

GENERAL MEDICAL COUNCIL

FITNESS TO PRACTISE PANEL

**(applying the General Medical Council's Preliminary Proceedings
and Professional Conduct Committee (Procedure Rules) 1988)**

On:
Monday 23 July 2007

Held at:
St James's Buildings
79 Oxford Street
Manchester M1 6FQ

Case of:

DAVID PATRICK SOUTHALL MB BS 1971 Lond

Registration No: 1491739

(Review)

Panel Members:

Dr F Wilson (Chairman)

Mr S Burton

Dr G Hanlon

Ms E Cunningham (Legal Assessor)

MS A FOSTER, Counsel, instructed by Hempsons, Solicitors, appeared on behalf of the
doctor, who was present.

MR R TYSON, Counsel, instructed by Field Fisher Waterhouse, Solicitors, appeared on
behalf of the General Medical Council.

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A

THE CHAIRMAN: Good morning. We are to review the case of Dr David Patrick Southall. As you may be aware, the GMC has reformed its Fitness to Practise procedures. These changes took effect on 1 November 2004. The transitional arrangements for cases such as this are that the Committee will now be called a Fitness to Practise Panel, but will operate under the old Preliminary Proceedings Committee and Professional Conduct Committee Procedure Rules 1988.

B

The Fitness to Practise Panel will convene in order to consider the case of Dr David Patrick Southall. Dr Southall is present at today's hearing and is represented by Ms Alison Foster, Counsel, instructed by Hempsons Solicitors, Mr Richard Tyson, Counsel, instructed by Field Fisher Waterhouse, Solicitors, represents the General Medical Council. The Legal Assessor is Miss Esther Cunningham.

C

THE CHAIRMAN: Doctor, you have been before a Panel before, so you know the layout of the room. I will introduce you to the people who are present. *(The Chairman explained the layout of the room).*

D

Dr Southall, I am going to ask you to stand and to confirm who you are. If you would kindly stand and confirm that you are David Patrick Southall?

DR SOUTHALL: I confirm that.

E

THE CHAIRMAN: I do not think there is any need for you to stand all the way through the next part of the proceedings. I am going to ask the Secretary to the Panel to remind the Panel of the charges which were previously proved against you.

F

THE SECRETARY TO THE PANEL: That being registered under the Medical Act:

1. In November 1999 Sally Clark was convicted of the murder of two of her children, Christopher and Harry Clark.

G

2. On about 27 April 2000 you watched the "Dispatches" programme about the Sally Clark case that was broadcast on Channel 4 television that night.

3. As a result of information gleaned during your watching of the programme, on the next day you contacted the Child Protection Unit of the Staffordshire Police to voice your concerns about how the abuse to Christopher and Harry Clark had, in fact, occurred.

H

A

4. As a result of such contact, on 2 June you met Detective Inspector Gardner of the Cheshire Constabulary, the senior investigating officer into the deaths of Christopher and Harry Clark, and in effect told him that, as a result of watching the programme, you considered that:

B

a. Stephen Clark, Sally Clark's husband, had deliberately suffocated his son, Christopher Clark, at a hotel prior to his eventual death.

b. Stephen Clark was thus implicated in the deaths of both Christopher and Harry Clark.

C

c. There was thus concern over Stephen Clark's access to, and the safety of, the Clarks' third child, Child A.

5. At the time of meeting Detective Inspector Gardner, you:

D

a. Were not connected with the case.

b. Made it clear that you were acting in your capacity as a consultant paediatrician with considerable experience of life threatening child abuse.

E

c. Were suspended from your duties by your employers, the North Staffordshire Hospital NHS Trust ("the Trust").

d. Knew that it was an agreed term of the Trust's enquiries that led to such suspension that you would not undertake new outside child protection work without prior permission of the Acting Medical Director of the Trust.

F

e. Had not sought permission of the Acting Medical Director prior to contacting the Child Protection Unit of the Staffordshire Police and meeting with Detective Inspector Gardner.

G

f. Relied on the contents of the "Dispatches" television programme as the principal factual source for your concerns.

g. Had a theory about the case, as set out in Head 4 above, that you presented as fact as underpinned by your own research.

H

6. Your actions as described in Heads 3 and/or 4 and/or 5 were:

A

- a. Precipitate.
- b. Irresponsible.
- c. An abuse of your professional position.

B

7. On 30 August 2000 you produced a report on the Clark family at the request of Forshaws, Solicitors.

a. At the time that you produced your report you:

i. Did not have any access to the case papers, including any medical records, laboratory investigations, post-mortem records, medical reports or x-rays.

C

ii. Had not interviewed either Stephen or Sally Clark.

b. Your report concluded that:

D

i. It was extremely likely if not certain that Mr Clark had suffocated Christopher in the hotel room.

ii. You remained convinced the third child of the Clark family, Child A, was unsafe in the hands of Mr Clark.

E

c. Your report implied that Mr Clark was responsible for the deaths of his two eldest children, Christopher and Harry.

d. Your report was thus based on a theory that you had about the case that you presented as fact as underpinned by your own research.

F

e. Your report declared that its contents were true and may be used in a court of law whereas it contained matters, the truth of which you could not have known or did not know.

f. Your report contained no caveat to the effect that its conclusions were based upon very limited information about the case held by you.

G

g. When given the opportunity to place such a caveat in your report you declined, by faxed e-mail dated 11 September 2000, on the basis that, even without all the evidence being made available to you, it was likely beyond reasonable doubt that Mr Clark was responsible for the deaths of his two other children.

H

A

8. Your actions as described in Head 7 above were individually and/or collectively:

B

- a. Inappropriate.
- b. Irresponsible.
- c. Misleading, and
- d. An abuse of your professional position.

C

THE CHAIRMAN: Thank you. I am now going to ask Mr Tyson, on behalf of the General Medical Council, to remind the Panel of the circumstances which led to the previous decision, the doctor's previous history and to present any oral or documentary evidence he may wish to adduce about the doctor's conduct since the last hearing.

D

Mr Tyson, the Panel have a bundle, which goes up to page 11. I understand that you may wish to give us further documentation at this point. It would be helpful if you do so. You may wish us to adjourn for a short period to read it.

E

MR TYSON: Madam, there is a bundle, which has been prepared by the General Medical Council, who are responsible for preparing the bundle in this case, not – can I add, for the sake of the record – those instructing me. That bundle was only finalised on Friday. It is now available and I will be: (a) asking for it to be called C1 and, (b) asking that you read it before I make my opening. It does contain a number of important documents.

F

In addition to that, there are some documents to be added to it. I do not know whether you have actually physically got the bundle.

G

THE CHAIRMAN: If you can give us an idea of its size and length, we will be able to get some idea of how long we will need to consider.

H

MR TYSON: 75 pages.

THE CHAIRMAN: Do you wish us to have the further documents at this point? You mentioned some other documents to be added.

MR TYSON: Yes. I do not know the state of them, whether they can be put in.

A

THE CHAIRMAN: Have they been seen by the Legal Assessor?

B

THE LEGAL ASSESSOR: No.

THE CHAIRMAN: Has the Defence been able to consider them?

C

MS FOSTER: Madam, not through the fault of my friend, I saw the bundle in its form by e-mail last night at nine-thirty. This morning I had a bundle handed to me shortly after I arrived. We are content that it contains what the index tells us it contains. I have no observations on its contents.

D

THE CHAIRMAN: It is unusual for the Legal Assessor not to have had everything.
Can we just clarify, when we are talking about the bundle, does this include the additional documents?

E

MR TYSON: Yes. You have had what I call "the yellows". There is an additional bundle. There is a bundle of documents of 75 pages, which I am going to ask you to read. As I understand it, it is not yet in a form to be given to you because it is about to be hole-punched and filed by the GMC staff. Before you get it, there are going to be four additional documents put in it. The practical arrangements of that will take about five minutes before you physically get a bundle. I would anticipate it would take you about half-an-hour to read.

F

THE CHAIRMAN: Very briefly, before I come to the Legal Assessor, the document of 75 pages, which you have seen this morning, have you also seen the four additional documents?

G

MS FOSTER: Yes. Madam, it is my understanding that it will reach 75 pages when the additions are made. I have been handed what, I think, are those extra pages. I am sure they will be as my friend has described them. I believe that I have copies.

H

THE CHAIRMAN: Legal Assessor?

THE LEGAL ASSESSOR: I would just like to say that it is most inappropriate for the Legal Assessor not to have the documentation beforehand. My job as being an independent is to advise the Panel and if I am in the dark then it is very difficult for me to actually advise the Panel appropriately.

MR TYSON: I accept the Legal Assessor's observations. I

A

feel uncomfortable when she is looking at me, telling me about those observations, because it is not the fault of neither myself nor my instructing solicitors that you have not had the bundle. I accept that you should have had it.

B

THE CHAIRMAN: I am sure the Panel will wish to receive these documents and consider them. I am slightly uncomfortable with receiving these documents without the Legal Assessor having already had a chance to scan them. I think, once we have the documents, we will adjourn for half-an-hour in order to achieve those two things. I would like the Legal Assessor to very briefly consider the bundle before the Panel does, only just to ensure that there is not any material which should not come before the Panel. I think at the moment we are waiting for the technical aspects of putting the bundle together. I am going to invite the Panel to adjourn at this point.

C

D

MS FOSTER: Madam, there are two things: The first is of housekeeping. If it is of assistance to you and your Legal Assessor, there is no point that I would take on the contents of the documents. The second point is this, which may inform your reading, Dr Southall is pleased to tell the GMC this morning that he freely accepts a continuation of the conditions as drafted on his practice for a further period of 12 months. We understand from correspondence with the GMC it is such a decision that they would be urging upon you today. I would wish you to know that before you go into your reading exercise and your consideration. I would also accept, necessarily, a further review at the end of those 12 months.

E

F

THE CHAIRMAN: Thank you. I am sure the Legal Assessor would be reminding me, even if I were not reminding myself, that that sort of decision is a decision for the Panel notwithstanding the views of all the representatives.

MS FOSTER: Madam, with respect, she would be entirely right to do so.

G

THE CHAIRMAN: I will now invite the Panel to adjourn so that we may receive and consider the documents that are just being bundled together at the back. I suggest we aim to reconvene at quarter-past ten. If we have not already managed to consider the documents then, obviously, we may need a little longer. Are you content with that?

H

MS FOSTER: Yes.

A

THE CHAIRMAN: We will now adjourn until quarter-past ten.

(The Panel adjourned for a short time)

B

THE CHAIRMAN: Thank you very much for your patience. Mr Tyson, we have now read the entire bundle that you sent us. Just on one aspect of the bundle, on page 73, we wanted to check that we were absolutely correct, that there is a short paragraph which has been taken out of the copy?

MR TYSON: Madam, that is correct.

C

THE CHAIRMAN: Thank you very much. Having interrupted or forestalled your opening while we received this document, would you now like to proceed with your opening?

D

MR TYSON: Madam, before I do that, can I apologise on behalf of the General Medical Council for any difficulties that you and your fellow Panellists and also the Legal Assessor have had due to the none delivery of the bundle in a sensible time. I do apologise for that on behalf of my clients.

THE CHAIRMAN: Thank you very much.

E

MR TYSON: Madam, this is a resumed hearing, ordered to be heard, not by the original Professional Conduct Committee, who heard this case over nine days in June and August of 2004, but the fact that this matter had to come back for a resumed hearing was, in fact, ordered by Mr Justice Collins in a subsequent appeal.

F

First, to assist us all, can I take you to the procedure to be applied in this case, which is an old Rules case, by virtue of the transitional provisions? Could I take you to old Rule 40, please?

G

THE CHAIRMAN: I wonder if you can assist us by pointing us to where it is in our folder? If you actually know?

H

MR TYSON: Madam, I am afraid I am not familiar with your folder.

THE CHAIRMAN: It is behind tab C, page 24 of 38. It is headed, "Procedure at a resumed hearing".

MR TYSON: Madam, that is correct. Can I read out sub-Rule 1?

A

“Subject to the provisions of Rule 39, at the meeting at which the proceedings are resumed, the Chairman of the Committee shall first invite the solicitor...”

i.e. me.

B

“...to recall, for the information of the Committee, the position in which the case stands.”

That is what I start by doing. If I can take you to sub-Rule 3:

“The Committee may:

C

(a) hear any other party to the proceedings.”

D

Can I indicate that this was originally a complaint case under the old Rules and there was a complainant who I represented, which was Mr Stephen Clark, who was the husband of Mrs Sally Clark. If I can add now that I will say in more detail later that Mr Clark has been consulted about this matter and the submissions that I make on behalf of the Council I also make, as it were, on his behalf. He concurs with the submissions as to the outcome of these events that I am going to make.

E

Firstly, under sub-Rule 1, you have to hear the position in which the case now stands, so I tell you about the original case. Secondly, under 3(b) you may hear:

“...such further oral or documentary evidence in relation to the case, or as to the conduct of the practitioner since the previous hearing, as they think fit.”

F

THE CHAIRMAN: Can I just interrupt you for a moment? One of the members of the public seems to be using a device. There is a notice outside which asks you please not to use any electronic equipment. If you have business within the building then it would be more appropriate to be doing that outside here. I would ask you to switch your device off during the hearing, please? Mr Tyson, I am sorry to interrupt you. Can I just remind everyone that there is no recording of proceedings during these proceedings and neither should they be transmitted or broadcast during the hearing.

G

MR TYSON: Firstly, under sub-Rule 1 you are told about the original hearing, if I can put it that way. Secondly, under sub-Rule 3(b) you can hear about events in the public domain that have happened since.

H

A

Madam, you then go into what you do under Rule 42:

THE CHAIRMAN: We have that in front of us.

MR TYSON: Your task then under Rule 42(1) is:

B

“If at the previous hearing the Committee had directed that the registration of the practitioner should be subject to conditions, the Committee shall first judge whether the practitioner has failed to comply with any of the requirements imposed on him.”

C

Effectively, whether there has been a breach or not. Can I say straight away, that it is not alleged on behalf of the Council that this practitioner has been in breach.

In those circumstances, you then come to sub-Rule 2, which judge what you should do.

D

2(a) says:

“If the Committee judge that the practitioner has not so failed...”

We say that is the area we are in.

E

“...to comply they shall then consider and determine whether:

(i) to revoke the direction made at the previous hearing, that the registration of the practitioner be subject to conditions ---; or

F

(ii) to vary the conditions imposed under the direction made at the previous hearing
---; or

(iii) to make no further direction.”

G

Then sub-Rule 2(b) is the default position, if I can put it that way.

“If the Committee determine not to revoke the direction or vary the condition or conditions imposed at the previous hearing, or to allow the case to conclude as aforesaid, they shall...”

H

Madam, I underline the word “shall” as being mandatory.

A

“...proceed to impose a further period of conditional registration and shall consider and decide the nature of the conditions and the further period not exceeding 12 months...”

B

Pausing there. Under the old Rules you could only go for a resumed for 12 months rather than three years under the new Rules.

“...for which they shall apply, and shall so direct.”

C

Madam, that is the sub-paragraph where the GMC, if I can put it that way, will be submitting to you that there should be a further period of 12 months conditions. Those conditions should be the same conditions as Dr Southall has at the moment. In addition, and further, the Council are submitting to you that there should be a further resumed or a re-resumed – I think is the technical expression . We use the word “resumed” under the old Rules rather than “review” under the new Rules. There should be a re-resumed hearing at the end of the 12 months to consider what to do then, as it were - to put a forensic thermometer in the water to see what the position is.

D

E

Can I say, as you have heard from my learned friend, that she has indicated that Dr Southall does not oppose the continuation of his current conditions for a further period of 12 months. Can I also say, and underline, of course, that it is the Panel’s decision to determine what is the appropriate outcome in this case? My learned friend and I both readily recognise that, that it is your function and not the function of anybody else to determine what to do.

F

Can I start by taking you to the position in which the case now stands. Can I ask you, whilst going through the facts, as it were, to have your “yellows” near you. If your “yellows” – if I can put it this way – are the same as mine, you will find in bold that the position of what was admitted and what was subsequently found proved are set out in those “yellows”.

G

Can I start by saying that at the time that this case was heard in 2004 the doctor was a consultant paediatrician, working at the North Staffordshire Hospital for what was then the North Staffordshire Hospitals NHS Trust. He was also an Honorary Professor of paediatrics at the University of Keele.

H

In November 2004, some months after the conclusion of this case, the doctor retired from his Trust position albeit, I understand, that he continues to work for the Trust in a locum

A

capacity. Upon such retirement his Honorary status as a Professor ceased. Whilst all the references in the papers are to Professor Southall, he is now, as it were, Dr Southall.

B

You will also have noted from the papers that the doctor and others carried on using the title of Professor for some time after November 2004. I think the circumstances in which that occurred are best explained by the two letters at the back of your bundle, which perhaps I can now formally ask to be named as C1.

THE CHAIRMAN: Yes You had already done so and we had done so as well.

C

MR TYSON: May I take you to the last document in your bundle, page 75, which is a letter to the doctor in November 2006. It is said:

“I am writing to clarify your position with regard to your Honorary Professorship at Keele University.”

D

This is a letter from Keele University.

“Your Honorary status as Professor at the University ceased on 30 November 2004 on your retirement from the Trust. There is no Honorary Professorship associated with any current employment that you may have with the Trust.

E

I apologise that the University did not clarify this point with you at the time. The University understands and recognises that because you did not have any communication to the contrary, that you assumed that the use of your title continued.”

F

It is clear that it was not until November 2006, as that letter would indicate the matter, that he had ceased to be a Professor, was not communicated to him by that organisation.

G

Just to wrap it up – if I can put it this way – I can only show you the letter at page 74 addressed to those instructing me, dated 4 July 2007, from Keele University, which indicates that:

H

“Dr Southall’s Honorary status as Professor at the University ceased on 30 November 2004 on his retirement from the Trust. It was not possible to offer an emeritus Professorship at Keele as Dr Southall had not carried out research associated with the University for some time and, therefore, did not have an

A

ongoing academic relationship with us.

We trust that this confirms the position in relation to Dr Southall's status and the circumstances in which he ceased to be a Professor."

B

Madam, by the time of the 2004 hearing the doctor's work in the field of child protection had attracted much controversy. This case was not – and I emphasise that – about the doctor's work in the field of Munchausen's syndrome by proxy nor about the areas of covert video surveillance of parents with their infants. In both of which fields the doctor had done much pioneering work.

C

The case, in a nutshell, arose from the fact that as a result, principally, of watching a Channel 4 TV programme about the solicitor, Sally Clark, and her convictions for the murder of her two infant sons, the doctor formed a theory about the case.

D

This theory was that Stephen Clark, Sally Clark's husband, had deliberately suffocated the eldest child, Christopher, in a hotel room shortly before his death. As a result of that incident, it was clear to Dr Southall that Stephen Clark had gone on to murder both his sons by suffocating them both.

E

In due course, Dr Southall went further and stated that it was beyond reasonable doubt, i.e. to the criminal standard of proof, that Mr and not Mrs Clark had committed these double murders.

F

It thus followed in Dr Southall's logic that the Clarks' surviving son, known only as Child A - and I would be grateful if you could inform the press that there are various Court Orders in existence that the child should always be and continue to be known only as Child A. Dr Southall considered that Child A was unsafe in the hands of his father and should be removed from the father's care, a step which, due to Dr Southall's eminence and stature, was actively considered by the local authority.

G

The background facts of this case, as you can see from the many admissions made in the "yellows", were largely agreed. The inferences from those facts, especially in heads of charge 6 and heads of charge 8 were denied. I will take you to those. Heads of charge 6, as you will see, was the allegation that his actions up to that stage were precipitate and irresponsible. Those were matters of debate at the hearing. In relation to paragraph 7, which set out what Dr Southall did in relation to a report that was commissioned of him, paragraph 8 indicated

H

A

him, paragraph 8 indicated the allegations made by the complainants at that time about him. Whilst the facts were found proved the inferences of those facts, the inferences which are set out in heads of charge 6, were not admitted but were later found prove.

B

To give you some bare bones of the facts behind the heads of charge, they are these: Mr and Mrs Clark were both solicitors. Their first son, Christopher, was born in September 1996.

C

A few weeks later Christopher was in the sole charge of Mr Clark in a London hotel room. In that hotel room Christopher suffered a nose bleed. Some nine days after the nose bleed Christopher died unexpectedly at home, aged 11 weeks, when he was in the sole charge of his mother. His father being at an office party. At that time natural causes were recorded as the reason for the death. I think it was a lower respiratory tract infection that was recorded.

D

The Clarks then had a second child, Harry, who was born in November 1997. Harry died unexpectedly at home eight weeks later, in January 1998. As a result of his death matters were looked at again in some detail. It was concluded then that both children had been unlawfully killed. Both parents were arrested. In the end only Mrs Clark was charged with their murder in July 1998. In November 1998, after Mrs Clark had been charged but before the criminal trial, she gave birth to a third child, Child A. Child A was immediately taken into care at his birth with the agreement of the parents.

E

At this time, at the end of 1998, there were two sets of legal proceedings. There were the criminal proceedings relating to the unlawful killing of both the children and, secondly and separately, there were childcare proceedings in the Child Care Court relating to the future of Child A.

F

In November 1999 Sally Clark was convicted of the murder of the two children. That is head of charge 1. Turning for a moment to Dr Southall. At that time he was an extremely distinguished paediatrician with many ground-breaking research articles to his credit. He had an interest, both clinical and research, in the area of sudden infant death syndrome. Although, clearly distinguished, the doctor had acquired a number of detractors, in particular, people, especially parents, who were unhappy with his clinical and with his expert evidence work in the field of child abuse. Also, a group of people were unhappy with the nature and quality of his research work.

G

H

A

In January 1999 a formal complaint was made to his Trust by one of his detractors. That complaint broadly revolved around the twin issues of the doctor's child protection practice and around the issue of his research work. Whilst that complaint was being investigated, the Trust placed limitations on Dr Southall's practice. In particular, he was ordered not to undertake any child protection work without the written permission of the then acting Medical Director of the Trust.

B

Child protection work at that time included what was known as Category I work. Category I work is work on patients of the Trust. Category II work is work involving none patients of the Trust, such as expert witness work and the like.

C

In the course of the investigation of this complaint, which took a considerable amount of time to resolve, in November 1999 Dr Southall was suspended with immediate effect by his Trust. These matters, the suspension of Dr Southall and the prohibition on child protection work were the subject of heads of charge 5c and 5d in the original heads of charge. You will see that 5c reads:

D

"You were suspended from your duties by your employers, the North Staffordshire Hospital NHS Trust."

5d reads:

E

"You knew that it was an agreed term of the Trust's enquiries that led to such suspension that you would not undertake new outside child protection work without prior permission of the Acting Medical Director of the Trust."

F

In November 1999 we have these two events, the conviction of Sally Clark and the suspension of the doctor. Madam, Mr Clark never accepted the Jury's verdict about his wife. It is a matter of record that he put in an enormous amount of work to seek to overturn it. Part of that work involved agreeing to appear in a television programme about his wife's case, which he hoped would help highlight deficiencies in the prosecution case and would assist in her forthcoming appeal. This programme was made and subsequently broadcast by Channel 4 in its "Dispatches" series and it was broadcast on 27 April 2000.

G

H

In the course of that programme Mr Clark himself was interviewed. He dealt with the event when Christopher, the eldest child, had had a nose bleed in a hotel room whilst in his sole care and shortly before his death. Dr Southall watched

A

watched that programme and at a time when he was still suspended from the Trust and subject to the condition that he should not undertake any child protection work without permission. In his own words, he was stunned by what he saw. In a subsequent report, which I will come to in a minute, he said:

B

“I was stunned when watching this television programme since it appeared extremely likely, if not certain to me, that Mr Clark must have suffocated Christopher in the hotel room. I felt that the police had been misled into believing that Mrs Clark could have suffocated Christopher before she left the hotel and that the subsequent bleeding was a delayed consequence of this. My experience with cases of intentional suffocation, where there was nasal or oral bleeding, does not concord with this view of the expert advice given to the police. From my experience the bleeding always occurs simultaneously with the process of intentional suffocation. I was aware of a third child in the family who could be receiving care from Mr Clark. Consequently, the next morning, I contacted the Child Protection Division of the Staffordshire Police to report my concerns.”

C

D

Madam, Dr Southall did duly contact the child protection unit the day after the programme, and that is the matter set out in head of charge 3. What he did not do was to contact the acting Medical Director of the Trust beforehand to clear it with her.

E

As a result of his contact with the local child protection unit he was subsequently interviewed on 2 June by a Detective Inspector from the Cheshire Constabulary to discuss his concerns. What was discussed there is set out in paragraph 4 of the heads of charge, which says:

F

“As a result of such contact, on 2 June 2000, you met Detective Inspector Gardner of the Cheshire Constabulary, the senior investigating officer into the deaths of Christopher and Harry Clark, and in effect told him that, as a result of watching the programme, you considered that:

G

a. Stephen Clark, Sally Clark’s husband, had deliberately suffocated his son Christopher Clark at a hotel prior to his eventual death.

b. Stephen Clark was thus implicated in the deaths of both Christopher and Harry Clark.

H

c. There was thus concern over Stephen Clark’s access

A

to, and the safety of, the Clarks' third child, Child A."

You will note that all those were admitted from the start.

B

Madam, it was only after that meeting that Dr Southall told the Trust that he had become involved in a child protection matter. When the Trust were informed they were most concerned and, in fact, wrote to the doctor to that effect.

Thus, we had the position set out in head of charge 5:

"At the time of meeting Detective Inspector Gardner, you:

C

a. Were not connected with the case.

b. Made it clear that you were acting in your capacity as a consultant paediatrician with considerable experience of life threatening child abuse.

D

c. Were suspended from your duties by your employers, the North Staffordshire Hospital NHS Trust ("the Trust").

d. Knew that it was an agreed term of the Trust's enquiries that led to such suspension that you would not undertake new outside child protection work without prior permission of the Acting Medical Director of the Trust.

E

e. Had not sought permission of the Acting Medical Director prior to contacting the Child Protection Unit of the Staffordshire Police or meeting with Detective Inspector Gardner.

F

f. Relied on the contents of the "Dispatches" television programme as the principal factual source for your concerns."

Madam, pausing there. You will see that all those matters were admitted at the start of the hearing. There was a matter of controversy at "g", that you:

G

"g. Had a theory about the case, as set out in Head 4 above, that you presented as fact as underpinned by your own research."

You will see what the nature of the theory was, if we look at a, b and c in head of charge 4. It was in relation to heads of charge 3 to 5 that the adjectives at head of charge 6 were alleged. It says:

H

A

“Your actions as described in Heads 3 and/or 4 and/or 5 were:

a. Precipitate.”

B

Madam, precipitate was found in relation to head of charge 3 and in relation to head of charge 5. It was also alleged that the matters were irresponsible. Madam, that was only found in relation to head of charge 5.

Head of charge 6c was not found proved in relation to any.

C

Madam, in July 2000 Mr Stephen Clark heard about Dr Southall’s involvement in the case and complained officially to the General Medical Council about such involvement. Thus, under the old Rules, he was the complainant at the hearing in 2004 and was there represented by me.

D

The local Authority involved in the childcare proceedings in relation to Child A, the third child, also became aware of Dr Southall’s views. That led to the Care Court to order that Dr Southall set out his points of concern in writing and thereafter discussed those matters with a Professor David. Madam, Professor David is a well known paediatrician from the University of Manchester who had been instructed by all the parties in the Child A care case to assist them. He was jointly instructed by the local Authority, by the guardian for the child and by the parents to assist in the childcare case.

E

We are now coming to heads of charge 7 territory. Dr Southall did not simply set out his points of concern, he wrote a medico-legal report about his views on the case. The basic contents of the report can be seen from heads of charge 7a to f. Charge 7 says that:

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“On 30 August 2000 you produced a report on the Clark family at the request of Forshaws, Solicitors.”

G

Madam, pausing there for a moment. They were the solicitors for the child. In care proceedings, when joint reports are created, they are always at the request of the solicitors for the child. If I can add that?

It says:

“a. At the time that you produced your report you:

H

i. Did not have any access to the case papers, including any medical records, laboratory investigations, post-mortem

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records, medical reports
or x-rays.”

B

Pausing there for a moment. That was a part of the Court order, that he should simply set out his concerns without access to any of the case papers and, in particular, any of the medical records.

“ii. Had not interviewed either Stephen or Sally Clark.

b. Your report concluded that:

C

i. It was extremely likely if not certain that Mr Clark had suffocated Christopher in the hotel room.

ii. You remained convinced the third child of the Clark family, Child A, was unsafe in the hands of Mr Clark.

D

c. Your report implied that Mr Clark was responsible for the deaths of his two eldest children, Christopher and Harry.

d. Your report was thus based on a theory that you had about the case that you presented as fact as underpinned by your own research.”

E

Pausing there for a moment. All the previous matters had been admitted and found proved but 7d was found proved at the hearing.

“e. Your report declared that its contents were true and may be used in a court of law whereas it contained matters, the truth of which you could not have known or did not know.”

F

Madam, at the hearing, the first line and a half of that was admitted, namely:

“Your report declared that its contents were true and may be used in a court of the law.”

G

That the standard, as it were, expert witness’s declaration was used in that report. What was denied but found proved at the hearing was:

“Whereas it contained matters, the truth of which you could not have known or did not know.”

H

Then:

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“f. Your report contained no caveat to the effect that its conclusions were based upon very limited information about the case held by you.”

That was admitted. It is admitted that there was no caveat.

B

Madam, the report was dated 30 August 2000. On 8 September 2000 a discussion as ordered by the Care Court took place between Professor David, the jointly instructed paediatrician in the care case, and Dr Southall. In the course of that meeting Dr Southall told Professor David, in relation to his suspension, that his work in the Clark case was merely as a concerned member of the public rather than as a paediatrician or as a doctor.

C

He told Professor David that he had come to the conclusion that the Court had convicted the wrong person and that a child was in danger as a result of living with the true killer.

The central prop of Dr Southall’s theory was:

D

(1) Nose bleeds occur immediately after trauma.

(2) The only cause of a nose bleed at that age, in the absence of pre-existing disease, was inflicted trauma.

E

(3) As Mr Clark was alone with Christopher in the hotel room when Christopher had the nose bleed such bleed must have been caused by his father.

(4) Therefore, Mr Clark unlawfully killed Christopher a few days later and then Harry a year or so later.

F

This was the theory that was based principally on the watching of the television programme and without access to any of the case papers in the case.

G

Professor David was concerned that nowhere in Dr Southall’s report was there any sort of warning or note of caution that his opinion could only have been based on the most scanty of information, the main source being the television programme. Madam, the lack of caveat is head of charge 7f, which I have read to you.

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Professor David assumed that the lack of any caveat was simply an oversight and so Professor David e-mailed Dr Southall and suggested that he inserted a caveat. As was later

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noted, Professor David was thus effectively providing Dr Southall with a lifeline but the lifeline was not accepted. Dr Southall e-mailed back on 11 September 2000 and the e-mail stated:

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“I had thought through the issue of whether there might be other evidence not seen or heard by me which makes it impossible or very unlikely that Mr Clark killed the two children. I should say, and should have put in my report, that I had undertaken a number of discussions with people involved in the case after seeing the video, namely Mr Gardner, the guardian and the senior social worker, and had asked questions relating to other possible but extremely unlikely mechanisms for the bleeding and scenarios which would enable rejection of my opinion. I received negative answers to these questions. These were, in particular, whether any disease had been present in the first baby that might have caused the death that was not reported on the television programme. Also, any other information relating to the case that made Mr Clark’s involvement impossible.

C

D

My only smallest reservation relates to an extremely unlikely prospect that both parents are implicated in the deaths. I have never seen before this and, therefore, rejected it.”

Then we come to the matter which is subject of head of charge 7g:

E

“Thus, there can, in my opinion, and beyond reasonable doubt, be no explanation for the apparent life threatening event suffered by the first baby, which would account for the bleeding other than that the person with the baby at the time caused the bleeding through the process of intentional suffocation. The subsequent unexplained deaths of the babies with other injuries makes it likely beyond reasonable doubt that Mr Clark was responsible. I am not used to giving opinions without all of the evidence being made available and feel vulnerable over my report. However, based on what I saw in that video alone and my discussions with the police officer, social worker and guardian, I remain of the view that other explanations cannot hold. The evidence of the family friend is particularly important.”

F

G

Madam, that is the subject matter of head of charge 7g. The PCC found the matters at head of charge 8 proved in relation to the matters concerning the writing of this report and the doctor’s rejection of Professor David’s lifeline.

H

Submissions were made on serious professional misconduct

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and on sanction. In the course of which, it was pointed out that the doctor had shown no remorse, had not apologised and still considered that he was right. It was submitted that the doctor had little or no insight especially as he had admitted head of charge 7f and g and yet had not admitted any of the consequences said to follow, in head of charge 8.

B

Therefore, there came a determination thereafter on the ninth day of the hearing. Madam, that determination is in the bundle of documents at page 1 to 6. It is also in the “yellows”. Madam, I seek your guidance as to whether you want me, as a matter of form, to read that into the record, as it were, or whether it can lie where it falls?

C

THE CHAIRMAN: The evidence is not only what is spoken but also the evidence that you have presented to us in writing. I do not consider it is essential for you to read it into the record because it is already in the record, having been presented to us. Unless the Legal Assessor tells me any different, that is the way I propose to proceed.

D

THE LEGAL ASSESSOR: No. I absolutely agree with what the Chair says, so far as that matter is concerned.

E

MR TYSON: Can I just highlight, therefore, out of that, that the Committee twice used the phrase “extremely concerned”. Also, they used the phrase that they considered that the doctor’s conduct amounted to a serious departure from the standards expected from a registered medical practitioner. Madam, if you want the references to that, the first reference to “extremely concerned” is on page 2, at the top of the penultimate paragraph and over the page, on page 3 of the bundle, in the first main paragraph:

F

“The Committee are extremely concerned that you came to this view without ever meeting or interviewing Mr or Mrs Clark.”

G

Madam, in relation to the use “serious departure”, that is on page 4 of our bundle, at the top of the first big paragraph:

H

“Taking into account the facts found proved against you, including inappropriate and irresponsible behaviour and an abuse of your professional position, the Committee consider your conduct amounts to a serious departure...”

Then, can I take you to the bottom of page 5, please? It says right at the end:

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“In the circumstances, the Committee have concluded that in your own and the public interest it must take action regarding your registration. Based on the findings on facts in this case and your apparent lack of insight the Committee have decided that it would be inappropriate for you to continue with child protection work for the foreseeable future.”

B

It is those words that I would like to highlight.

“Therefore, the Committee have decided to impose the following condition on your registration for a period of three years:”

C

Can I just add that that is the maximum that they could have done at that time and, indeed, now.

Madam, as you will know, the body then known as the Council for the Regulation of Healthcare Professionals, or in the acronym CRHP, did, in fact, appeal the decision, saying that the decision to impose conditions only in this case was unduly lenient.

D

The matter came before Mr Justice Collins in March 2005. There is a transcript of the Judge’s judgment at pages 10 to 31 in C1. Madam, you are at liberty to study that when you retire. I will not go into it in any detail, unless my learned friend asks me to do so, in view of the fact that she told your Panel that the doctor was not opposing the continuation of the conditions. However, I do need to take you to one or two passages.

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Broadly speaking, I can take you to the bundle at page 22. If I can just indicate that paragraphs 22, 23, 24 and 25 are effectively a repeat of my submissions that I had made before the Panel.

F

Can I pick it up at paragraph 29 on page 26, please? Madam, Dr Chipping was the acting Medical Director of the Trust at the time. As a matter of fact, she was called twice in the course of the hearing. First, by me, at the finding of fact stage, to assist us on findings of fact and, secondly, by my learned friend then representing Professor Southall, as he then was, in mitigation, to indicate what kind of arrangements could be made at the hospital that would make some sort of conditions possible; so she appeared twice.

G

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MS FOSTER: Forgive my interruption. For some obvious reasons I have not marked up the transcript in the bundle I have just been handed. I have it separately marked. Would

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you be kind enough to refer to paragraph numbers when you refer to the body of it?

MR TYSON: I thought I had been. Paragraph 29.

MS FOSTER: You said page a couple of times.

B

MR TYSON: I said page 22, paragraph 22, which is the same, and paragraph 29.

THE CHAIRMAN: It will be helpful for all of us if you give us both the page and the paragraph.

C

MR TYSON: I will certainly do both. I appreciate the difficulties that people have been in because of the late notice of this document.

I need to pick it up at paragraph 29 on page 26. I was indicating that that paragraph starts with "Dr Chipping". I was explaining that Dr Chipping appeared twice in the course of the hearing.

D

"Dr Chipping was also asked about insight. She gave this answer:

'I would not subscribe to the fact that he does not have any insight. I think he has good insight, but I think he is a man who does not change his mind easily, and I think that is a slightly different thing. One of the things --- I am sure will have come out in the testimonials is that Professor Southall is actually a man of great principle. He will not change his mind if he does not think his mind should be changed. Does he have an insight into the impact he has on others? -- I think he probably has a better insight than he did earlier in his career, yes.'"

E

F

The Judge goes on to say, in his words:

"I can understand the distinction being drawn, but a refusal to change his mind despite circumstances which should tell a reasonable person that his view is wrong is a serious weakness which can lead to a risk to patients and others in the same way as a lack of insight."

G

Madam, I go on to paragraph 30 at the bottom of page 26:

"Absence of remorse and contrition is likely to be indicative of a lack of insight or of maintenance of unreasonable views. In either event, it may show that a risk of repetition exists.

H

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This is clearly relevant in deciding on the appropriate sanction, but lack of remorse should not result in a higher sanction as punishment. Punishment may be an inevitable effect of whatever sanction is imposed but it must not be an element in deciding what is the appropriate sanction. The PCC must decide whether the risk of repetition does really exist.”

B

Madam, can I take you on to paragraph 35, at the bottom of page 29?

C

“For Professor Southall preclusion from child protection work was a severe penalty. His reputation had to a great extent been built on his pioneering work in this field and it must have been a humiliation to him to have been found guilty of serious professional misconduct in connection with child protection. The PCC did, as it seems to me, have regard to all material matters and it cannot be said that they misdirected themselves.

D

They were, as I have already said, entitled to consider that there was no real risk that the condition excluding him from child protection work would be broken. The flaws disclosed by Professor Southall’s misconduct, serious though they are, do not prevent the view reasonably being taken that they should not prevent him continuing to practise as a paediatrician, provided that there is no real risk to patients or others if he is permitted to do so. Thus, erasure was not, in my view, an inevitable result of the misconduct which the PCC found proved. A reasonable observer would appreciate that the sanction was for him severe indeed and that it would produce a [significant] (*sic*) deterrent effect and send out the right message. As the testimonials showed, it was in the public interest that Professor Southall’s great skills as a paediatrician should not be lost, if that could be achieved without danger to the public. The PCC’s decision that it could be achieved seems to me to be entirely reasonable in all the circumstances.”

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I read part of paragraph 36:

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“It was, however, essential that the conditions imposed should be tightly drawn so as to prevent any involvement in child protection work. The PCC stated that it would be inappropriate for Professor Southall to continue with child protection work ‘for the foreseeable future’. It imposed the maximum period over which the condition could apply, namely three years, which is hardly the foreseeable future.”

H

That is the passage upon which the Council relies.

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Can I take you to paragraphs 37 and 38, to be found on page 30, please?

B

“In the light of the findings and the seriousness of the misconduct, it seems to me that the PCC ought to have given an intimation in accordance with Rule 31(5) to enable Professor Southall’s conduct to be kept under review and for a decision to be made at the end of the three year period whether any condition should be maintained.”

Pausing there. That is the position we are now in.

C

“I also think the conditions could be drawn more tightly so that it is made clear that all that Professor Southall can do, if he believes a patient may have suffered abuse, and is in need of protection, is to report his concerns to the relevant child protection doctor. He must not involve himself beyond that nor seek to influence that doctor to take any particular action. Such conditions must be imposed in respect of any Trust for which he works and must equally be applied if he does any Category II work.”

D

Paragraph 38:

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“It follows that I do not think that to impose conditions upon Professor Southall’s registration was unduly lenient. Erasure was not required but the PCC did, in my view, show undue leniency in the form of the condition and in failing to give an intimation in accordance with Rule 31(5).”

Madam, as a result of that, an order was drawn up, which you have at pages 32 to 34. This is the order, the conditions of which, you are reviewing today. Madam, I can pick it up at the top of page 33 at paragraph 3. The conditions are these:

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“The Second Respondent...”

That is Dr Southall.

G

“...must not engage in any aspect of child protection work either within the NHS, (Category I) or outside it (Category II) for a period of three years from 7 September 2004.”

That is the first condition. The second condition is this:

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“If, during the course of his medical practice (whether within or outside the NHS and whether clinical or research-based) or otherwise, the Second Respondent forms any concerns on child protection issues in relation to a particular child or

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child or children (whether or not his patient and whether deriving from any formal or informal approach to him concerning child protection issues) he must:

B

(a) Report those concerns as soon as possible to the most senior child protection doctor working for his employer (or to the person responsible for child protection at the relevant local Primary Care Trust) who is on call at the relevant time (the ‘child protection doctor’); and

C

(b) Not take any further steps or have any involvement whatsoever in relation to any consideration, steps or actions in any way connected to such concerns or initiate any communications with, or seek to influence in any way whatsoever, that child protection doctor or any other person or body in relation to such concerns.”

Pausing there a moment. You can see that this was drafted by a lawyer rather than a doctor.

D

The next condition is this:

“For the remaining duration of these conditions, at intervals of six months starting from the date of this Order, [Dr Southall] must provide to the [General Medical Council] full details of any cases (whether involving an individual or individuals) in respect of which he has reported concerns in accordance with 4 above or, alternatively, confirm that there have been no such cases during that interval.”

E

The next condition is:

“The Second Respondent...”

F

i.e. Dr Southall.

“...must inform his current employer and any subsequent employer (or relevant local Primary Care Trust) of the existence and terms of 3, 4 and 5 above.”

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Then paragraph 7:

“Pursuant to...”

The Rules there mentioned:

“...consideration of [Dr Southall’s] case is to be resumed at a meeting of a Fitness to Practise Panel of the [General Medical Council] to be attended by [Dr Southall], before the end of the

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the three year period specified in 3 above for the purpose of considering whether to take further action in relation to [Dr Southall's] registration."

That is the stage we are at now.

B

"(a) [Dr Southall] should be given reasonable notice of the date of the resumed hearing.

(b) A reasonable time before the resumed hearing [Dr Southall] should provide the [General Medical Council] with:

C

(i) Evidence of compliance with 3-6 above; and

(ii) Names and addresses of professional colleagues and persons of standing to whom the [GMC's] Registrar may apply for information as to [Dr Southall's] conduct since the relevant decision."

D

Madam, that Order was served on Dr Southall. I just mention that it is at page 9. He was given further instructions of what to do by the GMC later, on page 36.

As a result of the Court Order the doctor and his Medical Director met to discuss the implementation of these conditions. We can see that at page 35.

E

THE CHAIRMAN: Can I just say that for anyone who is not certain whether they have got the numbers on some of these letters? The GMC's number overprinting on the bundle is difficult to distinguish because it appears in the middle of a little printed logo from Keele University Medical School. That is just in case anyone is confused. Mr Tyson, I am sorry to interrupt you.

F

MR TYSON: Madam, I also do apologise for the fact that the numbering is on the same as the Keele footer – if I can put it this way – and is immensely irritating. It is document number 4 at page 35. It is a letter to the practitioner from his Medical Director, dated 2 June. It reads:

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"Thank you very much for coming up to meet with me at Trust Headquarters this morning to discuss the Court Order made by Mr Justice Collins in the Administrative Court. I was accompanied at the meeting by..."

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The lady there mentioned.

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H

“You demonstrated the cases that you have currently seen where you had suspicions regarding both child protection issues and also cases of children in need. In all of these cases referrals have been made to consultant colleagues along the lines laid down in the Court Order. Both [the Director of Human Resources] and I felt that the format used was an entirely appropriate means of recording the information that you will need to feed back to the GMC. We did, however, suggest that it would be helpful if you could obtain the counter-signature of the consultant taking over the case, to demonstrate to the GMC that the referral had been made. We also felt that it would be helpful to review the cases with Dr Kate Reynolds, as Head of Division, and also Trust lead for Child Protection, every six months before submitting the data, which will need to be anonymised, to the GMC.

As promised, therefore, I am setting this out in writing so that the Trust’s position is made clear and you can demonstrate to the GMC that you have discussed this matter in detail at the highest level within the Trust. If there are any other matters which you wish to draw to my attention around this Court Order in the future, please do not hesitate to contact me.”

It is quite clear that the first condition was complied with, namely he told his employer about the Order.

Then we come to the six monthly written reports. The first written report made by the practitioner, we see at page 39. As we are interim, six monthly reports – if I can put it that way - from the practitioner to the General Medical Council:

“I can confirm that I have not been engaged in any aspect of child protection work either within the NHS category 1 or outside it, category 2, since the 7 September 2004.

I also have informed my employer of the existence and terms of conditions 1, 2 and 3 as outlined in your letter and enclose a copy of a letter received from my hospital’s Medical Director, following a meeting I arranged with her further to discuss these issues.”

Madam, that is the letter I just read out to you, at page 35.

“I can confirm that I am also collecting data on all potential cases of child protection that I come into contact with as an acute general paediatrician. I have a system that is outlined in the letter from Dr Chipping to deal with this. Meanwhile, I will let you have some more information about the various

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cases that I have referred on in time for your first six month review on the 13 October.”

Madam, the first such letter that the practitioner sent is on the next page, page 40 to 41.

B

THE CHAIRMAN: Mr Tyson, can I just reassure you that we have read all these documents? I do not want to constrain you in any way, but in case you fear that you have to read them all to us.

C

MR TYSON: I am grateful. The first letter sets out the details of seven children with whom he had been involved in that may or may not have raised child protection issues, and on each and every one of these he had referred them on, as instructed. The fact that he had referred them on was confirmed by his Medical Director at page 42.

D

At page 43 the Medical Director - at the top of that e-mail - also confirmed that the practitioner was not taking part in either Category I or Category II work.

On the next six months review, April 2006, at page 46, Dr Southall set out two cases which he had referred on, and that was confirmed by the Medical Director, at page 48.

E

The next review, in October 2006, we see at page 50, where he set out two cases that had been referred on and the fact of such referring on was confirmed by his Medical Director at page 51.

F

Then the next review is April 2007 and we can see that at page 64. The doctor set out, at page 64, the one case in that six months review that he had referred on and that was confirmed by his Medical Director at page 65.

G

To bring us up-to-date to July, we have the practitioner’s letter at page 72, which indicates that since April he has not referred on any patients. We have confirmation of that, in the letter at page 73, from his Medical Director.

H

Madam, in the light of those six monthly reports and other matters, I confirm that the GMC is not submitting that there has been any breach of Dr Southall’s conditions.

If we go back to page 33, the condition at paragraph 3 has been complied with. The conditions at paragraph 4 have been complied with. The condition at paragraph 5 has been complied with. The condition at paragraph 6 has also been

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complied with.

B

In addition, the Order required that Dr Southall provide references. We can see that at page 34, that he had to provide the names and addresses of professional colleagues and persons of standing to whom the GMC could apply for information. Four references have been provided. The first is by Dr Parke at page 68. Madam, I will take your guidance as to whether you want me to read these, as it were, into the record or you have noted them.

THE CHAIRMAN: We have noted them.

C

MR TYSON: The second reference is from Dr Reynolds, at page 69. The third reference is from Dr Negrycz, at page 70. The third (*sic*) reference is from Dr Chipping at page 71. I will be coming back to some of the aspects in that reference in due course.

THE CHAIRMAN: That will be the fourth reference?

D

MR TYSON: Yes. Is that not what I said?

THE CHAIRMAN: No. You said the third again.

MR TYSON: I apologise. The fourth reference is from Dr Chipping at page 71.

E

Madam, those are my submissions on behalf of the General Medical Council under Rule 41, namely the position in which the case stands.

F

I now come to my submissions under Rule 40(3)(b), which is to deal with other matters that have taken place since that Panel. If I can remind you – if you need reminding – as to the wording of Rule---

THE CHAIRMAN: I think we just need to make sure that we are looking at the right one. Yes, I have it. 40(3)(b).

G

“To receive such further oral or documentary evidence...”

MR TYSON:

“...in relation to the case...”

THE CHAIRMAN:

H

“...in relation to the case.”

A

MR TYSON: Yes.

“...or as to the conduct of the practitioner since the previous hearing, as they think fit.”

B

That is the stage.

C

Madam, there are three matters in which I am going to draw the Panel’s attention under this head. I will come to these in more detail later. The first is that there is another misconduct Panel hearing taking place at the present against Dr Southall. It is part-heard. 16 days of evidence have been heard in November and December 2006. It has been adjourned part-heard until November and December 2007 for a further 25 days.

D

The second matter I need to deal with is that the Attorney General has made a statement in the House of Lords about a great number of medical records kept by Dr Southall on his patients that were not on the respective childrens’ hospital records. These were Dr Southall’s own records, known as special cases files.

Thirdly, the South Wales police are investigating a matter in which Dr Southall may or may not be concerned.

E

Can I deal with these in turn? Madam, you have the heads of charge in relation to the part-heard case at pages 52 to 60. Madam, can I say that, again, this is an old Rules case and it is a complainant case. The complainants are five parents. The complaints cover a wide range of issues. Can I say, for the sake of the record, on page 53 at head of charge 2, that was subsequently amended to read the words “from 1992” and then insert the words “and at all material times” then, “You have been Professor of paediatrics”.

F

It was also amended in relation to head of charge 15b at page 55 in a way that, at the end, it said, “or the North Staffordshire Hospital” it should say, “for Child D and Child B”.

G

THE CHAIRMAN: And Child B?

H

MR TYSON: Yes. Madam, heads of charge 10 to 16 concern the allegation that Dr Southall held his own files on patients, separate from main hospital records. These special cases files, as they were called, are in both paper form and held on Dr Southall’s

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computer. It came to light in the part-heard hearing that there were over 4000 of these special cases files.

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Madam, the hearing has gone part-heard with a gap of a year principally – and I hope he does not mind me saying this – as leading Counsel then representing and continuing to represent Dr Southall has become, and is currently occupied in the long running MMR case, which is being heard in a Panel hearing in London. Madam, that case is part-heard. I do not rely on any of the matters alleged in it against Dr Southall in that case as implying breach in this case. If I can put it this way - the matter is ongoing.

C

The relevance of mentioning it to you is merely to point out the existence of this case, as it is in the public domain. Secondly, we submit that it has relevance as to whether and to what extent the current conditions should continue over.

D

Madam, the second matter I mention as an aspect of relevance, and it arises out of the evidence of the part-heard case about the special cases files. The Attorney became concerned about the existence of the special cases files and he made a statement in the House of Lords about them and issued a Press statement about them, which you will see at pages 60 and 61 (*sic*). Again, you will see what is there said at pages 61 and 62. You will see that he announced that he was going to investigate these 4450 special cases files in view of the matters therein mentioned. If you want me to read it into the record I will but you will note the current state of that investigation is set out in a document I hope you have at page 62A.

E

THE CHAIRMAN: We have.

F

MR TYSON: You will see that his review is ongoing. They have reviewed a great number of files and they are being investigated further. Any further announcement relating to the matter will be announced to Parliament rather than to this Panel.

G

In relation to the third matter, all I can say is that the South Wales police are investigating a matter involving a child and Dr Southall in about 1993 and that investigation continues.

H

Madam, I next come to your role under Rule 42 which, to remind you, is that you have first got to judge whether he has failed to comply. If, under Rule 42(2), you decide he has not so failed to comply - that is precisely that we are in here. I am not alleging that he has failed to comply – then you consider

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consider the matters in (a) (i), (ii) and (iii) and, in particular, the default position which is at (b), which is where the Council's submissions arise from.

B

If I can remind you of the Council's position, it does not allege that the doctor has failed to comply with any of the requirements imposed on him as a condition of his registration. It is submitted by the Council – and this stance is supported by Stephen Clark, the original complainant – that you should adopt the Rule 42(2)(b) route and continue conditions for a further 12 months. It is also the Council's submission that there should be a further Rule 31(5) resumption of those conditions by the end of those 12 months, so broadly, 12 months plus a review. I think you can now call that 12 months plus a re-resumed.

C

Madam, as my learned friend has indicated that she is not opposing that course of action, I take the reasons for the Council's submissions shortly, and there are broadly nine of them.

D

Firstly, we would submit that there has been no substantial change in Dr Southall's position. He still thinks that he was right to do what he did. Thus, we submit, he shows a continuing lack of the necessary insight or is a man who does not change his mind easily. We rely on the passage of Mr Justice Collins at paragraph 29 of his judgment at page 26, which I read out to you earlier.

E

Secondly, we submit that the original offences were very serious indeed and were regarded as such by the PCC. Twice they used the words "extremely concerned" in their determination.

F

One can see that the PCC found that Dr Southall had acted precipitately on two separate occasions, that he had acted irresponsibly on two separate occasions and that he had also acted inappropriately, misleadingly and had abused his professional position.

G

Thirdly, we would submit that the doctor has shown no remorse for his actions, no contrition and has yet to offer any apology to Mr Clark, even with the benefit of hindsight.

H

Fourthly, the PCC took the view that Dr Southall's conditions should be for the foreseeable future. That is in the determination at the bottom of page 5 and the top of page 6. They then made it subject to the maximum period of three years.

A

Fifthly, Mr Justice Collins took up this point at paragraph 36 of his judgment on page 30, where he said that three years is hardly the foreseeable future.

B

Sixthly, it was for this reason that the Judge increased the penalty to order a review after three years, this one, so that, in our submission, active consideration can be given to extending the conditions. He also, as we have seen, tightened up the conditions themselves.

C

Seventhly, we submit that the public interest and the protection of the public requires, we submit, that whilst other serious matters are being investigated in relation to this doctor, the public should continue to be protected by the retention of the current conditions. We would submit that there are continuing concerns about this doctor.

D

Eighthly, I come to the points raised in Dr Chipping's reference letter, at page 71. Perhaps, I could ask you to open that up and remind you of its terms? The first point I make in relation to those letters, you see that the current system at the hospital dealing with the working of the conditions has, as Dr Chipping says in the top of the second main paragraph, "worked well". "The system has worked well". I readily concede that it may have caused some practical difficulties but those difficulties have been overcome. The system is working well. Thus, there is no reason to change or vary the conditions in that they are impracticable; they clearly are practical and are working.

E

Secondly, as we see in the bulk of that second, main paragraph, Dr Chipping herself does not believe that Dr Southall:

F

"should be undertaking specialist child protection work at this stage since he has not been involved in this field now for the last eight years."

G

Just pausing there. You will recall that Dr Southall was ordered not to do any child protection work by his Trust in 1999. He has not done so since despite his subsequent re-instatement by the Trust in October 2001, when all the complaints against him to the Trust were rejected.

H

The point I make, in support of my submissions, is that even his own Trust are not looking to the removal or revocation of all the conditions.

Lastly, it would appear - and I anticipate that we will hear

A

more of this - that Dr Southall's professional life has, as it were - to use the jargon - moved on. As I understand it - and I will be corrected if I am wrong - he does most of his work for the Trust in one week out of four. As I understand it, a considerable amount of his other time is spent in charity work for children and infants abroad. The current conditions do not preclude that doubtless, important and worthwhile work.

B

Madam, lastly, I need to make reference, but reference only, to your two "bibles" - if I can put it that way. The first "bible" is *Good Medical Practice*. The relevant edition of *Good Medical Practice* in this case is the July 1998 version.

C

THE CHAIRMAN: It is behind tab 3.

MR TYSON: Madam, I can deal with them by way of paragraph numbers only. I will not expand on the points being made but I draw the Panel's attention to paragraph 3, the third dot in relation to the possible "diagnosis" that Mr Clark and not Mrs Clark was responsible for these matters.

D

THE CHAIRMAN: I am sorry. I thought you were about to read out paragraph 3.

MR TYSON: I said that it is paragraph 3, the third dot.

E

THE CHAIRMAN: This is on page 2?

MR TYSON: Madam, it is the bottom of page 2. I say that was relevant in relation to the wrong "diagnosis" that Mr Clark was responsible for the deaths.

F

I also draw your attention to paragraph 7 on page 4, at the second dot of that. In relation, we would say, that he did not respond constructively to Professor David's lifeline but, as it were, destructively by hardening his view. I also point, again, to paragraphs 16 and 17 in the matter of dealing with complaints constructively in offering apologies, but those are dealt with in more detail in the Indicative Sanctions, which I will come to in due course.

G

The last matter from the relevant *Good Medical Practice* that you ought to be aware of, as the previous Committee were made aware of, is in relation to page 17 at paragraph 55, relating to the signing of documents. The submission was made where it says in the penultimate sentence,

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"You must take reasonable steps to verify any statement

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before you sign a document.”

This relates to the statement of truth attached to the report of August 2000 where we would say, in view of the matters set out in that report, Dr Southall failed to take reasonable steps to verify the matters that he there dealt with.

B

Madam, that is, in headline terms, the relevant *Good Medical Practice*.

I now come, lastly, to the Indicative Sanctions Guidance. Madam, I am going to use the April 2005 Guidance even though at the time that this matter came before the Committee on the last occasion, it was the May 2004 Guidance that was in force.

C

THE CHAIRMAN: I am now consulting the blue folder, behind tab D. That is the April 2005 Guidance.

D

MR TYSON: Madam, I say that this document has limited assistance to you in your task today for two main reasons: It is based on the new Rules rather than the old. We are not dealing in terms of impairment or the like here. You do not have to have a two stage hearing today. You only have to have one determination. You do not have to go down the impairment route.

E

Secondly, it tends to deal with procedure at the original hearings rather than any review hearings.

For the avoidance of doubt, can I draw the Panel’s attention to paragraph 13 on page S1-3?

Reminding the Panel that the matters you should consider cover the protection of the public and public interest and that public interest includes:

F

“a. Protection of patients.

b. Maintenance of public confidence in the profession.

G

c. Declaring and upholding proper standards of conduct and behaviour.

Madam, in our submissions to you today, each and every one of those applies and is relevant to the continuation of the conditions.

H

Paragraph 16 makes the important point about proportionality.

A

proportionality.

Paragraph 17 makes the important point that they are not meant to be punitive but to protect patients.

B

Paragraph 19 makes equally important points about the appropriate sanction. It is a matter for you but you must:

“a. Be sure that the action it proposes to take is sufficient to protect patients and the public interest.

b. Act within the framework set out by the GMC and reflected in this document.

C

c. Give reasons...”

Paragraph 22 deals with conditions. Of course, paragraph 22 does not help you to the extent that these are not, under the old Rules, renewable up to 36 months but they are only renewable up to 12.

D

It makes the point, importantly, in the last sentence of paragraph 22, that:

“A purpose of the imposition of conditions is protection of patients.”

E

At the beginning of paragraph 23 says:

“Conditions might be appropriate where there is evidence of incompetence...”

I am not alleging that, but we are alleging:

F

“...significant shortcomings in the doctor’s practice.”

The bottom of paragraph 24 makes the points that:

“Any conditions should be appropriate, proportionate, workable and measurable.”

G

We would submit that the current conditions fulfil all those descriptions.

Madam, it gives some guidance about review hearings, called under the new Rules, at paragraphs 31 and 32.

H

Paragraph 32 says:

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“It is important that no doctor should be allowed to resume unrestricted practice following a period of conditional registration or suspension unless the Panel can be certain...”

That is a very high word.

B

“...that he or she is safe to do so. In some misconduct cases it may be self-evident that following a short period of suspension, there will be no value in a review hearing. In most cases, however, where a period of suspension is imposed and in all cases where conditions have been imposed the Panel will need to be reassured that the doctor is fit to resume practice either unrestricted or with conditions or further conditions. The Panel will also need to satisfy itself that the doctor has fully appreciated the gravity of the offence, has not re-offended, and has maintained his or her skills and knowledge and that patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.”

C

D

Madam, it is the matters related to in that last sentence that are important, which is why the Council submits to you that (a) the conditions should continue, and (b) they should be subject to a further review or resumed hearing in light of the matters set out in that paragraph. Of course, in relation to maintaining his or skills and knowledge, we rely on the passage in the Dr Chipping letter that I have read to you.

E

Madam, finally, we have some guidance on the factors involved in conditional registration. The factors required are on page S1-13: Of the factors present we would say possibly the first; certainly, the second, certainly the fourth, the fifth is not relevant, the sixth is present, the seventh is present and the eighth is present. Going down that critical path, certainly most of the factors for conditional registration can be said to be present here.

F

Madam, you are given some supplementary guidance at S2-4. I draw your attention to paragraph 18 about “Expressions of regret and apology”:

G

“*Good Medical Practice* states that when things go wrong, doctors:

‘...Should act immediately to put matters right, if that is possible and ...must explain fully and promptly to the patient what has happened and the likely long and short-term effects.
---‘

H

A

This reflects a number of expectations on behalf of the profession and the public, including that:

a. Patients should be protected from similar events re-occurring, and

B

b. Doctors should take positive steps to learn from their mistakes, or when things go wrong.

Good Medical Practice continues:

‘when appropriate...offer an apology’ ---

C

reflecting that in this society, it is almost always expected that a person will apologise when things go wrong. However, the emphasis on ‘when appropriate’ reflects the fact that to some individuals (and this may or may not depend on their culture), offering an apology amounts to an acceptance of personal guilt which depending on the facts, a doctor may regard as inappropriate or excessive.”

D

Certainly, as I said earlier, the doctor still considers Mr Clark to be the person he said he was.

Paragraph 19 is important:

E

“This ‘insight’ - the expectation that a doctor will be able to stand back and accept that with hindsight, they should have behaved differently, and that it is expected that he or she will take steps to prevent a reoccurrence - is an important factor in a hearing.”

It then deals with cultural matters.

F

Madam, for all the reasons I have set out and due to the gravity of the original allegations and, we would submit, the continuing need to protect the public, both the GMC and Mr Clark ask the Panel to continue the existing conditions for one year and to order that the Rule 31 review at the end of that to assess the position at the end of that period.

G

Those are my, regrettably, over long submissions.

H

THE CHAIRMAN: Thank you. I am going to ask the Panel whether they have any questions which they wish to ask, only really because the Panel are entitled to ask any questions. If they had any, this would be a convenient point at which to ask. This is not an examination, as you are not a witness. Does either member of the Panel have any questions? I should

A

should probably ask the doctor's Counsel the same question.

MS FOSTER: I am perfectly content with the fact my friend has put his case in this way. I have observations that I would wish to make but at this point I have nothing to say. Thank you.

B

THE CHAIRMAN: Thank you very much. I know it is not necessary to ask the Legal Assessor whether she has any questions, but do you have any questions?

THE LEGAL ASSESSOR: No.

C

THE CHAIRMAN: In that case I think this may be a convenient point at which to adjourn.

D

MS FOSTER: Madam, I wonder, unusually for Counsel, asking that we not adjourn rather than that we do. I do not anticipate, subject to your questions, that I will detain you very long in submission. I would respectfully ask that I could make my submissions now. It might involve you in sitting perhaps an extra five perhaps ten minutes past one o'clock but if you would consider doing that, or at least taking me to that time, then I can indicate to you what we will very shortly say on behalf of Dr Southall.

THE CHAIRMAN: Do you have any witnesses to call?

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MS FOSTER: We do not.

THE CHAIRMAN: Will you be calling Dr Southall?

MS FOSTER: I will not.

F

THE CHAIRMAN: It may be that the Panel may wish to hear from Dr Southall. Will Dr Southall be content to?

MS FOSTER: I am sure he would, if they did. Yes.

G

THE CHAIRMAN: I am anxious that we do not go on and on and on. Apart from anything else, for reasons of the comfort of the Panel and those listening, because there has been a long period of concentration. Can I suggest that you make your opening and it may be convenient for us to adjourn at that point?

H

MS FOSTER: Yes.

A

THE CHAIRMAN: Are you happy with that?

MS FOSTER: Yes.

THE CHAIRMAN: Is the Panel content with that? Thank you. In that case, please?

B

MS FOSTER: Madam, as I indicated earlier today, Dr Southall is pleased to tell the GMC that should you order it under Rule 42(2)(b) he would freely accept a continuation of his conditions of practice for a further period of 12 months.

C

There are two things that I wish to say of a general nature and two more particular matters that I would draw to your attention.

D

The more general points are these: You may, having looked compendiously at the material this morning, feel they are self-evident. The first of them is this, that Dr Southall's own materials – and, in fact, he has brought with him the originals of his notes – are, we would submit, careful and all evidence from his place of work together with the colleagues and Medical Director with whom he must deal with on a daily or weekly basis, demonstrate his meticulous obedience to the letter and the spirit of the conditions. Materials coming from him and, without question, each of the pieces of information and evidence you have seen today speak to that.

E

Secondly, the reference material which was gathered by the GMC shows without exception the continuing high esteem and confidence with which Dr Southall is regarded today at the highest levels within the profession. Madam, you will have seen, when you read through the bundle – if not, on occasion this morning – reference both at PCC level and in court, to references of the very highest quality. That continuing esteem is an important factor, and it continues today, after all the events which have happened.

F

G

I would be doing a disservice to Dr Southall if I did not say to you that there are two or three sentences which I should read, as it were, in public on his behalf. I understand that it is your page 69. If I could take you to the reference from Dr Reynolds, please? I would just like to read, for your memory, about four lines down from this doctor:

H

“To my knowledge, on every occasion over the last three years where any child protection concerns have arisen in a patient under his care, Dr Southall has always referred the child involved to another consultant paediatrician. I myself

A

have, on a number of occasions, taken over the management of such children from him.”

You will notice that the doctor says in the last paragraph, almost gratuitously, mentioning the high standard of care in both his outpatient and inpatient general paediatric work.

B

Turning to Dr Negrycz, at page 70, again a complete description of total obedience to the letter of those quite complex and, it was recognised, onerous restrictions.

C

Then if I can take you back in your bundle to Dr Parke, at page 68, please? This is important because Dr Parke not only says that:

“Clearly, in acute paediatrics there is a great amount of child protection referrals made. Professor Southall has always passed these on to a colleague working on a specific child protection rota. Throughout the last three years there have been absolutely no concerns about his fitness to practise.”

D

That is important to mention in the light of the last submissions you have heard which really go to the matters that this Committee, or a different constitution of this Committee, considered all that time ago.

E

I bring to your attention once again, this comment in the next paragraph:

“In addition to this, he has been a wonderful, general acute paediatrician for the children of North Staffordshire participating fully in a paediatric acute on-call and the consultant of the week service. He has been involved in appraisal of junior staff, teaching and all departmental activities. He is an extremely valued colleague and a fantastic, experienced clinical opinion.”

F

You have had reference made to Dr Chipping, which I shall deal with in a moment.

G

The calibre and the content of the references I would respectfully say speak for themselves.

H

There are two more specific matters, which I will deal with just before we rise, if I may? They are these: Madam, the first of the specific matters, and the reason that I opened with the submission as I did, Dr Southall recognises the imperative of the incomplete GMC proceedings. As we heard, they started in November of last year. They have been adjourned

A

through a whole year, until November of this year. No resolution of them is expected until December. The obvious comment is that he has carried on his professional life, with that hanging over him, to the highest standards. That is plain from the references that we have seen. He fairly recognises that this Committee might well feel obliged to stay its hand in lifting the conditions since, through no fault whatsoever of his own, he is right in the middle of a matter that ought to have been decided many months ago.

B

C

The second particular matter is an important one and it is one that may not be known generally outside the medical community. Dr Southall has been, and he continues to be, the subject of intense interest. That is my neutral terminology. This intense interest is at the hands of a small pressure group composed mostly of parents about whom doctors have, in the past, raised concerns, touching on child protection. As I said, subject of intense interest is my neutral phrase. Witch hunt and hate campaign are the phrases used elsewhere.

D

There have been complaints about many persons who show any interest or support in Dr Southall. Even his Medical Director has been the subject of a now dismissed complaint to the GMC.

E

What you may not know is that there is a new department at the local hospital with a full-time staff member designated to deal with the small group's actions.

F

As I say, anyone with a connection to Dr Southall - many, I should say - have received the attention of this group.

He longs to get back to full practice and his colleagues who know him long for it also. He feels himself, very sadly, that at present the attention of this group could only damage child protection and thus the public interest, were he practising fully today.

G

These are not matters one would ever hope or expect to have to articulate in a position like this on behalf of a man like Dr Southall. Madam, I would respectfully say, both as a matter of humanity and in the wider public interest, they are part of your relevant context.

H

I will finish this part of my address just to say that their chilling effect upon child protection paediatrics is notorious at the highest level within the medical establishment.

A

Madam, after the break, with your permission, I shall have a few observations in the way that the case was put against me but they will also be short.

THE CHAIRMAN: I think that concludes your opening statement?

B

MS FOSTER: It does.

THE CHAIRMAN: In that case, I think this will be a convenient time for us to adjourn.

We will return at quarter-to-two. I can see the Panel nodding. We will re-convene at quarter-to-two, please.

C

(The Panel adjourned for lunch)

THE CHAIRMAN: Welcome back.

D

MS FOSTER: Thank you, madam. They do always say that the longer you give Counsel to think about their submissions the shorter they become. That short adjournment, I think, has made my remaining submissions the more concise.

E

A number of things were said towards the end of Mr Tyson's address to you. He said that he had nine points. With respect to him, I am not sure that they, in fact, break down into quite so many sub-divisions. We say that there are a group of matters which he addressed which are really not wholly relevant today. They were very relevant at the time when he made submissions before and, indeed, they mirror, pretty much, submissions that he made to the tribunal at the time when Professor Southall came before it in order for the PCC to consider what sanction to apply.

F

Initially, he was asserting, without having called any facts, that certain states of mind did or did not exist, as indeed he asserted at that stage, on the basis of evidence. He said one or two matters derived from the GMP and also from the Sanctions Guidance. All of which were thoroughly relevant at the time when the submissions were then made and, of course, are part of the available and material context. He characterized the original offences as very serious indeed. It is not a phrase I do not think that appears certainly in the PCC.

G

He also made mention of Dr Chipping's comments about a return to practice at present.

H

A return to practice, you heard from Dr Southall, through me, is not something that he seeks for a variety of reasons. One of

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of those reasons was, indeed, one of the matters my friend put forward, and that was the continuing question mark, particularly, we would say, with reference to the GMC proceedings which are not yet ended.

B

I think what I, effectively, would like to do is just to summarise what, in a way, his submission could and, we say, should be and with which we have no contest. It could not be said, and we do not say, that this was not a serious case. Yes, it was a serious case. It is a serious case. I say, in answer to that, equally it cannot be gainsaid that Dr Chipping has behaved impeccably since the sanctions were imposed upon him.

C

THE CHAIRMAN: Sorry. Dr Chipping?

D

MS FOSTER: I meant to say Dr Southall. I am so sorry. We next recognise the force of that part of the GMC's submission which draws your attention to the continuing proceedings which involve Dr Southall. The others, we say, are peripheral but they are not irrelevant to your consideration. We accept that. This is not the forum to challenge the merits of the previous decision. You have heard from us what we feel about a continuation and the reasons for that continuation today.

E

Given the substance of my address, those are the matters, I would respectfully say, that you should be required to consider.

Unless you wish me to address you on any particular matter, that is all I have in mind to say to you on behalf of the doctor today.

F

THE CHAIRMAN: Thank you. You did indicate that Dr Southall would be willing to answer questions, if there were any. If he is, I will first ask whether Mr Tyson has any questions and then whether the Panel have any questions.

G

MS FOSTER: Certainly. It has not been indicated to me that he particularly wishes to submit himself to gratuitous cross-examination, I may say.

H

THE CHAIRMAN: Indeed.

MS FOSTER: Madam, if your Panel had questions, I think, that, obviously, might be a matter on which he could assist you. He is here today, I would say, with all good faith, indicating his, if I may say so, very responsible attitude to the

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current position. Part of today is not to offer himself up once more having already been cross-examined about the particulars of this case and his response.

B

THE CHAIRMAN: I asked the question very carefully because I am aware that you have not tendered him as a witness.

MS FOSTER: I have not.

THE CHAIRMAN: Mr Tyson, are you content with that?

C

MR TYSON: I have no intention of cross-examining Dr Southall.

D

THE CHAIRMAN: That is very helpful. I have not asked the Panel members themselves whether they do, in fact, have any questions or not. I just merely thought it may be a possibility. As we are under the old Rules, and I think it is possible under the new Rules as well, there is a provision for the Panel to ask questions.

E

MS FOSTER: Obviously, Dr Southall is particularly concerned to be of assistance. He would not wish to be obstructive in any way. I think my submission would be to you, knowing as I do, that he endorses and is fully aware of what I have said and before I was to say it, I would be surprised if there would be matters that he could assist you on because I am conscious that I have been instructed to take issue, if issue there was.

F

THE CHAIRMAN: That is very helpful. Does either member of the Panel have any questions? No. I think my only question that I would want to ask is about what work Dr Southall is doing at the moment. I heard from Mr Tyson that you are working one week out of four at Stafford but I was not sure. Sorry not Stafford, Stoke. I was not sure from what was in the letters that that was actually correct.

G

The Secretary is just reminding me that you should either be sworn or you should reply through Counsel. I think this is my only question. I think it would be convenient for you to respond through your Counsel.

H

MS FOSTER: I am instructed that the establishment is the University Hospital of North Staffordshire. Dr Southall works the first and fourth Wednesdays, full day clinics. He has one in five nights, weekends and weekends on-call for acute general paediatrics and one week in five he is consultant of

A

consultant of the week.

B

I perhaps should add, for completeness and accuracy, that what was said about work out of the jurisdiction was correct. This is in collaboration with the World Health Organisation and the advanced life support group, called Emergency Maternal and Child Healthcare.

Dr Southall has undertaken work in Pakistan and the Gambia and has supervised work in Cameroon, Uganda, Albania and Bosnia.

C

THE CHAIRMAN: Thank you very much. That is most helpful. We do not have any further questions. We do not have any witnesses. I think we have taken all the evidence there is to be taken. Am I correct in thinking that there are no further submissions or representations on either side? That both your cases are complete?

MS FOSTER: Thank you, madam. That is correct, from my point of view.

D

MR TYSON: That is also correct from my point of view.

THE CHAIRMAN: Thank you. The Panel is about to go into camera to discuss their decision. I will, first of all, ask the Legal Assessor whether she has any advice for us.

E

THE LEGAL ASSESSOR: Yes, I do. A lot of it has been covered and I think my role as the Legal Assessor is just to confirm whether it is appropriate or not. For those of you who are not members of the legal profession, let me tell you that as the Legal Assessor I am totally independent of this Panel and I take no part whatsoever within the decision making itself. In the event, when the Committee go into private, they ask me something, then I will, if it is a matter of legal advice, actually advise everybody in public what it was and the advice that I gave. In the event that neither the Chair nor myself actually say anything that will be because I was not actually asked for any advice. I just want to make that clear.

F

G

Because this is one of the old Rules cases, then we are looking at the General Medical Council Procedure Rules 1988, Number 225.

H

One of the problems perhaps here is that, of course, there are other proceedings of which the Committee are now aware, that are going on but of course they are not privy to what is part of those proceedings. Again, it is my advice to the Panel

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that as the matters are ongoing they should not exercise the Committee's mind as to any deliberations that might take place in those.

B

This is a case where conditional registration has been imposed for a period of three years. Pursuant to Rule 42(1) of the Proceedings to which I have referred:

“The Committee shall first judge whether the practitioner has failed to comply with any of the requirements imposed on him as conditions of his registration.”

C

The Committee will recall from Mr Tyson's opening that, in fact, the GMC have no hesitation to confirm that this doctor has not failed in any aspect in his compliance with those conditions.

D

The Committee Pursuant to 42(2)(a) have to determine, three choices, to revoke, vary or make no further directions in that they can, in fact, continue with the conditions as they are presently there.

I would draw the Committee's attention to 42(2)(b), and it has been mentioned but I am doing it for the purposes of reinforcement. This is the part that concerns me because there is a mandatory requirement within that.

E

“If the Committee determine not to revoke the direction or vary...”

Then

F

“...they shall proceed to impose a further period of conditional registration and shall consider and decide the nature of the conditions.”

That period cannot exceed 12 months.

G

I bring that to the Committee's attention because of the mandatory use of the word “shall” proceed to those conditions.

H

I would reinforce the representation that was made by Mr Tyson, that the Committee has to be proportionate, weighing in the balance the interests of patients, the public and the doctor's own interests.

I have to say it always grieves me to say this but the Committee does not have to take any notice of the legal

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advice that I give them. Case law, however, is against it and indeed if they do they must give reasons in their determination.

That is my advice for the time being.

B

THE CHAIRMAN: Do both Counsel agree with that advice? Or, do you have any other observations on it?

MS FOSTER: I have no observations at all, thank you.

MR TYSON: I have no observations, madam.

C

THE CHAIRMAN: Do either of the Panel have any questions to ask of the Legal Assessor at this point? In that case, the Panel will now consider this matter in private. I will invite the parties to withdraw and also the public and press.

STRANGERS THEN, BY DIRECTION FROM THE CHAIR,
WITHDREW
AND THE PANEL DELIBERATED IN CAMERA
STRANGERS HAVING BEEN READMITTED

D

DETERMINATION

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THE CHAIRMAN: Dr Southall, the Professional Conduct Committee on 6 August 2004 found you guilty of serious professional misconduct and determined to impose one

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condition on your registration for a period of three years. The condition imposed was that you must not engage in any aspect of child protection work either within the NHS (Category I) or outside it (Category II). You did not lodge an appeal against this decision and the condition took effect on 7 September

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2004.

H

CHRE (*sic*) appealed the decision of the PCC and on 14 April

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2005 the High Court handed down the judgment of Mr Justice Collins in your case, which was to allow the appeal to a limited extent. Mr Justice Collins ruled that the PCC's

B

decision to impose conditions on your registration was not unduly lenient. However, the PCC was unduly lenient in failing to direct that a resumed hearing would take place at the end of three years. In addition, the condition imposed was not tightly enough drawn to prevent any involvement by you in child protection work.

C

D

An Order, which was agreed between the parties, was substituted for the PCC's original decision. The principal terms are that: the PCC's condition is still in force from 7

E

September 2004 for a period of three years. In addition, you must report any concerns on child protection issues (whether within or outside the NHS and whether clinical, research

F

based or otherwise) to the most senior child protection doctor working for your employer or the relevant local Primary Care Trust as soon as possible, not take any further steps or have

G

any involvement whatsoever in relation to such concerns or initiate any communications with, or seek to influence in any way that child protection doctor/other person/body in relation

H

to such concerns; you must, every six months, provide to the GMC details of any cases where you have reported your

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concerns; you must inform any employer of the existence and terms of the conditions. It was directed that your case should be resumed at the end of the three year period of conditional registration.

B

C

At your PCC hearing on 6 August 2004, the Committee found that in November 1999 Sally Clark was convicted of the murder of two of her children, Christopher and Harry Clark.

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On or about 27 April 2000 you watched the "Dispatches" programme about the Sally Clark case and as a result, contacted the Child Protection Unit of the Staffordshire Police to voice concerns about how the abuse to Christopher and Harry Clark had occurred.

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On 2 June 2000 you met Detective Inspector Gardner of the Cheshire Constabulary, the senior investigating officer into the deaths of Christopher and Harry Clark, and told him that

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you considered that Stephen Clark, Sally Clark's husband, had deliberately suffocated Christopher Clark prior to his eventual death. You raised concerns about Stephen Clark's access to,

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and the safety of, the Clarks' third child, Child A.

H

At that time, you were not connected with the case but made it clear that you were acting in your capacity of a consultant

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paediatrician with considerable experience of life threatening child abuse and that you were suspended from your duties by your employers, the North Staffordshire Hospital NHS Trust.

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You knew that it was an agreed term of the Trust's enquiries that you would not undertake any new outside child protection work without the prior permission of the Acting Medical

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Director of the Trust. You had not obtained this permission prior to contacting the Child Protection Unit of the Staffordshire Police or to meeting Detective Inspector Gardner.

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You relied on the contents of the television programme "Dispatches" as the principal factual source for your concerns and you presented as fact a theory about the case underpinned by your own research. Your actions in doing so were precipitate and irresponsible.

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On 30 August 2000 you produced a report on the Clark family at the request of Forshaws Solicitors, representing Child A.

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At the time, you did not have any access to the case papers, medical records, laboratory investigations, post-mortem records, medical reports or x-rays. You had not interviewed either Stephen or Sally Clark. Your report concluded that it was extremely likely if not certain that Mr Clark had

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Clark had suffocated Christopher and you remained convinced that Child A was unsafe in the hands of Mr Clark. Further, your report implied that Mr Clark was responsible for the

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deaths of Christopher and Harry. Your report declared that its contents were true and may be used in a court of law whereas it contained matters the truth of which you could not have

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known or did not know. It contained no caveat to the effect that its conclusions were based upon the very limited information about the case known to you. You declined an

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opportunity to place such a caveat in your report, stating that it was likely beyond reasonable doubt that Mr Clark was responsible for the deaths of Christopher and Harry. The PCC

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found that your actions were individually and/or collectively inappropriate, irresponsible, misleading and an abuse of your professional position.

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The PCC expressed extreme concern that you came to the view that Stephen Clark was responsible for the deaths of Christopher and Harry Clark without ever having met Mr or Mrs Clark or viewing the medical evidence. The Committee

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noted that you did not follow the guidance entitled "Expert Witnesses in Children Act Cases" produced by Mr Justice Wall.

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The Committee noted that your failure to adhere to the principles contained within the GMC's guidance "*Good*

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Medical Practice" resulted in substantial stress to Mr Clark and his family at a time when they were most vulnerable and could have resulted in Child A being taken back into care unnecessarily. It was concerned that at no time during those

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proceedings did you see fit to withdraw your allegations or to offer any apology. Further, it considered that your conduct amounted to a serious breach of the principles of *Good*

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Medical Practice and the standards of conduct which the public are entitled to expect from registered medical practitioners.

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The Panel today has also noted the contents of the High Court judgment handed down by Mr Justice Collins on 14 April 2005. In Justice Collins's view, your refusal to change your mind, despite circumstances which should tell a reasonable

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person that his view is wrong is a serious weakness which can lead to a risk to patients and others in the same way as a lack of insight. He further stated that absence of remorse and

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contrition is likely to be indicative of a lack of insight or of maintenance of unreasonable views. In either event, it may show that a risk of repetition exists. Justice Collins noted that the PCC had stated that it would be inappropriate for you to

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continue with child protection work “for the foreseeable future” and imposed the maximum period of conditions, namely three years which, he stated, is hardly the foreseeable future.

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In his submissions before it today, Mr Tyson, on behalf of the GMC, informed the Panel that you currently face further misconduct allegations at the GMC which are unrelated to the matters being considered by this Panel today. It noted the advice of the Legal Assessor who stated that these matters are not relevant to this Panel’s decision.

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Mr Tyson informed the Panel that the Attorney General has made a statement in the House of Lords about medical records kept by you, known as “Special Cases Files”. The Attorney General has announced that these files will be investigated and the findings will be announced to Parliament.

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Mr Tyson told the Panel that the South Wales Police are currently investigating a matter in which you may be involved, relating to a child and events which occurred in 1993.

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The Panel notes that none of these matters are material to its decision today.

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The Panel today has first had to consider whether you have complied with the conditions imposed on your registration in August 2004, and added to by the High Court in April 2005. It notes that you have regularly updated the GMC with regard to

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patients where child protection may be an issue and that you have referred each of these cases on to your colleagues in

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child protection work. It has noted the contents of the references provided by you for the purposes of today's hearing from your colleagues at the University Hospital of North Staffordshire, which verify that you have complied with

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the conditions imposed on your registration. It further notes the submissions of Mr Tyson that the GMC is satisfied that you have not failed to comply with the conditions. The Panel has determined that you have complied with all of the

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conditions imposed on your registration.

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In accordance with Rule 42(2)(a) and (b) the Panel went on to consider whether to revoke the conditions, vary them, make no further direction or whether to impose a further period of conditional registration.

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It notes that the position of both Mr Tyson and Ms Foster, your representative, is that the current conditions imposed on your registration should remain in place for a further period of 12 months, to be reviewed before the expiry of those conditions.

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In determining what action to take with regard to the conditions currently imposed on your registration, the Panel has applied the principle of proportionality, weighing the public interest with your own interests. The Panel has a duty to protect the public interest. This includes the protection of patients, the maintenance of public confidence in the medical profession, and the promotion of proper standards of conduct and behaviour as set out in the GMC's document "*Good Medical Practice*". The Panel recognises that the purpose of sanctions is not to be punitive, although they may have a punitive effect.

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Although the Panel did not hear evidence from you, or submissions from Ms Foster on this point, it noted the submission of Mr Tyson that there has been no substantial change in your position in respect of the allegations you made against Stephen Clark.

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The Panel has considered the calibre and content of the references from your professional colleagues and notes that you are held in very high esteem and that your work is

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considered to be of the very highest quality. It further notes that in the opinion of your colleagues at the University Hospital of North Staffordshire, the conditions imposed on your registration are practicable and workable.

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The Panel notes that you currently work in paediatrics at the University Hospital of North Staffordshire for approximately one week per month and spend the remainder of your time in paediatric work for charitable organisations and the WHO.

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The Panel's attention has been drawn to the GMC's "Indicative Sanctions Guidance" of April 2005. The Panel appreciates that the guidance is intended for the Fitness to Practise Panel operating under the General Medical Council (Fitness to Practise) Rules 2004, however it considers its contents are relevant in this case. This guidance states the circumstances in which conditions may be appropriate.

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The Panel also notes the contents of the "Indicative Sanctions Guidance" in respect of review hearings. The guidance states that it is important that no doctor should be allowed to resume

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unrestricted practice following a period of conditional registration or suspension unless the Panel can be certain that he or she is safe to do so. It further states that in all cases

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where conditions have been imposed the Panel will need to be reassured that the doctor is fit to resume practice either unrestricted or with conditions or further conditions.

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The Panel considers that this case is very serious. It notes the views of the PCC and Justice Collins, that the conditions currently imposed should remain in place for the foreseeable

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future. It also notes that the conditions are workable and that you have fully complied with them during the period in which they have been imposed on your registration. It also notes the

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submissions made on your behalf by Ms Foster that it would be in your own interests for these conditions to remain in place for a further 12 months.

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In all the circumstances, the Panel has determined that the period of conditional registration be extended for a period of 12 months. The conditions imposed are as follows:

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1. You must not engage in any aspect of Child Protection work either within the NHS (Category I) or outside it (Category II).

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2. If, during the course of your medical practice (whether

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within or outside the NHS and whether clinical or research-

based) or otherwise, you form any concerns on child

protection issues in relation to a particular child or children

(whether or not your patient and whether deriving from any

formal or informal approach to you concerning child

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protection issues) you must:

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a. Report those concerns as soon as possible to the most

senior child protection doctor working for your employer (or

to the person responsible for child protection at the relevant

local Primary Care Trust) who is on-call at the relevant time

(the “child protection doctor”), and

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b. Not take any further steps or have any involvement

whatsoever in relation to any consideration, steps or actions in

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any way connected to such concerns or initiate any

communications with, or seek to influence in any way

whatsoever, that child protection doctor or any other person or

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body in relation to such concerns.

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3. For the remaining duration of these conditions, at

intervals of six months, you must provide to the GMC full

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details of any cases, whether involving an individual or individuals, in respect of which you have reported concerns in accordance with condition 2 above or, alternatively, confirm that there have been no such cases during that interval.

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4. You must inform your current employer and any subsequent employer (or relevant local Primary Care Trust) of the existence and terms of conditions 1, 2 and 3 above.

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The Panel will resume consideration of your case at a meeting to be held before the end of the period of conditional registration. It will then consider whether it should take further action in relation to your registration. You will be informed of the date of that meeting, which you will be expected to attend.

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Before that date you will be asked to furnish the Council with names of professional colleagues and other persons of standing to whom the Council may apply for information, as to their knowledge of your conduct since the hearing of this case. Please note, at the next resumed hearing your case will be heard by a Fitness to Practise Panel applying the General Medical Council (Fitness to Practise) Rules 2004.

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The effect of the foregoing direction is that, unless you exercise your right of appeal, your registration will be subject to these conditions for a period of 12 months, beginning 28 days from the date on which notice of this decision is deemed to have been served upon you. The previous order of conditional registration will remain in place until the new direction takes effect.

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That concludes this hearing today.

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MR TYSON: Madam, before everyone disappears I heard you to say before, the doctor's appeal to Mr Justice Collins. I may have mis-heard what you said.

THE CHAIRMAN: CHRE appealed the decision.

MR TYSON: Later on you used the word "your appeal".

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THE CHAIRMAN: I have read the determination, of which you have a copy.

MS FOSTER: Madam, it is true that the phrase appears but it appears right at the end of the decision, so far as I can find it, correctly referring to Dr Southall's right of appeal.

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MR TYSON: Madam, it is correct in the written version. It is in the second paragraph of the first page, when you said "CHRE". In fact, it was not CHRE, it was its predecessor body.

MS FOSTER: CHRP I think it used to be.

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MR TYSON: It was the Council for the Regulation of Healthcare Professionals, so it is CRHP. Whenever the words "CHRE" appears it should be "CRHP".

THE CHAIRMAN: I think it only appears once.

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MR TYSON: Secondly, the third line:

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“...handed down the judgment of Mr Justice Collins, in your case, which was to allow the appeal to a limited extent.”

I wrote down, when you were speaking:

“which was to allow ‘your’ appeal to a limited extent.”

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It is certainly correct in the written version. Apart from the terminology of the appeal body, I think that it is all typographically correct.

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THE CHAIRMAN: My recollection is that I read the words which are printed on the page. I do take the correction on “CHRE”, which should be “CRHP”. Thank you very much.

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