 – we've had a variety of responses back from them. Organisations like the CQC, we've
11 had the response which you'd expect, which is: 'Thanks for your letter. We'll meet the
12 deadline and we'll get you everything we've got.' A very sort of positive and ordered
13 response. Other organisations: 'Well, I don't know why you're asking for this' type of
14 thing. And we've politely gone back to them and said—

15 CHAIR: 'That's for us to say.'

16 MS McINTOSH: 'That's for the investigation to determine what we ask for.' There are a
17 couple of organisations who are facing difficulty. One is one arm of the Department of
18 Health. They've got the legacy material for the SHA and PCTs. They have a quarter of
19 a million files from all of the PCTs and SHAs. They have asked us if we can give them
20 some search terms. Now I know search terms, we discussed before Christmas, and Paul
21 and Jo have sat down and gone through and produced a very comprehensive list that we
22 are working through. The Trust would also find it helpful. And obviously, if all
23 organisations were using the same search terms that we had determined, it would be
24 good. So that's something that may well be sent out to you in the next few days, for

1 you just to – if you think anything needs to be added to that list – but we'll need a fast
2 turnaround on that because obviously they will want to have that to search.

3 One of the things that the Trust has raised with us – in the discussion I had last
4 week – is that, for example, the number of maternal and baby deaths in the period we're
5 looking at is something in the region of 195. Now, as I was discussing with the
6 Chairman yesterday, some of those deaths are – and you probably all know this – but
7 maternal deaths are recorded for a year after the date of birth. And some of those are
8 absolutely not at all related to the care that was delivered at the time the baby was born,
9 in pre- or ante-natal care. So only about 65 of them are actually SUIs. When it comes
10 to how many incidents have been recorded in the maternity and obstetrics field, we're
11 into thousands.

12 PROF FORSYTH: Thousands?

13 MS McINTOSH: Thousands.

14 CHAIR: Not serious. These are all incidents.

15 MS McINTOSH: Just incidents. In the period from 2004 through to 2013. At a period in
16 our terms of reference, there was a Gold Command, so they were reporting everything –
17 and reporting more than they would have reported previously. I think we have to be
18 pragmatic about that. They will give us everything that is on their maternity IT system.
19 There is no difficulty with them giving us information. The difficulty I think is in what
20 we are going to do with it and whether we can reasonably say we are going to look at it
21 all.

22 I may be speaking out of turn, but I think it is unreasonable to expect
23 everybody to be looking at thousands of cases. And I think it is logical, possibly, to just
24 do a random sampling of those in each of the years. We could choose which ones we

1 looked at. But I just wanted to have a conversation today with you about what you felt
2 was feasible and reasonable. They will give us that information. It's not a problem
3 with them giving us information; it's simply volume. And I think that's something we
4 need to be mindful of.

5 CHAIR: And I think a bit of background is that, having spent some time working with the
6 NPSA in its early years, you expect 10% of admissions to generate some sort of adverse
7 event. It's very, very large numbers. And the correct thing to encourage Trusts to do is
8 to report them. It's not to discourage reporting on the grounds that 'my word, those are
9 big numbers, there must be a problem there.'

10 Secondly, there's a load of evidence that what you get from the average Trust
11 is nearly all of the serious ones – because people recognise that it's serious and they
12 want to report it and do something about it. Vast numbers of very trivial ones – and the
13 more trivial the better, because nobody sees any problem in reporting lots of those – and
14 a big gap in the middle. You get a very bimodal distribution. Interestingly, from a sort
15 of learning experience point of view, those are probably the ones that you are most
16 interested in actually because they are the potential ones, the near misses, the things
17 where something might have gone wrong but didn't quite.

18 If it comes to doing some sort of sampling exercise – I agree that going
19 through 9,000 incidents is probably a waste of time – but if it comes to doing some sort
20 of sampling exercise, it would be interesting to see whether there are things that, with a
21 fresh pair of eyes, you might think should have been reported as serious – end up with
22 serious incidents that are in the kind of trivial incidents. And also just to check that
23 they are properly looking at – because I'm saying 'trivial', and even the sort of minor
24 slip or fall or something is something that you can learn from, but it's not very relevant

1 from our point of view, but you might just want to spend a few minutes making sure
2 that they are dealing with those appropriately as well. I think we can do that without it
3 being too burdensome, and I think it would be worth doing on that basis.

4 I certainly think that we ought to look at all of the maternal and neonatal
5 deaths, even if it's only to screen them. The first maternal death that I had as an
6 obstetrician was a lady who was involved in a road traffic accident. And therefore your
7 initial instinct is to say, 'Nothing to do with us, guvnor', but actually there was an issue
8 over whether she'd had unrecognised postnatal depression. So maybe it was a true,
9 related maternal death. So it might just be worth making sure that we've investigated
10 all of them from that point of view as well. Okay, that's enough from me. I'll shut up
11 for a bit and other people can...

12 MS FEATHERSTONE: No, I think you're right. Just looking at – if it was a slip or a fall –
13 what did they do? Because they can just be closed off quite quickly on Datix.
14 Obviously in 2000 there wasn't Datix, there was just a paper form of incidents. But it's
15 'what happened to them?' If it's reported, it's all well and good, but if you don't do
16 anything with it, or where it went along the line, which we might have difficulty finding
17 – and actually having thousands, that's quite good because I know how many we have a
18 month and we probably have 130 a month. But it is because we are much better at
19 reporting. So it would be interesting to see how they followed up those, definitely.

20 MR BROOKES: My only... From the work that the Patient Safety Agency did, is there any
21 tools to help us in being... in sampling, is what I mean? I'm just wondering because I'm
22 not an expert. I don't know what would be... It's about making sure that what we do is
23 robust in processing, in terms of... I totally accept we can't look at all of them. I think
24 you're absolutely right in terms of the categories you said we should look at. But in

1 terms of the others, we need a methodology – just to understand the methodology to
2 support that which is robust. That is what would be my only suggestion.

3 CHAIR: I don't know is the short answer, but we could ask, bearing in mind that the NPSA is
4 in the throes of being—

5 MS KNIGHT: The new team are quite helpful. I know the RCOG has worked with them to
6 get a sample of data, and they are able to provide to our specifications.

7 CHAIR: That sounds encouraging. We'd ask you to pursue that with them.

8 MR BROOKES: I just wouldn't want anyone challenging the methodology on which we've
9 come up with these conclusions.

10 CHAIR: Agreed.

11 PROF WALTERS: So the thousands, are they just for the maternity units?

12 MS McINTOSH: Yes.

13 PROF WALTERS: And are they graded red, amber, green?

14 MS McINTOSH: I don't know. I've just given numbers at the moment, so I'll find that out.

15 [REDACTED] Zero, one, two, three, I think.

16 PROF WALTERS: Something like that. And I suppose, within our questions, we'd want to
17 know 'Were they reported in trend format over the years?'

18 CHAIR: Yes.

19 PROF WALTERS: I think then it would give us the pointers or 'shall we just look at reds?'

20 If they reported them to show, you know, 'this is how many by division over time', then
21 some of the answers... the Trust might have already... So you're starting off with an
22 awful lot, but hopefully you're honing down... funnelling down at various different
23 levels.

24 PROF FORSYTH: I think it would be helpful to see the breakdown of these incidents. There

1 may be a category that is particularly off the scale, and you think, well what's going on
2 there? So I think at the moment, obviously, fine, let's see the data, let's have it broken
3 down into different categories. If, you know, frankly, there has been millions of
4 complaints about the car parking or something like that, then that's not within our
5 remit. But I think if there are real issues about communication or something like that,
6 then it would help us to decide where we are going to look particularly at.

7 MS McINTOSH: That's helpful. And then finally, one of the actions from the last meeting
8 was for a subgroup of this panel to go to Leicester to meet the Embrace team there.
9 And that happened on Friday. And I think it would be quite useful to have feedback
10 from that.

11 CHAIR: Stewart, Oonagh and I were there, and met with Liz Draper and David Field from
12 Leicester – who've got a fair amount of experience of doing confidential investigations.
13 They were very helpful. They offered to share with us a typical report that they'd done
14 in anonymised form, which was helpful, and gave us some background on some of the
15 key issues from their perspective.

16 I think there are a couple of issues for us to think about, under the headings of
17 (a) confidentially and anonymising reports. And the issue there is, if we do that, and if
18 we turn up some problems in an anonymised report – I mean, from their point of view
19 it's great that we then can't say to anybody who it was. From our perspective, we're
20 not an academic investigation and it's not quite so great that we can't tell anybody who
21 it was. We need to think carefully about that.

22 And the second is whether we look at controls, non-index cases as well, (a)
23 from within the Trust and (b) from other trusts as well – which introduced some really
24 interesting questions about 'What are the questions?' 'What is the point of doing that?'

1 And we need to be very clear about what it is.

2 I think that, with Stewart – if Stewart will agree with this – I think that (a) this
3 needs a little bit more time to consider, and (b) a discussion when Catherine is here as
4 well, and the rest of us – bearing in mind that it was Catherine’s concerns that kind of
5 kicked this off in the first place. It would just feel a bit more effective to have that
6 conversation when she’s there. And, in the meantime, I will set out those issues as
7 clearly as I can to try and focus that discussion. Would that be acceptable?

8 PROF FORSYTH: Yes. I think there is a sort of balance between doing a proper academic
9 exercise, which would require taking samples from other similar units, blind data and
10 whatever. And suddenly you find yourself getting involved in a huge process which we
11 felt would probably be beyond the remit of this group. And it also threw up all sorts of
12 other potential complications.

13 But at the same time, if we are going to be looking at the index cases of the
14 families who have complained, and we do say there is some substandard care, then
15 people are going to challenge us and say, ‘Well how does this compare with what is
16 happening elsewhere?’ And we are then left with this difficulty of trying to answer that
17 particular question.

18 I think that that is the dilemma that our group is faced with. And I think we do
19 need to have some further thoughts around that. And I think we’ve got to try and keep
20 it manageable. But there is a difficulty of – the family are claiming there has been
21 substandard care, we are going to be investigating it – if we actually feel that it is
22 substandard or not substandard, how are we actually going to justify that in terms of
23 evidence?

24 CHAIR: Okay. So we will come back to that one.

1 MS McINTOSH: I think that's everything.

2 CHAIR: Okay. Thank you. So the next item is number 4: Proposed dates for hearing
3 evidence.

4 MS McINTOSH: Yes, just a prod really. And Jenny has emailed... Jenny, yesterday,
5 emailed out some more dates. And it's a sort of thorny issue, isn't it, because everyone
6 is very busy, but we do need to carve out some time in diaries to actually put some
7 planning in. So it is a plea really that you will get back as swiftly as possible.

8 Obviously those dates will not be brilliant for everybody. This will be a
9 process that will have to continue. But we do need something quite swiftly. When we
10 come onto the concerns of the families, one of the things that they are concerned about
11 is that we have not communicated – we appear to not meet very often and not do very
12 much. That is just a concern. Now, obviously, in the initial stages, it is going to be like
13 that. It's understanding, isn't it. But this would also help us do planning and it will
14 help you with planning, so please get back. And for those who've got PAs, if they
15 could do the hassling, that would be grand.

16 CHAIR: Okay, thanks, Oonagh.

17 MR BROOKES: I still think there is some benefit in doing more than one day. So I just raise
18 that. By the time we've got up here, spent time... It goes really quickly. Having the
19 opportunity to work longer and to have some of the discussions about what we've
20 found and everything maybe over a two-day period, I think would be beneficial. That's
21 just my view.

22 CHAIR: I'm very open to that, but I'm also very careful that I don't want to place pressure on
23 people who might find that very difficult from the point of view of their day jobs and
24 their domestic arrangements. So please, be honest and let us know what you would

1 prefer to do, and we will try to accommodate the majority as well as we can. Thank
2 you. And 5 is you again, Oonagh: it's the management of material supplied.

3 MS McINTOSH: Yes. And this is something that we've been talking about. And Jonathan
4 had raised at the first meeting. And we've all mentioned it at subsequent meetings.
5 And, as you know, when we met last time, Bill and I were going to meet Council the
6 following day – I think the following day – to talk about the concerns that the Trust had
7 expressed about whether or not they could release material to us. And there are two –
8 we've got two documents here. A much shorter one, which I have to tell you is the
9 wording that was agreed by the solicitor and by Council, and obviously by the
10 Chairman, and that is wording that we have included in all of the letters that have gone
11 to the organisations asking for them to supply us with evidence. That is just so that you
12 are aware how we have phrased it, and that has been cleared.

13 And I have to say, there was a letter that came through late last night – a draft
14 letter came through from the Trust – who were the people who had the most concern –
15 and I haven't read it in complete detail, but I think they are content with our approach.
16 And it was they who were expressing the greatest concerns about releasing material. I
17 don't think that means we are out of the woods necessarily, but I think it's gone a long
18 way.

19 The second document that you've got in front of you is setting those words
20 into context of how the Investigation will actually manage its documents and will
21 manage – we've touched on this earlier – about what would be retained at the end of the
22 investigation and what will be shared with the Department and then become FOI-able
23 and will ultimately be placed in the public domain. And there's a reference here to the
24 documents – and you were saying, 'I'm nervous about running things off; I don't know

what I can and can't do' – and this actually gives some sort of guidelines to how the Panel can actually work freely and flexibly, but that we will retrieve everything at the end. And you must retain stuff – and even if it is your notepads and your scribbles, it doesn't really matter. It will be destroyed. It's not going to be placed anywhere. But we just need to make sure it happens and it happens in a manner to which we have said we are going to operate and comply with.

There is something there which is lost to reality. 'Stewart, I think' has gone into the letter to the organisations and is in the longer document, which is about – if we were a public enquiry and [redacted] were coming to give evidence, we would say to [redacted] 'We want you to look at these documents.' And we would send to [redacted] or to her legal representative or her trade union those documents that we needed her to see, and she would look at them. Now we are not resourced to do that. (a) We are not a public enquiry, but (b) we are not resourced to do it. And (c) when you are an independent investigation, you think independently, and you might decide to say, 'Well, can you tell me about this and can you tell me about that?' And actually those discussions... it sort of evolves while you're talking to somebody. It's not sort of pre-planned and calculated, which actually some of the work in a public inquiry can be.

We intend to say – we've told the organisations – that if the former chief exec is coming to give evidence and he wants to look at documents, then he goes to his former employer and he asks them to look at them. That's probably okay for the organisations where there's a sort of... they have less evidence and there's not as much volume. What the Trust have expressed, informally, a concern about is that if we write and say 'We want to interview [redacted] in respect of term of reference 4,' and she just looks at documents in respect of that, how does the Trust know that another organisation isn't

1 giving another witness access to all of their material and saying 'You can look at
2 whatever you want, and you just have a plough through it.'

3 What they are just concerned about it... Oh, another thing – we can control
4 this, but it is just an issue that has been raised – what other organisations can do, apart
5 from us being quite clear about why we want to question [REDACTED] and why we want [REDACTED] to
6 come and give evidence.

7 So I think it's just a thorny issue that the Trust will keep coming at us about
8 because – and one of the major things is that they've got a significant volume of
9 material, and also they will have, they think, a lot of witnesses, and they're not
10 resourced to do it. So they are understandable... They are justifiable concerns. But we
11 are definitely not resourced to do it.

12 We did initially think that it might be something that we might do. But
13 actually now, looking at the volume of material, we are just not resourced to do it. And
14 also not if we want to report in the time period that we are supposed to be reporting in.

15 CHAIR: But can I ask: what exactly is the Trust's concern that another organisation might
16 show somebody more information?

17 MS McINTOSH: Well, what they're saying... It's about confidentiality. It's not about
18 someone coming along to give evidence and being better informed about the subject.
19 It's about who redacts what. What should be taken out of documents? My view is that
20 that is a matter for them to discuss with their legal advisor, if they have a concern about
21 it. And if we decide to give a ruling on it, then that actually puts us in a very rigid
22 position really.

23 But they are concerned that people will have... If, for example, there is an
24 exchange between the Strategic Health Authority and there's the Trust, and the

1 Strategic Health Authority letter is copied within the Strategic Health Authority to lots
2 of people, within the Trust it might not have been. Now that's different manager
3 approaches...

4 MR BROOKES: I'm still trying... I'm struggling with what the problem is, to be honest. It's
5 exactly what's happened in previous ones. And also what happens routinely on FOIs –
6 it is the organisation's judgment that they are meeting the requirements of the Freedom
7 of Information Act. And sometimes they will make different judgments about what
8 they redact and what they don't redact.

9 I absolutely don't think we should be getting into it. So I'm not sure... Is it
10 because they feel that they are going to be wrong-footed? If the information is being
11 copied widely in a different organisation, it has been copied widely in a different
12 organisation. We're not generating that duplication; it's a fact. So I'm not sure why
13 that is a problem. I struggle a bit with that, I have to be honest.

14 CHAIR: That would support the line that we basically bat it back to them and say, 'It's your
15 judgment. You have to decide what to do. You're the data owner.'

16 MR BROOKES: Yes. 'You're the data owner. There's a Freedom of Information Act and
17 Data Act which you need to comply with. But there are areas of judgment on this and
18 some others may have taken a different judgment.'

19 MS McINTOSH: Do they run into some difficulty if, for example, a former employee, who
20 might have parted company with the Trust in less than amicable circumstances, doesn't
21 want to go to them and wants us to... And we won't even communicate via the Trust,
22 for example. We are hoping that the Trust will be the go-between to say, 'We'd like [REDACTED]
23 to come and give evidence on one of these three dates, could you contact [REDACTED]?' Now
24 there'll be some... But there are already people within the Trust – or former employees

1 of the Trust – who want to liaise directly with the Investigation, which is fine. In those
2 cases, do we show them the evidence or do we still send them a letter?

3 CHAIR: I think we have to say, 'If you want to see the evidence, the Trust is the data owner
4 and you need to go to them.'

5 MS McINTOSH: Okay, that's fine. That's really helpful.

6 MR BROOKES: Yes. They need to go to the data owner.

7 PROF FORSYTH: But I think we need to be aware that the Trust might be resistant or
8 selective in the information. I think the Trust will be trying to protect itself and a bit
9 concerned about former employees – whether it's a locum doctor who was there or a
10 midwife or a manager – and what they might say. Speaking from a little bit of
11 experience of me getting called to the NMC about some matter – our Trust has been
12 quite sort of cautious as to how much information I should have. And I'm saying, 'Well
13 look, surely it's better that I have information about something that happened years ago,
14 than to sort of go and talk about something off the top of my head, which is incorrect.'
15 But Trusts suddenly get very protective in these situations. I'm just worried about this.

16 CHAIR: I hope that we've communicated the message that defensiveness on the part of the
17 Trust is a very, very unhelpful strategy for them. But maybe we haven't. But it does
18 seem to me that if somebody did come along to answer some questions from the Panel
19 and said, 'Well I could tell you that, but unfortunately the Trust won't let me look at the
20 information', then we would have a legitimate reason to go... Well (a) it would tell
21 you something, and (b) it gives us a legitimate reason to go back to the Trust and say,
22 'You need to be more cooperative with this.'

23 MR BROOKES: I agree.

24 PROF FORSYTH: I think when we are interviewing those witnesses, we need to challenge

1 them on that: 'Have you got all the information from the Trust to answer the
2 questions?'

3 CHAIR: Yes. I think that's fair enough. I don't think, in all fairness, that this issue is likely
4 to arise in the context of a former medic or midwife. I think it's more likely to arise in
5 the context of a former general manager, for example.

6 MR BROOKES: Yes. That's true.

7 MS McINTOSH: Or a current more junior member of staff who might have to have... they
8 might have to do redaction in-house, and that's the labour-intensive bit, isn't it. It's not
9 an issue for the Investigation. Okay.

10 CHAIR: Okay. We've half an hour so we need to move on.

11 MR BROOKES: Sorry, can I just ask a very brief question? The definition of working
12 papers, is this around FOI? Because it's a working paper, you can't... You have a
13 defence in law to actually [inaudible].

14 CHAIR: Yes, that's correct.

15 MS McINTOSH: It would be helpful, if you have any questions on the second, the longer
16 paper, that you come back to me by the end of the week. But otherwise, we'll take that
17 as kind of... as the Investigation's approach. Thank you, Bill.

18 CHAIR: Item 6 is about the questions that have been raised relatively recently. And I hope
19 that you will have had a chance to have a look at paper 3.4 about this. This really arose
20 from a sequence of contacts by email and telephone on Friday afternoon and Saturday.
21 It was clear that there had been some conversations leading up to those emails and
22 telephone calls, and that some of those had involved at least one journalist. And I think
23 that that – well I don't want to comment on that, other than to say that I think that is a
24 relevant point when we think about the origin of all of this.

1 And it seems to me that there were two or three key issues. One was the
2 general theme of the independence of the Panel, and the fact that we all have some sort
3 of health service, NHS, whatever background, and that there wasn't anybody on the
4 Panel who was outside that particular kind of background. Could they ask that a
5 representative attend for the families? Could they be a member of the Panel? Could
6 they attend meetings? My response to that is that we have always said that families
7 might not want to attend themselves and might find it difficult to attend. I think that's
8 become evident as we've had the first two or three meetings. And we'd said from the
9 outset that they could send an agreed representative. I don't think that that could
10 realistically be a member of the press. If they could give a convincing guarantee that
11 they were there purely in a private capacity and guaranteed that they were not there as a
12 member of the press, then possibly, although I think it would be difficult to accept that
13 as convincing.

14 MR BROOKES: Absolutely.

15 CHAIR: Part of the difficulty – apart from finding it difficult to be convinced by that
16 guarantee – is that if you open it up to one member of the press, you have to open it up
17 to all of them. We cannot have exclusive access or we would get into all kinds of hot
18 water and difficulties from the point of view of public accountability.

19 And once we do that, we're a public enquiry, *de facto*. Staff will all have to be
20 legally represented. We need to be legally represented. It all turns into a Robert
21 Francis type of full public enquiry, which we've discussed with them previously. We
22 all, I think, understand and agree the reasons why that is not what we want and it is not
23 what they want.

24 The position at the moment on that one is that they are, I believe, mostly

1 satisfied with the explanation and the assurance that they can have a representative,
2 with one reservation, which is: 'Can we identify one representative of all of the families
3 and, if so, can we reimburse (a) their time, and (b) their travel expenses?' And I have
4 said that I am confident that we could reimburse their travel expenses. I'm less
5 confident that we could reimburse their time. But we could consider it if they would
6 put forward somebody and let us know what the arrangements would be. I would take
7 it under consideration.

8 I should have started out by saying – I apologise to you all that my judgment
9 was that we were so close to a boycott of the process and effectively a walk-out by
10 family members over Friday night, Saturday morning, that I've taken Chairman's action
11 on some of these things. So to some extent, I'm looking to you to either say, 'Why did
12 you do that? I don't agree' or 'Yes, that's all right with us', in discussing it with you
13 this morning. So that's where we are on that one. Shall I pause there and ask whether
14 anybody has any...?

15 MR BROOKES: I'm surprised, given our conversations with the families, that this has come
16 back in this way. And I'm just trying to understand why they've changed their mind. Is
17 it because they have been talking externally with other people and this has raised the
18 consideration? It seems likely.

19 We were very open – in fact we went much further, Bill, didn't we, than you
20 probably would in an independent investigation to actually ensure that the families were
21 comfortable with the process, were comfortable with the terms of reference – and we
22 shared that with them before we started it. To start changing now is difficult, I think.

23 I wrote some little notes on the note that came round. I said, first of all, in
24 terms of independence, there is a need for independence but there's also a need for

1 expert knowledge. And where are you going to get your expert knowledge from? It is
2 going to be people who are practising in health care. And because we have a National
3 Health Service, it is invariable that they are going to be part of the National Health
4 Service. So I think they need to be clear and understand that.

5 There are a number of us who are not in the NHS, though we do have
6 experience. And we are all here because of the experience we have. I think you can't
7 have it both ways. To have a group who don't have the clinical and professional
8 expertise that's required, who have no NHS experience, I think is really difficult –
9 unless you're going overseas for it, and then that's very... So I think there is a balance
10 there that they need to be thinking about.

11 As to an additional person, I was a little ambivalent about that because, as you
12 say, we gave the offer of representative or representatives to be there for the families. I
13 think when we talked to the families at the time, we talked about legal representatives.
14 So particularly for those who had legal outstanding cases, if their solicitor wanted to
15 come on their behalf. We certainly were very clear that we didn't want press in the
16 room. I was thinking about who might be acceptable and things like the Patients
17 Association – an independent person came up as a possibility. I wouldn't want to
18 necessarily go down that route at this stage. And, as you say, you've already gone back
19 to them and are seeing if they can come up with somebody, well, that's fine.

20 CHAIR: Let me just be clear: that was as an attender at the meetings, rather than as a Panel
21 member.

22 MR BROOKES: Exactly. And again, that's what I was saying: I think they need to be an
23 observer and not a member of the panel. And they are just assuring the families that we
24 are doing the following due process, sticking to our terms of reference, and proceeding

1 with the investigation in a professional manner.

2 CHAIR: Yes.

3 MR BROOKES: So I said that one as well. My other comment was about – I don't know if
4 you want to do this one separately, but it was about the police element of this.

5 CHAIR: Yes, I was going to come onto that.

6 MR BROOKES: I've got a comment on it.

7 CHAIR: Okay, thank you. Anybody else on the first part?

8 PROF FORSYTH: Yes. I think it's a really important issue. If we lose the confidence of the
9 families at this stage, we're in trouble. And I think, as Chair, you are quite right to try
10 and take immediate action to get control of this situation. What we now need to decide
11 is: what can we do to try to retain the confidence of the families?

12 What has happened is not an unusual scenario. You've seen it many times
13 when you discuss with patients and relatives. You've had a good discussion and then
14 they go off and then of course they speak to their postman or anyone, and it's 'that's not
15 right', and suddenly all these things happen. And I think, you know, the journalists'
16 role in the background here is very suspicious. I agree entirely: we should certainly not
17 be having a journalist sitting round here, because why would you have a journalist? For
18 one reason at all – for them to go and tell the story at a later date, at some point.

19 MR BROOKES: Absolutely.

20 PROF FORSYTH: And so what can we do? The families themselves in a way have to take
21 some sort of sense of responsibility here to help this process. They have been advised
22 that they can come and sit in. And clearly it's difficult for them to come. And even if
23 they were actually – I was just wondering if maybe they could even organise a rota. If
24 we give them – here are the dates of all the meetings – can they just, amongst

1 themselves, collectively work out a rota to come. Just so that at least they are keeping
2 in contact. Because I think the worry is: if they're not having contact, then they are
3 beginning to think 'well I wonder what is going on', and people are talking to them –
4 and so we're losing that sort of link, which I think is a key part of the whole process.
5 And somehow we do need to try and see the families – and whether it's at least
6 once-a-month or something like that – yourself as Chair or whatever went to Barrow
7 and spoke to them – I think it's really important that we maintain the link with the
8 families because we're just going to get the bad press every now and then coming
9 along... And then if they are unhappy with what comes out at the end of the day, then
10 we have failed as a Panel.

11 I just feel this is important. Having someone – and I don't think we should
12 need them as a member of the Panel – likewise, if they particularly wanted an observer
13 to come in, then as long as we felt this seemed a reasonable person, then I think that
14 would be all right. But we still need to try and maintain links with the families.

15 CHAIR: I absolutely agree with that. Two things, if I can. One is: I have offered that I
16 would go and speak to them in Barrow – or wherever they found convenient – if they
17 had any issues at all. I would rather do that than find myself copied in on the tail-end of
18 an increasingly escalated email. And I've said specifically that I could do that at their
19 request, and I would do that when we were at the period when our findings were
20 beginning to emerge, so that they had some idea of what the findings were.

21 The second thing I think it's worth just mentioning is that – we've touched a
22 couple of times on what kind of external influences in all of this process, but I do think
23 it is worth also saying that one or two people had, quite understandably, taken rather
24 hard the ombudsman's report – on the grounds that, on one level it was pretty

1 hard-hitting and identified some serious criticisms – but then appeared to go nowhere.
2 What happens next? People felt let down, I think, by that. And I think that had a
3 significant role that... the question was posed: 'Well isn't our Investigation just going
4 to be exactly the same?'

5 PROF FORSYTH: I think it's really important for us to keep thinking 'What are their
6 expectations?' You can see clearly that they are wanting their stories to be believed and
7 so we need to make a decision 'Do we believe their stories?' They want to know who
8 are culpable for the tragedies. They want to see action taken on those individuals.
9 They are wanting an unreserved apology from the Trust and probably some of the wider
10 agencies involved. And, fifthly, yes, they are maybe wanting some compensation. That
11 is what they are wanting. And I think, from my—

12 CHAIR: And, sixthly, they want to see that the need for service improvements has been
13 taken seriously and that something has happened as a result of their tragedies.

14 PROF FORSYTH: I think we've got to be seen to be at least exploring each of these
15 questions fairly intensely. Because we may not necessarily agree – we might not find
16 evidence to support all of these, but we will need to justify that at the end of the day. I
17 agree, I think we do need to say 'Is there a question of staff being disciplined, etc?' It
18 needs to be raised and in a report. And we need, as a group, to come up with a
19 conclusion on that. Because if we sort of gloss over that, then yes, I think we will just
20 be sort of signed off as another failed Investigation.

21 We really need to be keeping a very close eye on these key issues that the
22 families are wanting addressed, and not get carried away with some of the wider issues.

23 [There is agreement from around the table]

24 CHAIR: Agreed. Thank you, Stewart.

1 MS FEATHERSTONE: Can I just ask...? We talk about 'some families'. How many are
2 we talking about? That was the other thing. Are we talking about all the families – or
3 the families that we heard? I wasn't at that meeting then. How many? Who are we
4 talking about?

5 CHAIR: That's a really good question. People who were authoring emails would be three
6 families, one of whom was taking a more conciliatory line. But there were other people
7 copied in on it, so you never really know who's actually behind this. It doesn't come in
8 the form of a petition; it is an almost unconnected series of emails.

9 MS FEATHERSTONE: That makes it even more – and I absolutely agree with everything
10 you say – but it's just, you know, well the Panel then are seen to be just doing it from
11 one person's view and it's very difficult to do it on that...

12 PROF FORSYTH: That's true.

13 CHAIR: I would say that it would certainly be described as having gained some traction over
14 Friday evening, Saturday morning.

15 MS FEATHERSTONE: And it will just snowball actually from now anyway.

16 CHAIR: I think that's right. I mean, hopefully not. Hopefully we've contained the process.

17 MS FEATHERSTONE: But gathering the more... Once the advert has gone out, they will
18 gather more families within their sort of...

19 CHAIR: That's possible, yes.

20 PROF WALTERS: I think we definitely should ask them who they would like to come on.

21 The jury is out for me whether you sort of slightly tie their hands by just saying they can
22 observe but they can't do anything else. I'm not convinced about that. Because I think
23 we've got to try to be agreeing with their request. And I think the journalist one is quite
24 easy to fend off because you could say, 'Well here's somebody that stands to make

1 personal gain out of coming here and actually we can't have that.' And I think
2 suggesting 'Isn't there someone like the Patients Association...?' or presumably, if it
3 was a legal representative, they'd have to pay them. Unless we were going to pay them.

4 CHAIR: That's what they were asking.

5 PROF WALTERS: So I think that's a possibility. And I just wonder whether yours and
6 Stewart's six questions, whether we should actually circulate those to them – along the
7 lines of perhaps in the notes of the meeting. 'This is where the panel were discussing
8 what they felt would be a reasonable outcome. These were some of the things.'

9 Because I think you're right. You've sort of got to contain this, but actually
10 we can't contain it by seeming to make the process more rigid.

11 CHAIR: Yes, I agree with that. I think that the question of full Panel membership is quite a
12 big one, not least because we would have to bring somebody up to speed and get them
13 integrated into the Panel's way of working, in the way that we are all learning to do. I
14 think it would set us back. I think that would be quite difficult.

15 PROF WALTERS: I think if it was a legal representative, it wouldn't matter quite so much.

16 MS McINTOSH: I think it would matter... Whether the Department would be willing to pay
17 for that person's time, I think is.... I think they would probably baulk at it, to be
18 honest.

19 CHAIR: I think if it was a legal representative, I don't think there's any way we could do that
20 because it would push the expenses off the scale.

21 PROF WALTERS: Yes. It might be easier than having to do another inquiry if this one
22 didn't...

23 CHAIR: You could always make a business case.

24 MR BROOKES: The crux of this, as I've said, is about the confidence of the families

1 without compromising what we are trying to do. And I think the suggestion to go and
2 speak to them again and the offers you've made is excellent and absolutely the right
3 thing. And to have offers of routine communication with them, so that they're not
4 mulling about things and things become escalated through misinterpreted emails –
5 which is easily done as it trails through – and then they think this is actually the case,
6 when actually it was only a speculation in the first place. And, Bill, you've been really
7 good at keeping in contact with them. But that offer is really important, I think.

8 PROF FORSYTH: And I think the face-to-face bit is really important as well.

9 MR BROOKES: Absolutely.

10 PROF FORSYTH: I think, when you get into exchanging emails—

11 CHAIR: Yes, it's very difficult, which is why I say, you know, 'Phone me on Saturday
12 morning...'

13 PROF WALTERS: Is there a sort of [INCA-type?] person, an independent advocate?

14 Because I think the problem with saying, you know, 'You can come as often as you
15 like' – I don't think that ticks the box because I don't think they necessarily understand
16 everything that is going on. And I think this is why they want someone else.

17 CHAIR: At the moment the offer is there: (a) for me to go and talk to them, but (b) you come
18 back with somebody who you would regard as an accredited observer, and we will do
19 what we can to make that happen. So if we kind of formalise that offer and wait and
20 see what they come back with, we can see at that stage.

21 There are a couple of other issues. I paused at that point. I think, hopefully,
22 this one is relatively easy and disposed of. We talked about offering anonymity to some
23 of the families who were concerned about their own family members not being
24 identified as linked with Morecambe Bay. Unfortunately that has been misinterpreted

1 at some point that staff would be able to come and give interviews anonymously. And I
2 simply said, no, there was no intention to offer that to staff.

3 MR BROOKES: But I do agree with the suggestion that we have some sort of witness
4 management protocol.

5 CHAIR: I think that's right. And I suppose the possibility does exist that somebody who
6 we're all unaware of at this stage could come forward and say, 'I'll be a whistleblower,
7 but I'll only do it on the grounds that I can be anonymised.' And we would have to take
8 that under consideration. But on the grounds that...

9 MR BROOKES: Case by case.

10 CHAIR: ...that you reserve the right to deal with that. I think, other than that, we simply
11 wouldn't do it. Okay, thank you. And what was the last one? Oh yes, the police
12 investigation. One family member was told a couple of weeks ago that the police
13 investigation was not – or the Crown Prosecution Service, to be accurate – had said that
14 they hadn't established enough evidence to prosecute for corporate manslaughter. And
15 understandably was very disappointed with that decision. And critical of the police
16 investigation that it had ended up with that outcome. And asked whether we would be
17 able to investigate the police's investigation under our terms of reference. And I said,
18 'It's a really important question. I'm not sure that we can, but we need to give it proper
19 investigation and we owe you a formal response.'

20 Since then, having written a couple of very critical emails to his contacts at the
21 police, he's then said, 'Look I'm sorry...' – I'm paraphrasing wildly here, but – 'I shot
22 from the hip there, and I understand that you were doing all that you could. However
23 disappointed I am with the outcome, you know, I don't think that I am really criticising
24 your process.'

1 However, I don't want to just go 'oh well that's all right then, that lets us off
2 the hook of can we do this or not' because I do think, having raised the question, he
3 deserves a proper answer to the question. And I think you've sort of made some quiet
4 investigations about all of this. My concern is that not only is it not within the terms of
5 reference, but actually it wouldn't have been within the Secretary of State for Health's
6 powers to be able to include it within the terms of reference, and that the police would
7 be naturally resistant to any notion that, even if it were within their powers, that we
8 would have the expertise to do it. Can you add to that?

9 MS McINTOSH: Yes. The only one that the Department has – it was a public inquiry and it
10 was the Shipman Inquiry. The Shipman Inquiry was commissioned by the Secretary of
11 State for Health and the Secretary of State for Home Affairs, so they were empowered
12 to look at the police investigation. The Secretary of State for Health wouldn't give
13 those powers.

14 But also, I think, we need to just be quite certain what the mechanism is within
15 the police community for peer review. I mean the police have indicated informally to
16 us – and we're hoping to establish more formally – that they anticipate that they will be
17 scrutinised by another force because it's just been a two and a half year investigation
18 and that would be standard practice. So any criticisms will come from sort of an
19 independent review by a different force, but within the police community. So that's
20 something we're just trying to resolve, and we should find that out in the next week.

21 MR BROOKES: My view is very clear on this one. I have written on the note: There are
22 police complaints procedures which are the proper route for individual and other
23 families dissatisfied with the police investigations. I don't believe we have the powers
24 or the capacity to do this. That's my view.

1 CHAIR: Exactly. I think that summarises my view precisely too, Julian, thank you. Shall we
2 just enquire of them when the review process will be? And then we'll respond along
3 those lines. But I think Julian's point about there being an independent police
4 complaints process – it's rather in disrepute at the minute, but that is the proper
5 mechanism.

6 MR BROOKES: Because we can't judge the Crown Prosecution's assessment of the
7 evidence. We are not capable of doing that. We're not lawyers. But there is a police
8 complaints procedure and commission for doing those kinds of things. And that really
9 would be the most appropriate way of dealing with that.

10 PROF FORSYTH: And there's the situation where the police may hold information that
11 might help our inquiry.

12 MR BROOKES: But I thought they had already given us—

13 MS McINTOSH: They've already—

14 PROF FORSYTH: So we've got all the information—

15 MR BROOKES: Yes.

16 CHAIR: They've been very cooperative in passing the information—

17 MS McINTOSH: Simply because they recognised that their investigation was much more
18 tight and didn't have the scope that ours has, but they happen to have gathered
19 information on the way that actually is relevant to our terms of reference – it wasn't
20 relevant to theirs – so they've shared all the material with us.

21 CHAIR: Okay. Does that complete item 6 then? [Agreed] That's been very helpful. So far,
22 nobody has said 'you've got that wrong', so thank you for that, I appreciate that. We
23 need to be quite quick here because we've got people coming to collect us in about 25
24 minutes, I think. Can you do this next item in five minutes or should we break and

1 have sandwiches? What would you prefer?

2 MS KNIGHT: I think it will be less than five minutes.

3 CHAIR: Okay. In that case, I'm going to crack on with Item 7. Thank you.

4 MS KNIGHT: You've got this all in your packs, and you can see this, so I will flick through
5 this – but you've also got colour copies.

6 [Referring to the computer screen images] This is really just a bit more
7 contextual information and a first example of the type of analysis that I'll be able to
8 take forward over the next few weeks, and some of the background information about
9 the population served by the Trust, etc, which might be useful for your visits this
10 afternoon.

11 We'll start with the maternal demographics. Last time, I presented the overall
12 population demographics – stuff that was already published. I've now got access to the
13 HES data, so I've focused specifically on women delivering in the Trust and during the
14 period of Investigation. And for all of these slides, I'll first present the Trust versus the
15 national rates, and then I'll look at the two sides within the Trust on the following
16 slides.

17 This is firstly for maternal age at the Trust and at national level. And you can
18 see a fairly similar breakdown by the age categories. There are slightly more teenage
19 pregnancies and slightly fewer women aged 35 or over, but we're not talking huge
20 differences.

21 CHAIR: That pretty much fits with the socio-demographic profile of Barrow and the
22 surrounding area, doesn't it?

23 MS KNIGHT: Yes. This is the whole Trust, so of Barrow and...

24 CHAIR: Okay.

1 MS KNIGHT: But if we look at the difference—

2 CHAIR: It's slightly more deprived, as a population, than the national average.

3 MS KNIGHT: Yes. And I've got measures of deprivation coming later. This is...

4 CHAIR: Sorry. Sometimes my public health hat won't go away. I apologise.

5 MS KNIGHT: So this is then Furness General Hospital compared with the Royal Lancaster
6 Infirmary, and there are slightly more teenage pregnancies and fewer older mothers at
7 Furness compared with the Royal Lancaster.

8 Ethnicity, you will see a huge difference here between the Trust's ethnic
9 breakdown and the national means. 97% white within the Trust compared with 78%
10 nationally. And the largest ethnic minority group is Asian, but that's under 2%.

11 CHAIR: Rather more in the index cases.

12 MS KNIGHT: Yes.

13 CHAIR: Just an observation.

14 MS KNIGHT: This is then Furness General compared with Royal Lancaster. 98% at Furness
15 – white – compared with 96%. As you were saying, it's surprising for a major town
16 with a university.

17 MS McINTOSH: Lancaster hasn't had any impact on the figures at all really.

18 MS KNIGHT: Socioeconomic deprivation – and this is measured using the index of multiple
19 deprivation, which takes into account the various factors. I think eight different factors,
20 including income. There are a larger proportion of women delivering within the Trust
21 that fall into this sort of middle... These are quintiles of the least deprived and the
22 most deprived at this end. You can see, at the Trust there are less women in either
23 extreme compared with the national level. Most women fall within these middle three
24 quintiles. But there are some big differences between Furness General and the Royal

1 Lancaster. 3% of women are in the top quintile in Furness General compared with
2 12 in Royal Lancaster and many more... 60% in total are in the two most deprived
3 categories. So that concludes the demographic information.

4 The other thing which I've been able to look at so far in HEZ is 'Mode of
5 delivery'. It is work I started, for the last Panel meeting. I've now honed in on the
6 unassisted delivery rate. The reason for that is that, well, a few of the families
7 mentioned that the midwives were sort of reluctant to intervene or to call an
8 obstetrician to perform an assisted delivery or rush a woman for a caesarean if she'd
9 had a prolonged labour. So I thought it might be interesting just to look at what
10 proportion of deliveries had no form of assistance.

11 This is just for 2010, and I will do a time series eventually, but 2010 had the
12 best data quality to allow me to start with this and to risk adjust the factors that might
13 explain the unassisted delivery rate. These are funnel plots, which you may well be
14 familiar with already – and forgive me if I'm telling you things you already know –
15 but—

16 MR BROOKES: No.

17 MS KNIGHT: You might be able to see it better in your pack. The solid line running through
18 the middle of the funnel is the national mean. Each dot is a trust for this – and then I'll
19 show you the hospital level in the next plots. I've highlighted the Trust's position here.
20 What the funnel shows you is what is expected due to chance alone. We always expect
21 some variation around the mean. And you expect more variation in smaller trusts than
22 you do in larger trusts, hence the funnel shape. So any trust outside the outer funnel has
23 more variation – either higher or lower – than would be expected based on chance
24 alone.

1 You'd normally expect only about one in 20 hospitals to be outside the inner
2 funnel, and one in 500 to be outside the outer funnel.

3 CHAIR: That is clearly not the case for—

4 MS KNIGHT: So this is a measure which has a lot of natural variation.

5 CHAIR: It's what you call an 'uncontrolled process' in a Deming terminology, isn't it.

6 MS KNIGHT: Yes. Because you've got very large sample sizes, there is sort of over
7 dispersion around – to use statistical... This is unadjusted data, and Morecambe Bay
8 came 41st out of 138 NHS trusts. And it's all on the funnel, so it doesn't have more
9 variation than expected. When you take into account its case mix and the clinical risk
10 factors for women delivering there, you can see it actually moves up.

11 CHAIR: That's interesting.

12 MS KNIGHT: Whereas the majority of Trusts move into the funnel once you take into
13 account these things, Morecambe Bay has moved outside the funnel and become 10th
14 out of 138 trusts for this measure – so it has a higher rate of unassisted delivery than
15 you would expect, based on chance alone, and given its population. So controlled for
16 the following factors: age, ethnicity, deprivation, parity, plurality – whether it's a
17 multiple or single birth – the presentation of the foetus – if it's breached or cephalic –
18 gestational age, birth weight, hypertension, diabetes, pre-eclampsia, placenta praevia,
19 placenta abruption, pelvic abnormality or disproportion, and fluid volume – so
20 oligohydramnios or polyhydramnios. And that's the same for...

21 CHAIR: That's pretty much obstetrics, really, isn't it.

22 PROF WALTERS: Would somewhere in there be co-located MLU?

23 MS KNIGHT: This is the whole trusts, so some of them...

24 PROF WALTERS: Because if you had gotten MLU, you would expect that to generate more

1 unassisted, wouldn't you? Because the argument is, you know, if you have an MLU,
2 then you are likely to have a reduced section rate just because... You'd be the expert
3 on this.

4 MS FEATHERSTONE: Yes. You would expect that, but I don't... It's not co-located
5 though, is it?

6 PROF WALTERS: No, I meant within the Trust.

7 MS KNIGHT: This is within the Trust. The next ones I'll show you are just looking at
8 Furness General and Lancaster – only looking at obstetric units, which may have—

9 CHAIR: If that argument affected a whole Trust though, you would have to assume that
10 people who in another-- no, you would have to assume that people who had a delivery
11 in a midwife-led unit in that Trust, who would otherwise have moved outside the Trust.
12 If it's a question of which unit within the Trust they deliver in, and more of the low-
13 risk ones go to, in this case, Kendal, and more of the high-risk ones go to Barrow and
14 Lancaster, it's not going to affect the overall Trust figures. It would only be if they
15 moved in or out of the Trust, for that reason.

16 PROF WALTERS: Well I think there is an argument that it does because if you have an
17 MLU then there is less propensity to resort to assisted delivery. So the idea is, if you've
18 got an MLU, your unassisteds will be higher than those same women—

19 CHAIR: Even risk adjusted? Because it shouldn't be.

20 MS KNIGHT: But you'd only expect low-risk women to be eligible to deliver in an MLU.

21 CHAIR: The risk adjustment should sort that.

22 PROF WALTERS: You're the obstetrician, I'm not. But the argument that I've heard is that
23 – because I've said, 'Well, surely, if you get women coming into a unit, some of them
24 will be unassisted, some of them will not, and it doesn't matter which stream they are

1 in, if they are just, you know, in a unit.' Whereas the argument is: you'll get less
2 propensity to resort to an assisted delivery if you have a separate—

3 CHAIR: Yes, okay, I understand. It's a slightly different argument. It's saying that, for the
4 same case, you have a greater chance of instrumental delivery or assisted delivery in a
5 consultant-led unit and a lower chance in a midwife-led unit.

6 MS KNIGHT: Which is what the birthplace studies showed: that you are less likely to have
7 an intervention if you are in a midwifery-led unit than—

8 CHAIR: The issue there though is: what is the right level of intervention?

9 PROF WALTERS: Absolutely. I'm just wondering – I'm just trying to think of what might
10 explain – which is not in the risk factors.

11 PROF FORSYTH: It may be quite interesting to... I mean, I think that's a question that
12 some people might ask – are you comparing like with like? And therefore doing a
13 similar analysis, but only including maternity units that have-- You're about to show us
14 that, are you?

15 PROF WALTERS: I think in the next slide, this explains it better.

16 MS KNIGHT: Yes. So this is at the hospital level. So three midwifery units are excluded.
17 These are only units which have an obstetric unit and have more than a thousand
18 deliveries a year. And, incidentally, Furness General is the smallest obstetric unit in the
19 country. It's got around a thousand deliveries. There are no obstetric units which have
20 fewer...

21 CHAIR: There might be obstetric units that have fewer who are excluded because they don't
22 hit a thousand though. Might there be?

23 MS KNIGHT: Well the next biggest one had 400. That was Bournemouth. And I don't think
24 it's an obstetric unit at Bournemouth because they all go to...

1 CHAIR: What happened to Berwick and to Hexham? Hexham used to have about 900?

2 MS KNIGHT: Is it still...?

3 CHAIR: Do you know, you might be right. I'm a dinosaur, I'm sorry, ignore me.

4 PROF WALTERS: So what this suggests is then that there is a higher rate which can't be
5 explained.

6 MS KNIGHT: Yes. If we just skip to the... This is unadjusted. And then once it's adjusted,
7 both Trusts are sort of hovering on the funnel. Furness is 15th out of 165 trusts. And
8 the Royal Lancaster is 23rd out of 165 trusts. So they have higher unassisted delivery
9 rates, but I don't want to draw conclusions from this. This is just the first example of
10 the type of analysis.

11 CHAIR: I mean most of these kinds of analyses, they are kind of analogous to screening
12 tests, aren't they? They pose interesting questions. They don't necessarily give you
13 distinctive answers. There might be things for us to look at.

14 MR BROOKES: Because the questions are: are the right ones being unassisted?

15 CHAIR: Exactly. That's fascinating. Thank you very much.

16 MS KNIGHT: In your packs, you've also got a map of the areas served by the Trust. I can't
17 remember if I told you last time about the neonatal provision within the units, but in
18 Furness General it's a neonatal level 1 with five beds. In this hospital there is neonatal
19 unit level 2 with 10 beds. And double the number of births here compared with
20 Furness. And then you've got two other tables showing the services provided –
21 antenatally and delivery, and then post-natally as well. So you can do a side by side
22 comparison.

23 CHAIR: The one thing I'll say about that map – that some of us will get the opportunity to
24 verify – is that it's not such a long distance as the crow flies, but my word does it take a

1 long time to go. And that's also relevant. You might wonder why Furness doesn't
2 have any links with Whitehaven. The only sensible way to travel between Whitehaven
3 and Barrow is to go east to the M6, which is the blue line that goes down through
4 Penrith, south, and then back out west again to Barrow. Having tried on a couple of
5 occasions to drive down the coast from Whitehaven to Barrow, it's an all-day job.

6 MS KNIGHT: Maybe one thing to draw your attention to on the last page, the landscape
7 table, is the full-time equivalent midwives. The RCN recommends one midwife for
8 every 28 births. When they did the calculations for Furness, combining the midwives
9 and the community midwives, they did have... they were meeting approximately that
10 recommendation. Whereas actually at Royal Lancaster, they had less midwives than
11 you would expect for a Trust which actually has twice the number of deliveries. They
12 don't have twice the number of midwives.

13 CHAIR: Okay. Thank you. That's really helpful. Any quick questions on that?

14 PROF FORSYTH: My only comment actually is: staffing. It's a major... It's a continuing
15 battle for them. I think that is going to come up as an explanation for some of the
16 differences.

17 CHAIR: We're going to have a quick look at Lancaster. And can I emphasise that it ought to
18 be a quick look. It's not a major focus. But (b), it's got the propensity to knock us right
19 off timetable if we let it overrun. When we go to Kendal or to Barrow, as the case may
20 be – I've said this before, but can I just re-stress that we are there to look at current
21 services. And even if people try to raise issues with you about what's happened in the
22 past and about the Investigation and all the rest of it, please resist them.

23 The reason for that is two-fold. One, we have a proper process to look at all of
24 those things, and informal discussions in cars or around coffee tables is not a part of

1 that. But secondly, of course, because we are going to look at clinical areas, we've had
2 to say to family members, 'I'm sorry but on this occasion you can't accompany us', and
3 therefore we really mustn't get into any discussions about the past.

4 Okay. We would very much value your feedback from the two looks at
5 current services, so as soon as you can let us have that it would be appreciated.

6 MR BROOKES: So I'm meeting with the executive board and Jonathan is joining us—

7 MS McINTOSH: It's the Chief Exec, the Chairman, and two of the three—

8 MR BROOKES: I just wanted to be clear because that's slightly different. We're not looking
9 at existing services, as such.

10 CHAIR: You're looking at existing clinical governance though.

11 MR BROOKES: Yes, exactly.

12 MS McINTOSH: Yes, procedures.

13 MR BROOKES: So it's about that – it's about a discussion about what they are currently...

14 Are they presenting to us or is it just an open discussion?

15 MS McINTOSH: It's an informal discussion. We have stressed across the—

16 CHAIR: I think you'll find they'll want to present – they usually do.

17 MR BROOKES: That's what I expected, yes.

18 PROF FORSYTH: They're clearly going to be referring to the recent Care Quality
19 Commission—

20 MR BROOKES: I'm sure they will. Well, the good bit and the bad bit. I looked at a local
21 paper while we were having breakfast this morning. Have you seen that?

22 MS McINTOSH: No. I don't know the results about—

23 MR BROOKES: Well that was just saying that they had been given notice on Ward 39 about
24 staffing levels. But also that they were confident... The CQC say that the maternity

1 services had improved, which... I thought they were being visited in February.

2 MS McINTOSH: They are. It is part of their inspection. We will find out more about that
3 when we go—

4 PROF FORSYTH: Yes. An impromptu visit...

5 [Everyone talks at once]

6 PROF WALTERS: Was it one of Mike Richard's visits or was it...?

7 PROF FORSYTH: Because he is actually employed by the CQC.

8 PROF WALTERS: Well they are, but I wondered if they were running one of the new
9 reviews on some previous review.

10 MR BROOKES: Because they've put them formally on notice, I'm not sure if that is part of
11 Mike's processes. I don't know. We can find out.

12 CHAIR: Okay. And the last thing for me to say on the agenda is the date and venue of the
13 next meeting. The date and venue of the next meeting is the 13th February at the Park
14 Hotel in Preston again, so back to the normal venue. And I must apologise that, owing
15 to events mostly beyond my control, I'm not going to be able to be there. I've asked
16 Julian if he would chair the meeting – not least because he met the families in the first
17 place with me, and I think that's an important bit of continuity from that point of view.
18 So, apologies.

19 [The meeting concluded at 12.42pm]

Evidence gathering process

1. The following interested organisations (*interested to the Investigation*) were contacted to provide evidence to the Investigation on either the 3rd or 6th of January. They were requested to provide the evidence with 21 working days of the date of the letter. Therefore, evidence should be with the Investigation by the first week of February.
 - The University Hospitals of Morecambe Bay NHS Foundation Trust (the Trust)
 - The Department of Health (in its role as a Department of State responsible for setting national policy and separately in its role as the legacy body for the abolished organisation such as the Strategic Health Authority and Primary Care Trusts)
 - Patients and relatives treated at the Trust
 - Cumbria Constabulary
 - HM Coroner for South and East Cumbria
 - Monitor
 - NHS Cumbria Clinical Commissioning Group
 - NHS England
 - NHS Lancashire North Clinical Commissioning Group
 - Public Health England
 - The Care Quality Commission
 - The General Medical Council
 - The Health and Safety Executive
 - The NHS Litigation Authority
 - The Nursing and Midwifery Council
 - The Parliamentary and Health Service Ombudsman

Evidence has been requested in either searchable PDF format, or as Word or Excel documents.

2. The aim is to load evidence onto Huddle as soon as practicable after receipt, and Panel members will be notified by email when uploads are completed.
3. The Investigation has received feedback from some of the interested organisations:

CQC – identifying and locating evidence to meet timescale. Evidence requirement set out clearly.

Monitor – actively progressing the information requests, but querying why the Investigation wants to see financial reports provided to them by the Trust. They also question why the Investigation wants to see a record of Monitor's actions in responses to, and any subsequent actions taken by the Trust following delivery of Monitor's review of the Trust's application for FT status (April 2010), October 2010. They consider it would be better to review KPMG's Internal Audit report entitled 'Learnings and Implications from UHMB NHSFT' as re-issued on 12th July 2012. We have requested they include this as part of their response to the request for evidence. We have also indicated that it is the Chairman's decision what evidence he requests.

DH – have queried why two letters were sent to the Permanent Secretary – whilst acknowledging they are seeking different evidence. We have clarified the requirements back to them and indicated some search terms, which include:

- Morecambe Bay + University Hospitals Morecambe Bay (UHMB)
- Furness General Hospital + Furness maternity + Furness SCBU/special care baby unit
- Royal Lancaster Infirmary + Royal Lancaster maternity + Royal Lancaster SCBU/ special care baby unit
- Westmoreland General Hospital + maternity
- Queen Victoria Hospital
- Ulverston Community Hospital
- Cumbria TPCT
- North Lancashire PCT (+Morecambe Bay PCT, Fylde PCT and Wyre PCT
- NHS North West SHA

THE MORECAMBE BAY INVESTIGATION

MANAGEMENT OF MATERIAL AND/OR DOCUMENTS SUPPLIED TO THE INVESTIGATION

A number of organisations and individuals will be approached to supply material and/or documents to the Morecambe Bay Investigation (the Investigation).

Material and/or documents may also be supplied independently to the Investigation.

Every effort will be made to provide organisations and individuals who supply material and/or documents to the Investigation with a receipt. Material received anonymously cannot be receipted but its delivery must be recorded.

Receipts for materials and/or documents supplied to the Investigation will be prepared by the Investigation's Documents and Evidence Manager or by the Assistant Documents and Evidence Manager. Each receipt will be signed by either of those post holders and will be witnessed by a representative of the supplying organisation who must be content that the terms of the receipt accurately records the documents and/or materials they have deposited with the Investigation.

A log will be maintained of all material supplied to the Investigation and evidence will be assigned a unique reference number (URN). The Documents and Evidence Management Team are responsible for ensuring that the name and contact details of the provider of material/documents will be retained on a central register to assist the repatriation of evidence at the end of the Investigation.

Material sought by and supplied to the Morecambe Bay Investigation from interested organisations and the families of those involved will be viewed and accessed by Investigation staff and the Investigation Panel only. All of these staff will view the material via a secure internet based database to which access will be controlled by the Documents and Evidence Management Team.

All documents stored on the Investigation's evidence database will be deleted when the Investigation's work is concluded and the database will be closed.

All Investigation personnel, including Panel members, are required to sign and adhere to the terms of a confidentiality undertaking.

Material and/or documents supplied to the Investigation will be collected from, or derived from, official files that are the property of interested organisations and/or individuals and will be considered by the Investigation as "working papers".

Working papers will be either returned to the relevant interested organisation/family at the end of the Investigation or destroyed by the Investigation and a record of all destruction will be retained.

Material and/or documents supplied to and considered by the Investigation will not be provided or shown to any witness in advance of their attendance, by the Investigation.

Witnesses will be advised in advance of their attendance what specific topics or areas the Panel wish to ask them about and which of the Investigations specific term(s) of reference they are being invited to provide evidence in respect of.

Should any witness wish to be reacquainted with any material and/or document(s) prior to attending the Investigation for an interview or to give evidence, they will be advised by the Investigation to liaise with their employer, or former employer, to make any necessary arrangements for them to undertake any such preparation.

A record will be retained of all material and/or documents that were supplied to the Investigation and that were subsequently returned to the interested organisation or relative, or were destroyed.

All administrative logs and records regarding documents and evidence management by the Investigation will be placed in the Departmental Records Office.

EVIDENCE GATHERED BY THE INVESTIGATION

Where the Investigation has gathered evidence, such as the transcripts of public meetings, Panel meetings and/or interviews with witnesses, statements submitted by interested organisations and individuals and/or any summaries of evidence agreed between the Investigation and any individual, these will become part of the Investigation's formal record and will be placed in the Departmental Record Office at the end of the Investigation.

Prior to any transcripts of the Investigation's public meetings, Panel meetings and/or interviews with witnesses, statements submitted by interested organisations and individuals and/or any summaries of evidence agreed between the Investigation and any individual being prepared as the formal record of the Investigation, they will redacted in accordance with any requests for anonymity that the Chairman has considered and permitted during the lifespan of the Investigation and will be placed in the Departmental Record Office.

Details of the sources of material and/or documents supplied to or obtained by the Investigation and the relevant assurance and governance processes adopted and applied will form part of the formal record of the Investigation.

Drafts of the Investigation Report will be retained until the final proof reading has taken place and printed version of the Report is received by the Investigation. Once the Report is presented to the Secretary of State for Health and published all draft versions of the Report will be destroyed.

The management of the production of the Investigation's Report and the destruction of all earlier versions will be the responsibility of the Investigation Secretary. A record will be retained of the administrative processes undertaken to produce the Investigation Report and a record will be retained of the destruction of all draft versions of the Report.

All notes made by Investigation staff and Panel members during Panel Meetings, evidence sessions and whilst undertaking their work for the Investigation, will be retained until the Report is finalised. These papers will then be submitted to the Investigation Secretary. Once the Investigation Report is presented to the Secretary of State and published, they will be destroyed.

DRAFT PARAGRAPHS REGARDING DOCUMENT MANAGEMENT BY THE MORECAMBE BAY INVESTIGATION TO BE INCLUDED IN THE LETTER TO INTERESTED ORGANISATIONS COMMISSIONING EVIDENCE

“The Investigation recognises that the Trust will need to know how material it is being asked to provide to the Investigation will be managed. It will therefore be helpful for you to know that material sought by and supplied to the Morecambe Bay Investigation from interested organisations and the families of those involved will be viewed and accessed by Investigation staff and the Investigation Panel only.

All Investigation staff, including the Panel, will view the material via a secure internet based database to which access will be controlled by the Investigation’s Documents and Evidence Management Team and all Investigation personnel, including Panel members, are required to sign and adhere to the terms of a confidentiality undertaking.

Material and/or documents supplied to the Investigation will be collected from, or derived from, official files that are the property of interested organisations and/or individuals and will be considered by the Investigation as “working papers”.

Working papers will be either returned to the relevant interested organisation/family at the end of the Investigation or destroyed by the Investigation and a record of all document destruction will be retained.

Material and/or documents supplied to and considered by the Investigation will not be provided or shown to any witness in advance of their attendance, by the Investigation. Witnesses will be advised in advance of their attendance what specific topics or areas the Panel wish to ask them about and which of the Investigations specific term(s) of reference they are being invited to provide evidence in respect of.

Should any witness wish to be reacquainted with any material and/or document(s) prior to attending the Investigation for an interview or to give evidence, they will be advised by the Investigation to liaise with their employer, or former employer, to make any necessary arrangements for them to undertake any such preparation.”

PANEL RESPONSE TO QUERIES RAISED BY THE FAMILIES ON PROCEDURAL MATTERS

Independence of the Panel\exclusion of the media

Background

As the Morecambe Bay Investigation has been established as an independent body, the Chairman determined how the Investigation would proceed. Following discussions with the families prior to the terms of reference being announced to Parliament, and to reduce the intrusion that relatives would face when providing and hearing evidence, it was agreed, that the media would not be invited to attend Panel Meetings or oral evidence sessions. Only the families are invited to attend Panel discussions.

Information regarding Panel Meetings and interviews would be placed on the Investigation website.

The Chairman appointed a Panel of independent advisors to assist him address the Investigation's terms of reference.

Issue

Some families have questioned how independent the Panel can be as many are still employed by, or engaged in, the NHS and there is, in their view, no truly independent Panel Member. As families have work and domestic commitments, and the Investigation meets in Preston, it is not always possible for families to attend Panel Meetings.

One family has asked if A N Other could be appointed to the Panel to increase their confidence in its independence.

Another family has asked that an independent observer – perhaps a respected journalist - attend all Panel Meetings on their behalf.

The Investigation Chairman has replied to this family as follows:

"I would also say that I have been happy from the outset to extend the invitation to attend panel meetings and interviews to an agreed representative where families found it difficult to attend personally. This would not apply to a member of the press, unless they could give a convincing guarantee that they would act purely in a private capacity, for reasons that I hope will be clear."

Risks

Altering the membership of the Panel at this stage would have an impact on its effectiveness.

The Investigation could be placed in a difficult position if it responded favourably to these requests and it were approached, on a separate matter, at a later date with a request to alter its

approach and was unwilling or unable to respond in a manner that met the requirements of the questioner. The Panel could be seen to be inconsistent and favouring one party over another if it does not adopt a consistent approach.

If the Investigation were to agree to a selected member of the Press being present, fellow journalists could judicially review the Secretary of State's decision to hold an independent Investigation and may demand a Public Inquiry.

In addition the Investigation has been explicit in seeking to manage communications to ensure that there is less opportunity to pre-empt or pre-judge the evidence and emerging findings and the confidence of the Panel – and crucially of witnesses – might be eroded if they were advised a member of the press were present.

The families may “vote with their feet” and decide that they have lost confidence in the Investigation.

Suggested approaches

At the first Panel Meeting the Chairman emphasised the need for the Panel to act, and be seen to act, independently and emphasised the role Professor Montgomery has in ensuring that there is peer review and scrutiny of the Investigation's decision making process.

The Chairman has offered to meet the families to discuss their concerns if they would consider this to be helpful. Any such discussion could help identify A N Other who may be a suitable independent representative for the families.

Panel action required

The Panel are asked for their views and to agree an appropriate response.

Confidentiality

Background

The Chairman made the decision, prior to the publication of the Method Statement, that the Investigation would offer families anonymity if that enabled them to share their experiences and help the Investigation address its terms of reference. Thus far the Panel have not discussed the management of the witness programme and this will be a matter that will be considered then.

Issue

The Investigation was approached last week regarding a call from a journalist who was apparently writing an article on the Investigation and its approach to confidentiality. The journalist had, erroneously, assumed that the Investigation had already made a decision that staff at the Trust would be granted blanket anonymity when giving evidence.

Some of the families have expressed concerns that the Investigation would, rather like the PHSO, reach the same conclusions that no one individual was responsible and that NHS staff

would continue to be what they perceive as “protected” by a cloak of anonymity and have asked the Chairman what his views are.

In response to a question about confidentiality, asked at the public meeting on 1st November 2013, the Chairman stated

“There may be some things that people want to say to the Panel in confidence and they are not prepared to discuss it otherwise and we would have to take a view on that. We do that on a case-by-case basis. I mean, you know, I am aware that there are some families who are very concerned about their relative not being identified, for example.

We have to be very careful to make sure that if that was the case we could comply with that. I am not suggesting that is a way for staff or managers to hide evidence because we would not accept it in those circumstances, but I think there are legitimate reasons why some people might want to be able to say information is confidential to us.”

In response to the most recent urgent request, the Chairman has replied to the families as follows:

“I am happy to clarify that we offered anonymity only to protect those families who wished their account to remain anonymous, and I have no intention of extending this to NHS staff past or present.”

Risk

The Investigation may expect serving NHS staff to provide evidence by name as their names may already be in the public domain (public appointments, named on the Trust website, name provided to the public when a “named midwife” for an expectant mother), however some staff may consider this to be less favourable treatment than the families have been afforded and may challenge the decision through their Trade Union or using legal procedures.

Suggested approach

The Investigation should develop a witness management protocol and the Panel agree this.

As the Investigation does not have any legal powers, any decision about anonymity would first need to be agreed by the Panel and then considered by the Investigation’s legal advisor.

The Investigation should consider any queries raised by the interested organisations when the witness management protocol is shared with them.

Panel action required

The Panel are asked for their views and to agree an appropriate response at this stage in the Investigation’s proceedings.

Police investigation

Background

The Investigation was advised by James Titcombe that Cumbria Constabulary are not proceeding with legal action against the Trust, or anyone employed or formerly employed, at the Trust regarding the death of Joshua. The Health and Safety Executive are still considering whether they should take any legal action.

James Titcombe has asked the Investigation if it will include the handling of the police investigation (Operation Scarf) in the scope of its terms of reference.

Terms of reference

1. To review the outcomes for mothers and babies that occurred during this time, including maternal and neonatal deaths that occurred in the Trust and in any other institutions to which patients were transferred;
2. To review the Trust Board's actions and governance procedures in response to untoward incidents such as the deaths of mothers and babies, including:
 - a) The Board's processes for responding to serious untoward incidents (SUIs); and
 - b) The relationship and communication between the Trust and
 - Patients and families
 - GPs and community ante-natal midwifery services
 - Commissioners, predominantly in the two local PCTs, Cumbria PCT and North Lancashire PCT, their predecessor PCTs, and successor CCGs
 - The North West Strategic Health Authority
 - Regulators – including Monitor, CQC, and the Healthcare Commission.
 - Public Health services
 - Other Trusts where mothers and babies were transferred
 - Any other relevant organisations.
 - c) Relevant investigations published by the Parliamentary and Health Service Ombudsman.
3. To review the Trust Board's responses to, and any subsequent actions taken following receipt of, the following reports:
 - Monitor's review of the Trust's application for FT status (April 2010), October 2010
 - The Fielding Report, August 2010
 - Central Manchester University Hospital Diagnostic Review, December 2011
 - PWC Governance Review, February 2012
 - Gold Command Stocktake, April 2012
 - Care Quality Commission (CQC) Investigation Report, July 2012
 - Nursing and Midwifery Council (NMC) Review, July 2012;
 - The NHS Litigation Authority's Clinical Negligence Scheme for Trusts (CNST) reports

4. To make findings as to the adequacy of the actions taken at the time by the Trust to mitigate concerns over safety;
5. In light of this, to assess and make findings as to the Trust's ability to discharge its duties in delivering maternity services; and
6. To make recommendations on the lessons to be learned for both the Trust and the wider NHS to secure the delivery of high quality care.

Risks

Whilst the terms of reference could be interpreted as affording the opportunity to consider the police investigation (in respect of the Trust's responsibilities when it becomes aware of sub-standard care being delivered and when it is appropriate to involve external organisations in its management of such cases), the Investigation does not currently have the resources or technical expertise to assess police procedures.

Suggested approach

The Investigation is establishing, from Cumbria Constabulary, what the standard procedure is for review by another force of the approach and conduct of the investigating force – and will update the Panel with this information.

Panel action required

The Panel are asked for their initial views and to agree an appropriate response at this stage in the Investigation's proceedings.