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Dr David Patrick SOUTHALL

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Neutral Citation Number: [2005] EWHC 579 (Admin)

Case No: CO/4738/2004

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 April 2005

Before :

Mr Justice Collins

Between:

Council for the Regulation of Healthcare Professionals	Appellant
- and -	
General Medical Council	First Respondent
And	
Professor David Patrick Southall	Second Respondent

Monica Carss-Frisk Q.C. & Pushpinder Saini (instructed by Baker & McKenzie) for the Appellant
Mark Shaw Q.C. & Jemima Stratford (instructed by Field Fisher Waterhouse) for the First Respondents
Kieran Coonan Q.C. & Andrew Kennedy (instructed by Hempsons) for the Second Respondent

Hearing dates: 3 - 4 March 2005

Judgment Approved by the court for handing down (subject to editorial corrections)

Mr Justice Collins:

1. Professor David Southall is a paediatrician of international renown. He has done pioneering work on child abuse and has been recognised as an expert in that field. In November 1999 Sally Clark was convicted of murdering two of her baby children. One of the expert witnesses at her trial, at which the defence was that the children had not died unnatural deaths, was Professor Sir Roy Meadow, whose evidence has subsequently been called into question, in particular in relation to the virtual impossibility of more than one infant death in a family to be attributable to 'cot death' or natural causes.

2. Sally Clark's husband was convinced that his wife was indeed not guilty of the offences of which she had been convicted. He was looking after a third child, who has been referred to as A, while she was in prison pending her appeal. On 27 April 2000, Channel 4 television, in its 'Dispatches' series devoted a programme to the case of Sally Clark. It contained a lengthy interview with her husband. Professor Southall had an obvious interest in it and watched it. In the course of it Mr Clark described how one of his sons who had died nine days later had suffered a nose bleed while he was looking after him at a hotel in London. The description of this event led Professor Southall, who at that time knew nothing of the case beyond what he saw in the course of the programme, to reach a firm conclusion that there had been an attempt to suffocate the child and that Mr Clark had not only been responsible for that attempt but had killed the child.

3. Professor Southall immediately decided to convey his concerns to the police and the next day contacted an officer at the Child Protection Unit in Staffordshire. The officer was known to him since he worked for the North Staffordshire Hospital (NHS) Trust at the North Staffordshire Hospital and in the course of his work had referred a number of cases of suspected child abuse to the police. The CPS and the Cheshire Social Services, who were concerned because there were ongoing care proceedings in the High Court in relation to Child A, were notified and Professor Southall was seen on 2 June 2000. He later attended a meeting with a representative of Cheshire Social Services and Child A's guardian ad litem on 21 July 2000. He had by then spoken to Professor Green, who was one of the pathologists who had appeared on behalf of the Crown at Sally Clark's trial, and Professor Meadow and had as a result got some more information. He did not, however, disclose the fact that he had had those conversations to social services and to the guardian ad litem believing, as he later said, that he might get the two into trouble if he did.

4. He maintained his conclusions that Mr Clark had attempted to suffocate his son at the hotel and that he and not his wife had killed his two children. It followed that Mr Clark was not fit to look after Child A who would be in grave danger if he did. He has, despite the existence of evidence which shows that Mr Clark could not have been responsible for his sons' deaths and his continuing lack of full knowledge of all the relevant material which would have to be taken into account in reaching such a positive conclusion, not resiled from that conclusion.

5. It will in due course be necessary to consider what I have set out in introducing this case in more detail. Professor Southall's conduct was the subject of a complaint to the General Medical Council (GMC) that he had been guilty of serious professional misconduct. In due course, he appeared before the Professional Conduct Committee (PCC) which, following a hearing lasting some 9 days, on 6 August 2004, having found him guilty of serious professional misconduct, directed that for a period of 3 years a condition should be imposed on his registration that he: -

> "... must not engage in any aspect of child protection work either within the NHS (Category I) or outside it (Category II)".

6. The appellant Council (which has now changed its title to the Council for Health Care Regulatory Excellence) was created by Section 25 of the National Health Service Reform and Health Care Professions Act 2002 ('the Act'). This resulted from concerns that the system of self-regulation of health care professionals did not always lead to proper concern for or protection of the public but was weighted in favour of the professionals. Similar concerns have recently been expressed by Dame Janet Smith in her report following her inquiry into the activities of Dr Shipman. One of the powers conferred on the Council is to refer to this court penalties imposed by a professional body which it considers to have been unduly lenient: see s.29(4) of the Act. Such references are treated as appeals. The Council took the view that the decision to impose the condition was unduly lenient and that, having regard to all the circumstances, nothing short of erasure would have been appropriate.

7. The approach to be adopted by this court in considering an appeal such as this has recently been the subject of a decision by the Court of Appeal in two conjoined appeals, one involving a decision of the GMC, the other a decision of the Nursing and Midwifery Council. The case is cited as [2004] EWCA Civ 1356, the practitioners being called *Ruscillo* and *Truscott* respectively.

8. The present case is concerned only with the alleged undue leniency of the penalty imposed. It is not suggested that all material facts were not put before the PCC or that there was any 'under prosecuting'. The power to refer conferred by s.29(4) extends to findings and lack of findings as well as to penalties and in the *Ruscillo* case those elements were of importance and it was necessary for the court to decide whether the power to refer extended to what can be described as acquittals. At paragraph 67, the Court rewrote s.29(4)(a) in the following way: -

> "A relevant decision falling within subsection (i) has been unduly lenient, whether because the findings of professional misconduct are inadequate, or because the penalty does not adequately reflect the findings of professional misconduct that have been made or both".

The actual wording of s.29(4)(a) is: -

> "A relevant decision falling within subsection (1) has been unduly lenient, whether as to any finding of professional misconduct, or fitness to practise on the part of the practitioner concerned (or lack of such a finding) or as to any penalty imposed or both".

As the Court said, its rewriting (with, I would suggest, the addition of the words 'or fitness to practise' after 'professional misconduct') accords with the scheme of section 29 and is not in conflict with the language used.

9. In paragraph 73, the Court was considering the correct approach to a reference. It said this: -

> "What are the criteria to be applied by the Court when deciding whether a relevant decision was 'wrong'? The task of the disciplinary tribunal is to consider whether the relevant facts demonstrate that the practitioner has been guilty of the defined professional misconduct that gives rise to the right or duty to impose a penalty and, where they do, to impose the penalty that

> is appropriate, having regard to the safety of the public and the reputation of the profession. The role of the Court when a case is referred is to consider whether the disciplinary tribunal has properly performed that task so as to reach a correct decision as to the imposition of a penalty. Is that any different from the role of the Council in considering whether a relevant decision has been 'unduly lenient'? We do not consider that it is. The test of undue leniency in this context must, we think, involve considering whether, having regard to the material facts, the decision reached has due regard for the safety of the public and the reputation of the profession".

The Court then went on to consider how the issue of undue leniency should be addressed in the light of an argument put forward by the Council that it alone had to consider whether a decision was unduly lenient and, if it did, the Court was than concerned to consider the decision as if on an ordinary appeal. In relation to penalty, the Court said this (at paragraph 76): -

> "We consider that the test of whether a penalty is unduly lenient in the context of section 29 is whether it is one which a disciplinary tribunal having regard to the relevant facts and the object of the disciplinary proceedings, could reasonably have imposed".

And in paragraph 77, the Court said: -

> "In any particular case under section 29 the issue is likely to be whether the disciplinary tribunal has reached a decision as to penalty that is manifestly inappropriate having regard to the practitioner's conduct and the interests of the public".

The use of the adverbs 'reasonably' and 'manifestly' reflect 'unduly' and makes it clear that it is only if it is obvious to the court that the penalty imposed was too lenient should it intervene. It must bear in mind that the overriding concern is the safety of the public coupled with the reputation of the profession, but it must not interfere with the penalty imposed unless satisfied that that penalty cannot reasonably be regarded as producing the necessary protection for the public or as upholding in an appropriate fashion the reputation of the profession.

10. The Court also considered a matter which is almost always raised in appeals from professional bodies such as the GMC, namely the extent to which the Court should defer to the expertise of the disciplinary tribunal. In paragraph 78 the Court of Appeal said this: -

> "That expertise is one of the most cogent arguments for self-regulation. At the same time Part 2 of the Act has been introduced because of concern as to the reliability of self-regulation. Where all material evidence has been placed before the disciplinary tribunal and it has given due consideration to the relevant factors, the Council and the Court should place weight on the expertise brought to bear in evaluating how best the needs of the public and the profession should be protected. Where, however, there has been a failure of process, or evidence is taken into account on appeal that was not placed before the disciplinary tribunal, the decision reached by that tribunal will inevitably need to be reassessed".

11. The amount of weight to be attached to the expertise, assuming regard has been had to relevant factors, will depend on the circumstances of a particular case. Thus where there is misconduct constituted by a failure to reach proper standards in treating patients, the expertise of the tribunal in deciding what is needed in the interests of the public is likely to carry greater weight. This will apply more particularly in cases involving fitness to practise. But where, for example, dishonesty or sexual misconduct is involved, the court is likely to feel that it can assess what is needed to protect the public or to maintain the reputation of the profession more easily for itself and thus attach less weight to the expertise of the tribunal. The question of deference has been considered by the Privy Council in a number of cases. The more recent approach, which reflects the influence of Article 6 of the European Convention on Human Rights, is to be found in Ghosh *v General Medical Council* [2001] 1 W.L.R. 1915. At paragraph 34 on page 1923, Lord Millett said this: -

> "For these reasons the Board will accord an appropriate measure of respect to the judgment of the committee whether the practitioner's failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the Board will not defer to the committee's judgment more than is warranted by the circumstances. The council conceded, and their Lordships accept, that it is open to them to consider all the matters raised by Dr Ghosh in her appeal; to decide whether the sanction of erasure was appropriate and necessary in the public interest or was excessive an disproportionate; and in the latter event either to substitute some other penalty or to remit the case to the committee for reconsideration".

That approach was followed in *Preiss v General Dental Council* [2001] 1 W.L.R. 1926 and is reflected in what the Court of Appeal said in *Ruscillo* at paragraph 78.

12. As will become apparent, the PCC were very much influenced by testimonials which were put before than on behalf of Professor Southall. The weight to be accorded to testimonials has been considered in a different context in *Bolton v Law Society* [1994] 1 W.L.R. 512. However, the purpose of disciplinary sanctions is material. As the GMC's own guidance correctly makes plain, the purpose of disciplinary sanctions is to protect the public and the reputation of the profession in question, not to punish. It is obvious that whatever sanction is imposed will involve to a greater or lesser extent a real penalty, but the word penalty is not, as the Court of Appeal pointed out in *Ruscillo* at paragraph 60, really an appropriate one to describe disciplinary sanctions. In its Indicative Sanctions Guidance, the GMC points out that the purpose of the sanctions is not to be punitive, but to protect the public interest, which includes the maintenance of public confidence in the profession and upholding proper standards of conduct. The approach set out in *Bolton v Law Society* has been approved and applied to the GMC by the Privy Council in *Gupta v GMC* [2002] 1 W.L.R. 1691. At p.518 of *Bolton*, Sir Thomas Bingham, MR said this: -

> "The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor,

> pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.
>
> Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price".

13. Miss Carss-Frisk, when I drew her attention to this passage in *Bolton*, suggested that testimonials should not be accorded substantial weight and certainly should not produce a lower sanction than that which would otherwise have been appropriate. Testimonials in the case of a doctor can go much further than in the case of a solicitor since they can show that he has been and is, apart from the misconduct in issue, a thoroughly good doctor. It is clearly in the public interest that doctors who are competent and for whose skills many patients and colleagues have nothing but praise should not be precluded from practice altogether if that can be achieved with no danger to the public and with no damage to the reputation of the profession. So much was made clear by the Privy Council in *Bijl v General Medical Council* [2002] Lloyd's Med Rep 60. The serious professional misconduct in that case arose from a failure by the appellant to stay with a patient when he considered that he, as the surgeon, had completed his part of the operation but the patient was still in a serious condition. The patient died and the appellant's conduct was rightly castigated as 'seriously irresponsible and a grave neglect of proper professional standards'. There was, in addition, a real concern that he had a continuing lack of insight in that, although he accepted that he had made an error in leaving the hospital, he did not seem to appreciate that he had a continuing duty to do his utmost to ensure that the patient lived and could not place that burden on the shoulders of the anaesthetist. In paragraphs 13 and 14 on page 62, Lord Hoffmann said this: -

> "The Committee was rightly concerned with public confidence in the profession and its procedures for dealing with doctors who lapse from professional standards. But this should not be carried to the extent of feeling it necessary to sacrifice the career of an otherwise competent and useful doctor who presents no danger to the public in order to satisfy a demand for blame and punishment. As was said in *A Commitment to Quality, A Quest for Excellence*, a recent statement on behalf of the Government, the medical profession and the National Health Service:
>
> "The Government, the medical profession and the NHS pledge ... without lessening commitment to safety and public accountability of services, to recognise that honest failure should not be responded to primarily by blame and retribution but by learning and by a drive to reduce risks for future patients.
>
> The Board, as their Lordships said at the outset, is reluctant to substitute its own views for those of the Committee on the appropriate penalty. In the present case since Mr Bijl is aged 56 erasure means the end of his medical career. The Committee have not expressly said why this, the maximum sentence available, was necessary in this case. So far as they clearly thought this was a serious lapse which they describe as the Appellant abandoning his patient when her condition was still serious, their Lordships entirely agree. However the Appellant accepted that his decision to leave the hospital was certainly a mistake, but as already mentioned, he clearly determined never to make that mistake again. Their Lordships note that there was a period of over four years between the operation and the Committee's decision when these serious charges were outstanding. During that time Mr Bijl did succeed in obtaining employment as a locum consultant urologist in other hospitals, without so far as appears any complaint about the standard of his work. While giving great weight to the judgment of the Committee their Lordships feel difficulty in the light of theses circumstances in being satisfied that erasure involving a complete cessation of Mr Bijl's medical work was necessary when suspension with the possibility of imposing detailed conditions on his carrying on practice is available".

Those observations are of general application.

14. It follows that in my view testimonials can in the case of doctors be accorded *greater weight than in the case of solicitors. The requirement of absolute honesty* so that there can be absolute trust in a solicitor is obviously of paramount importance. That he may be a good solicitor is obviously something to be taken into account, but the public interest in him being able to continue in practice is not so important. Thus testimonials which establish that a doctor is, in the view of eminent colleagues and of nursing staff who have worked with him, one who is not only competent but whose loss to the profession and to his potential patients would be serious indeed can, in my opinion, be accorded substantial weight.

15. I must now consider the misconduct which was established in more detail. It has led the Council to submit that Professor Southall abused his professional position by, in effect, misusing his eminence in the field of child abuse, that he violated conditions imposed by the Trust under which he was having to conduct himself at the time, that he had shown no remorse and so lacked insight that what he had

done was wrong and that a message ought to have been sent to the profession that such conduct could not be tolerated. The only result in all the circumstances which could have followed the findings was one of erasure. If that meant (Professor Southall being 57 years old) that he would never practise again, it was an inevitable and justifiable result of the serious professional misconduct of which he had been found guilty. The loss of his services as a first class paediatrician was unfortunate but was a price which had to be paid in the light of his misconduct and in particular because his arrogant attitude that he was right and, despite the findings made against him and his knowledge, because of matters put to him in cross examination, that his theory that Mr Clark killed his sons was seriously flawed, his failure to accept even that he might be wrong showed that there was a real danger that he would do something similar if, in his work as a paediatrician, he came across a case which he believed indicated child abuse. Thus to impose the condition did not adequately protect the public since he had already breached a similar condition in acting as he had and certainly did not send out the right message to satisfy the public that they could be sure that there was no risk of irresponsible reporting of alleged child abuse.

16. I have referred to conditions imposed by the Trust. Those resulted from complaints made of Professor Southall's conduct in, inter alia, dealing with child abuse, in particular in relation to his use of covert video recording which had demonstrated abusive conduct by some parents. The allegations were investigated in depth and were all found to be without substance. Their relevance lies in the fact that at the material time the allegations were still being investigated and the Trust had required him not to undertake any child protection work unless he received written confirmation from the then Acting Medical Director, Dr P. M. Chipping. On 3 June 1999 he had been told that he should not undertake any further category II work without Dr Chipping's express written authority. Category II work is work outside the NHS. On 15 October 1999, Dr Chipping wrote in these terms: -

> "I write to provide further clarity in relation to your agreement to comply with the Trust's request in ceasing work on any of your current child protection cases.
>
> As you are aware, the Trust has made their request on the advice of the inter-agency review panel. Until the panel are at a stage in this inquiry to advise otherwise, your compliance with this request is required. I will write to you to confirm if this position changes. Until you receive written confirmation from myself, you should not undertake any protection work".

He was also suspended from his duties with effect from 3 December 1999 because of the serious nature of the allegations, unfounded though they were subsequently recognised to have been.

17. When she gave evidence at the hearing, Dr Chipping said that Professor Southall ought to have asked her permission before contacting the police about his concerns following the television programme. She had written to him on 12 June 2000 making this point, saying, inter alia, that he had 'potentially put yourself and the Trust in a very difficult position'. However, she accepted that, if he had informed her, she would have contacted the police to enable him to raise his concerns and, no doubt, to ensure that the police knew of his suspension, although they had been aware of that in any event. Professor Southall's excuse for not informing Dr Chipping or asking her permission was that he was not acting as an employee of the Trust but as an informed individual. It was, as he put it, 'neither category II work nor acute child protection work of the kind I was doing

in October when asked to stop. This was something completely different to those two issues' (Transcript Day 5 p.344G).

18. That excuse is unimpressive and no more than sophistry. His actions in this respect were regarded by the PCC as precipitate and so they clearly were. In addition, to have relied on the contents of the television programme and to have presented to the police theory as fact was properly regarded as irresponsible, but the fact that he had reported his concerns and the manner in which he had presented them were not regarded as an abuse of his professional position.

19. The abuse of his professional position arose from a report that he produced on 30 August 2000 at the request of the solicitors acting for the guardian ad litem of Child A. His conclusion was expressed as follows: -

> "I was stunned when watching this television programme since it appeared extremely likely if not certain to me that Mr Clark must have suffocated [C] in the hotel room. I felt that the police had been misled into believing that Mrs Clark could have suffocated [C] 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.
>
> I feel that every event subsequent to that in the hotel should be re-examined with this new evidence in mind.
>
> I remain convinced that the third child in this family is unsafe in the care of Mr Clark.
>
> I suggest that all of the remaining film work undertaken for the 'Dispatches' programme but not shown be examined.
>
> Tragically a considerable time has now elapsed making the task of the police in rechecking Mr Clark's alibi for the first death very difficult.
>
> I declare that the contents of this report are true and that they may be used in a court of law".

Following this, he received an e-mail from Professor David, who had a considerable interest and expertise in shaken baby syndrome (which had been originally said to have been the cause of at least one of the childrens' death) and who was involved as an independent expert to give evidence to the court in the care proceedings. This e-mail, so far as material, stated: -

> "My question is simple. Do you accept that it is possible that there is either medical data, or circumstantial data, or both, that could in fact largely or even completely exclude the possibility that Mr Clark killed either of his children?

> I feel I have to ask this question because nowhere in your report did you say something like 'These opinions are based on the very limited data available to me in the television programme. I have not had the opportunity to study the papers in this case, and I accept that there may be data available that negates or is inconsistent with the opinions expressed here'.
>
> My guess is that you did not insert a caveat like this simply because you were in a hurry to send it off, but of course it is possible that you take a much stronger view. I want to make sure that I fairly and accurately represent your opinions, and hence this e-mail".

20. Professor Southall had neither the sense nor the humility to accept this lifeline. In his reply, he said this: -

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

And, at the hearing, at the outset of his cross-examination, Professor Southall maintained his view that Mr Clark had killed both the children.

21. As is the practice in the GMC, the charge against Professor Southall was broken down into a number of allegations of fact and of conclusions to be derived from those facts. It is convenient to set out what can be described as the charge sheet in a way which shows what was admitted and what, having been denied, was found proved.

> "That, being registered under the Medical Act,
>
> 1. In November 1999 Sally Clark was convicted of the murder of two of her children, [C] and [H] Clark;
>
> **Admitted and found proved**
>
> 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;
>
> **Admitted and found proved**
>
> 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 [C] and [H] Clark had in fact occurred;

Admitted and found proved

4. 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 [C] and [H] Clark, and in effect told him that, as a result of watching the programme, you considered that

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

b. Stephen Clark was thus implicated in the deaths of both [C] and [H] Clark,

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

Admitted and found proved

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

a. were not connected with the case,

Admitted and found proved

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

Admitted and found proved

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

Admitted and found proved

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,

Admitted and found proved

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,

As amended, admitted and found proved

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

Admitted and found proved

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;

Denied and found proved

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

a. Precipitate and/or,

Denied and found proved in relation to Heads 3 and 5, but not proved in relation to Head 4

b. irresponsible and/or,

Denied and found proved in relation to Head 5, but not proved in relation to Heads 3 and 4

c. an abuse of your professional position;

Denied and found not proved in relation to Heads 3, 4 and 5

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

Admitted and found proved

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;

Admitted and found proved

ii. Had not interviewed either Stephen or Sally Clark,

Admitted and found proved

b. Your report concluded that

i. It was extremely likely if not certain that Mr Clark had suffocated [C] in the hotel room,

Admitted and found proved

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

Admitted and found proved

c. Your report implied that Mr Clark was responsible for the deaths of his two eldest children [C] and [H];

Admitted and found proved

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,

Denied and found proved

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

Denied and found proved

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

Admitted and found proved

g. When given the opportunity to place such a caveat in your report you declined, by faxed email 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 2 other children;

Admitted and found proved

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

a. inappropriate and/or,

b. irresponsible and/or

c. misleading and/or,

d. an abuse of your professional position.

Denied and found proved

And that in relation to the facts alleged you have been guilty of serious professional misconduct.

Denied and found proved".

22. The submissions made by counsel who, as he pointed out, represented not only the GMC but also Mr Clark, in relation to penalty were clear and unequivocal: nothing short of erasure would be appropriate. He submitted that the most serious heads of charge were 7f and g. Professor Southall's failure to admit the consequences of his acceptance of the facts set out in 7f and g showed, it was said, a complete lack of insight into the grave errors that he had made. He continued (Transcript Day 8 p.462D): -

> "It follows, we would submit, that a doctor who has no insight, and who arrogantly continues to believe that he is right, is a very dangerous doctor. This is especially so where, as here, we have a doctor who practices in the extremely sensitive and important

> field of child protection. This is a field where, largely on a consultant paediatrician's say-so, families can be split asunder or parents can be convicted of very serious crimes against their children. That in my brief analysis of the circumstances of the background leading to the facts found".

Further, there can be no doubt that Professor Southall's report had breached the guidelines for medical experts in court proceedings and had failed to have proper regard to the need for caution in advising that a particular event had taken place. Further, he had for no good reason failed to disclose that he had spoken to Professor Green and Professor Meadow over the telephone and had obtained what he regarded as important information from them which fortified him in his opinion.

23. Apart from the specific risk to children and, more particularly, to their parents or carers shown by Professor Southall's misconduct, there was a wider issue of public confidence in child protection arrangements. While it is important that children who are being abused should be protected and indications of abuse should be carefully and thoroughly investigated, it is important that families should not be torn apart as a result of mistaken diagnoses. That is hardly in a child's best interests. Counsel put the general issue in these words (Transcript Day 8 pp465H-466B): -

> "Public confidence in doctors, especially in paediatricians, in correctly identifying true cases of abuse, is, we would submit, in some sort of a crisis. We would submit that the only way of restricting public confidence (and, incidentally, getting more paediatricians to be involved in this sensitive, difficult and important work) is for this Committee to take strong, effective *and public action against paediatricians, such as Professor* Southall, who have been found, in the wording of head of charge 8, to have behaved inappropriately, irresponsibly, misleadingly and to have abused their professional position".

While I am not convinced of the validity of the point made in parenthesis, the general sentiment is one which has very considerable force.

24. Counsel further drew attention to the Indicative Sanctions Guidance. Miss Carss-Frisk also relied on matters set out in the Guidance, submitting that, if they were followed as they should have been, erasure was the only appropriate penalty. Paragraphs 10, 11 and 12 describe the purpose of the PCC's sanction in these words: -

> "10. The purpose of the sanctions is not to be punitive, but to protect patients and the public interest, although they may have a punitive effect.
>
> 11. There is clear judicial authority that the public interest includes:
>
> a. The protection of patients.
>
> b. The maintenance of public confidence in the profession.
>
> c. Declaring and upholding proper standards of conduct.

12. The public interest may also include the doctors return to safe work".

The only gloss I would place on those overarching principles in that protection can extend, in appropriate cases, beyond patients to those who are directly adversely affected by the doctor's actions. Reference is then made to the need to have regard to proportionality in balancing the interests of the public against those of the practitioner, bearing in mind any mitigation which might be put before the PCC.

25. The guidance sets out factors specifically said not to be exhaustive whose presence may make a particular sanction appropriate. The sanctions are set out, because that is the way the statutory provisions require the PCC to approach its task, in reverse order of seriousness. They are reprimand, conditions imposed on registration, suspension and erasure. Under 'erasure' this is said: -

> "This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a doctor and involves **any** of the following (this list is not exhaustive):
>
> - Serious departure from the relevant professional standards as set out in Good Medical Practice.
> - Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients.
> - Abuse of position/trust (particularly involving vulnerable patients) or violation of the rights of patients.
> - Offences of a sexual and/or violent nature including involvement in child pornography.
> - Dishonesty (especially where persistent or covered up).
> - Persistent lack of insight into seriousness of actions or consequences".

Miss Carss-Frisk submitted that four out of the six bullet points were involved (that is to say all except offences of a sexual or violent nature and dishonesty). The abuse of position arose because of Professor Southall's expertise in the field of child protection and his reputation. The police were (to the Detective Inspector's credit) unimpressed by Professor Southall's allegations, stating that they illustrated 'how a well-meaning but scantily informed person can theorise about what actually happened'. But the Social Services felt, understandably, that they could not be ignored, particularly as they involved 'a very serious allegation, raised by a Consultant Practitioner with extensive experience in the field of life-threatening child abuse in infancy'. Fortunately, it was not felt necessary to remove Child A from his father's care.

26. It was accepted – or rather, the contrary was not argued – by counsel before me that suspension was not in the circumstances a sensible alternative to erasure. If there was to be a choice, it lay between erasure and conditional registration. This was essentially because suspension could be for a maximum of 12 months and there was limited scope for subsequent conditions to be imposed or for an extension of suspension. What was needed (if anything short of erasure was appropriate) was a condition which precluded Professor Southall, at least for a

substantial period, from involving himself in child protection as opposed to treating individual sick children.

27. The Guidance says this about conditional registration: -

> "This sanction may be appropriate when most or all of the following factors are apparent (this list is not exhaustive):
>
> - No evidence of harmful deep-seated personality or attitudinal problems.
> - Identifiable areas of doctor's practice in need of assessment or retraining.
> - *No evidence of general incompetence.*
> - Potential and willingness to respond positively to retraining.
> - Patients will not be put in danger either directly or indirectly as a result of conditional registration itself.
> - The conditions will protect patients during the period they are in force.
> - It is possible to formulate appropriate and practical conditions to impose on registration".

Conditions are said to be inappropriate since Professor Southall had already *broken the conditions which the Trust had imposed and there is no reason to* believe that in a case where he believed abuse had occurred he would not do the same again. Further, since he remains adamant that he was right and has shown no remorse and no contrition, it is said that he has no insight and for that reason too there is a real risk of further similar offending.

28. Dr Chipping in addition to her evidence to assist the PCC in its fact finding exercise, gave evidence on behalf of Professor Southall in mitigation. She explained the system which had been put in place since Professor Southall's return to work with the Trust in October 2001, once the allegations against him which had led to his suspension had been rejected. He was limited to paediatric work and, if he came across what he believed to be a case of abuse, he was to contact the child protection officer on duty and should not involve himself further. This system had worked well. These questions and answers are important (Transcript day 8 p.491F-G): -

> "Q. So far as Professor Southall is concerned, has that structure *effectively prevented him from doing what may be called,* generically, child protection work?
>
> A. Yes. What has happened is that if Professor Southall has concerns that this might be a child who has been abused, he is clearly instructed to contact the Trust child protection doctor on call at that time. I have in fact spoken just yesterday with the Trust's child protection doctor, who happens, also, to be the head of division for women and children, which is just slightly above the clinical director. This individual confirmed that there is a very robust system at work, and that appropriate referrals have been

received. She is confident, as I am, that this system has worked robustly.

Q. Are there any breaches by Professor Southall?

A. No".

While Dr Chipping accepted that it would not be possible for the Trust to control what private work Professor Southall chose to do outside his working hours for the Trust, she was anxious, if possible, not to lose his 'very considerable contribution to general paediatric work'. She recognised that, as one of the eminent doctors who had written testimonials had said, Professor Southall was 'unprepared to view things as a spectator if he considers that certain aspects have failed to receive the attention that they deserve'. Nonetheless, she was confident, having regard to her experience of working with Professor Southall when subject to the condition preventing him from engaging a child protection work, that he had accepted and would, however painful it was, continue to accept the restrictions. He recognised that she would be the first to report him to the GMC if there were any breach and that erasure would then be virtually automatic. In addition, she made the point that what might be seen as a weakness in child protection work appeared to be a strength in general paediatrics, since Professor Southall's determination to arrive at an appropriate diagnosis resulted in 'thorough, well thought through and detailed diagnostic work'.

29. Dr Chipping was also asked about insight. She gave this answer (Transcript Day 8 p.495H): -

> "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 thank 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".

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. Nonetheless, the PCC heard and saw and was able to evaluate the evidence given by Dr Chipping and to attach, if it so chose, considerable weight to it. She had worked closely with Professor Southall for nearly 3 years during which he had been prevented from doing child protection work. She believed that any risk to patients or others was insignificant. That was a view which the PCC was entitled to accept, particularly if sufficiently tight conditions were imposed since Professor Southall would know that any breach would, unless there were wholly exceptional circumstances, lead to erasure.

30. 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. 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. Provided that they have properly considered all the relevant circumstances and have had regard to

the correct principles and have reached a conclusion which is itself reasonable, this court will not interfere. Furthermore, the Guidance is just that and it does not automatically follow that erasure must follow if any of the bullet points set out apply. The overarching principles must be taken into account and they include a recognition that the public interest may, despite a finding that he has been guilty of serious professional misconduct, indicate that a doctor should be able to return to safe work. And the conduct must, if erasure is to be justified, be fundamentally incompatible with being a doctor. In that respect, I agree with what is said in the Guidance.

31. I do not propose to set out the PCC's conclusions at great length but merely to highlight their more important observations. They emphasised the failure to make an adequate assessment of Child A and Mr Clark's actions or to take reasonable steps to verify what he put in his report of 30 August 2004. This was a contravention of the GMC's guidance contained in its publication Good Medical Practice. They continued: -

> "The Committee do not believe that you did take reasonable steps before you signed the report on the Clark case. Your failure to adhere to these principles 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 and Mr Clark's prosecution as a result of your false allegation. The Committee are concerned that at no time during these proceedings have you seen fit to withdraw those allegations or to offer any apology".

The PCC had also pointed out that Professor Southall's view, based on what he had seen in the television programme, coupled with his undisclosed conversations with Professors Green and Meadow, was a theory which had been presented not as a theory but as a near certainty.

32. The PCC retired to consider what to do in the afternoon of the eighth and returned in the afternoon of the ninth day. This was a lengthy consideration. They must have appreciated that erasure could not have been regarded as too severe for the serious professional misconduct which had been found proved. As will be apparent from what they said (and I fear it will be necessary to set it out), they were very much influenced by the testimonials which had been provided. They are indeed most impressive.

33. Professor Southall is now 57. He has been a consultant paediatrician since 1988. He has been responsible for much research and has published many articles, including important studies in relation to child abuse. Between 1993 and 1995 he was consultant health advisor to UNICEF in the former Yugoslavia. In 1995 he was involved in the setting up of a charity, Child Advocacy International, which is involved in international child health issues. In 1998 he was awarded an OBE in particular recognition of his humanitarian work. One of the testimonials came from Professor Sir David Hall, the immediate past president of the Royal College of Paediatrics and Child Health. As such, he was aware of and advised the Trust on and saw all the reports relating to the investigation into the allegations which had been made against Professor Southall and which had led to his suspension by the Trust. Sir David was satisfied, after considering the rigorous investigation which had been carried out into the allegations, that 'notwithstanding the image he presents of a single-minded enthusiast for his research and for the protection of children, no major criticism could be levelled at him in any area of his practice'. He concluded thus: -

> "David Southall is an unusual man, single minded and totally committed to what he wants to achieve. In an era when many paediatricians are extremely reluctant to get involved in child abuse cases, or stand out against the tide of opinion, for fear of complaints against them, he will do what he believes to be right without counting the cost to himself. We need people like him who challenge perceived wisdom, test new ideas and suggest new approaches. They are rare.
>
> RCPCH recently published a survey showing the escalating number of complaints against paediatricians about child protection work and the unacceptable vacancy rate for paediatric child protection posts. Paediatricians have been attacked verbally, threatened physically, demonised in the press, and referred to the GMC for diagnosing child abuse – and for missing it. David Southall is widely respected, as one of the few men who has had the courage to stand up to these attacks and keep on working in the field. His enforced retirement from the scene would have a catastrophic effect on paediatric morale".

There were in addition tributes from colleagues and nursing staff to his excellence as a paediatrician and reference to letters from parents of children whom he had treated expressing their gratitude for what he had done for them.

34. In explaining why they were deciding on the sanction of imposing a condition, the PCC said this: -

> "In considering whether to take action in relation to your registration, the Committee have considered the issue of proportionality and have balanced the interests of the public against your own. The Committee have given careful consideration to the submissions made on your behalf and on behalf of the GMC and Mr Clark. It has also considered carefully the GMC's Indicative Sanctions Document. The Committee have been extremely impressed by the vast number of and the quality of testimonials that have been put before them. It is clear from the testimonials that you are held in the highest esteem by your professional colleagues both in the United Kingdom and internationally. They all testify to your outstanding clinical skills and unparalleled commitment to the welfare of children all over the world. In particular we have noted the comments of Professor Sir Alan craft, President of the Royal College of Paediatrics and Child Health (RCPCH) who states that there has been no doubt that you have been an academic leader and that you have undertaken extremely important ground breaking research which 'has greatly influenced the way that babies and children have been managed all over the world'. The testimonials dealt with not only your research work, but also your work in paediatrics and child protection. There are many references to your unstinting involvement in the care of seriously ill children both within your own Trust and wider afield. Your colleagues have testified your willingness to help them when faced with difficult cases no matter the personal cost to yourself. The Committee have also heard and have been impressed by the fact that you set up Child Advocacy International, a charitable organization which helps and promotes the welfare of sick children in less privileged parts of

the world. The Committee notes that prior to this hearing you have more than 30 years of unblemished medical practice.

The Committee have taken into account the evidence of Dr Chipping, Medical Director who appeared before the Committee to give an oral testimony on your behalf. Dr Chipping stated that since your return to work in October 2001, you have only worked in the area of general paediatrics and that you no longer involve yourself in paediatric intensive care or indeed in child protection work.

The Committee nevertheless concluded that the findings against you reflect a serious breach of the principles of Good Medical Practice and the standards of conduct, which the public are entitled to expect from registered medical practitioners and the Committee therefore feel obliged to take action in the public interest. In reaching this conclusion the Committee have borne in mind the Privy Council judgment in the case of Dr Gupta (Privy Council Appeal No 44 of 2001) which states that:

> "The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price".

In considering what action to take against your registration, the Committee recognise that taking no action and concluding this case with a reprimand would be wholly inappropriate.

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. Therefore, the Committee have decided to impose the following condition on your registration for a period of 3 years:

> 1. You must not engage in any aspect of child protection work either within the NHS (category I) or outside it (Category II)".

35. 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. 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 sufficient 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.

36. 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 3 years, which is hardly the foreseeable future. I recognise that, as a result of the conditions imposed by the Trust, he had already been prevented from involving himself in child protection work in category I and had not involved himself in any category II work since September 2000. There is power to extend the period during which a condition can apply: see Medical Act 1983 s.36(4). The GMC etc Rules Order of Council 1988 (SI 1988/2255) places some procedural constraints upon the exercise of this power. Rule 31(5) provides that, where the PCC has decided that a practitioner's registration shall be subject to conditions, they 'may when announcing the direction to give effect to such determination, intimate that they will, at a meeting to be held before the end of [the period during which the conditions are to apply] resume consideration of the case with a view to determining whether or not they should then direct that the period of conditional registration should be extended or the conditions varied or that the name of the practitioner should be erased from the Register'. If no such intimation is given, Rule 37(2) provides: -

> "If it appears to the Chairman of the Preliminary Proceedings Committee ('the Chairman'), as a consequence of the receipt during that specified period of information as to the conduct or a conviction of the practitioner since the date of the direction to give effect to the determination that the Professional Conduct Committee should consider whether or not –
>
> (a) the period of suspension or conditional registration should be extended; or
>
> (b) the conditions should be varied or revoked; or
>
> (c) the name of the practitioner should be erased from the Register
>
> he shall direct the Solicitor to notify the practitioner that the Professional Conduct Committee will resume consideration of the case at such meeting as the Chairman shall specify".

Thus some positive action is required to enable the matter to be kept under review and that is unlikely to happen unless the practitioner has done something wrong.

37. 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. 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.

38. 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). Ms Carss-Frisk has submitted that, if I were to decide in this way, I should not devise conditions myself but should remit the case to the PCC to impose appropriate conditions following further argument (or, perhaps, agreement) by the interested parties. I see the force of this, but will hear counsel upon it.

39. This appeal will therefore be allowed to the extent I have indicated.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/4738/2004

BEFORE MR JUSTICE COLLINS

THURSDAY 14 APRIL 2005

B E T W E E N:

THE COUNCIL FOR THE REGULATION
OF HEALTHCARE PROFESSIONALS

Appellant

- and -

(1) THE GENERAL MEDICAL COUNCIL
(2) PROFESSOR DAVID PATRICK SOUTHALL

Respondents

ORDER

UPON the Appellant's Notice dated 30 September 2004.

AND ON HEARING Monica Carss-Frisk QC and Pushpinder Saini (Counsel for the Appellant), Mark Shaw QC and Jemima Stratford (Counsel for the First Respondent) and Kieran Coonan QC and Andrew Kennedy (Counsel for the Second Respondent).

IT IS ORDERED:

1. The Appellant's appeal be allowed to the extent set out below and:
   (a) the First Respondent do pay one third of the Appellant's costs, to be subject to detailed assessment if not agreed; and
   (b) there be no order for costs in relation to the Second Respondent.

2. Pursuant to section 29(8)(c) of the National Health Service Reform and Health Care Professions Act 2002, the decision set out below is substituted for the relevant decision of the Professional Conduct Committee of the First Respondent of 6 August 2004.

3. The Second Respondent 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.

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

5. For the remaining duration of these conditions, at intervals of six months starting from the date of this Order, the Second Respondent must provide to the First Respondent 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.

6. The Second Respondent 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.

7. Pursuant to rule 31(5) and rules 38(1) and (2)(ii) of the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988, consideration of the Second Respondent's case is to be resumed at a meeting of a Fitness to Practise Panel of the First Respondent, to be

attended by the Second Respondent, before the end of the three year period specified in 3 above for the purpose of considering whether to take further action in relation to the Second Respondent's registration.

(a) The Second Respondent should be given reasonable notice of the date of the resumed hearing.

(b) A reasonable time before the resumed hearing the Second Respondent should provide the First Respondent with:

i. evidence of compliance with 3-6 above; and

ii. names and addresses of professional colleagues and persons of standing to whom the First Respondent's Registrar may apply for information as to the Second Respondent's conduct since the relevant decision.

.....

PUSHPINDER SAINI

(Counsel for the Appellant)

.....

MARK SHAW Q.C.

(Counsel for the First Respondent)

.....

ANDREW KENNEDY

(Counsel for the Second Respondent)

General
Medical
Council

Regulating doctors
Ensuring good medical practice

FITNESS TO PRACTISE PANEL HEARING

On 13 November 2006 a Fitness to Practise Panel will consider the case of:

Dr David SOUTHALL
Registration number: 1491739
Registered Address: Academic Department of Paediatrics,
City General Hospital, Stoke on Trent, Staffordshire, ST4 6QG

This case will be considered by a Fitness to Practise Panel applying the General Medical Council's Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988.

The hearing will commence at 09:30 at:

General Medical Council
44 Hallam Street
London
W1W 6JJ

The case is expected to last 15 days.

Panel Members: Dr J Mitton, Chairman (Lay)
Mrs L Lloyd (Lay)
Mr A McFarlane (Medical)
Dr S Sarkar (Medical)
Mr A Simanowitz (Lay)

Legal Assessor: Mr Robin Hay

If you require any further information or assistance, please call Adjudication Management Section on 020 7189 5186, or visit the GMC website www.gmc-uk.org.

If an emergency arises out of hours that may prevent your attendance at the required time please call 020 7189 5186 and leave a message. We will not be able to call you back at the time, but it will enable us to act on your message as soon as the office opens the next working day.

The Panel will inquire into the following allegation against Dr David Southall, MB BS 1971 Lond; MRCS Eng LRCP Lond 1971 SR:

"That being registered under the Medical Act 1983,

'1. From 1982 you were a senior lecturer and subsequently also a consultant paediatrician based at the Royal Brompton Hospital, London;

'2. From 1992 you have been professor of paediatrics at the University of Keele and also a consultant paediatrician at the North Staffordshire Hospital, Stoke on Trent;

'3. a. In January 1998 you were contacted by social workers from a local authority who had concerns about Child M2, and in particular about similarities between current events in Child M2's life (including apparent suicide threats) and those in his elder brother, Child M1's, life shortly before Child M1's death by hanging in June 1996, when aged 10,

b. You gave the social workers certain advice, and on 29 January 1998 Child M2 was removed from home under an Emergency Protection Order,

c. Your advice was put into writing in a preliminary report dated 2 February 1998,

d. On 3 February 1998 the local authority applied for an Interim Care Order in respect of Child M2;

'4. On 17 March 1998 you were instructed by the local authority to prepare an assessment/report for them in the care proceedings. Such report was to cover both Child M2 and his family;

'5. a. For the purpose of preparing your assessment/report you interviewed Mrs M on 27 April 1998,

b. During the course of such interview you accused Mrs M of drugging and then murdering Child M1 by hanging him;

'6. Your actions as set out in 5.b. above,

a. Were inappropriate,

b. Added to the distress of a bereaved person,

c. Were an abuse of your professional position;

'7. a. In March 1989 Child H was referred to you at the Royal Brompton Hospital by Dr Dinwiddie of Great Ormond Street Hospital for investigation and advice,

b. Child H was admitted to the Royal Brompton Hospital, where his breathing was monitored, in September 1989 and again in March 1990,

c. On about 22 March 1990 Child H's parents informed you that they no longer wanted you to be involved in the management of Child H's care;

'8. a. On 22 March 1990 you wrote to Dr Dinwiddie stating that,

i. Child H's parents were not acting in Child H's best long term interests,

ii. you were suspicious of their motives,

iii. you viewed Child H's long term prognosis with great concern,

b. You copied the letter mentioned at 8.a. to an unnamed Consultant Paediatrician at the Royal Gwent Hospital even though no one there was involved in Child H's care,

c. You did not seek, nor obtain, Child H's parents' consent,

i. to the fact of involving a local paediatrician in Child H's care, or

ii. to any letter being sent to an unnamed local paediatrician, or

iii. to the letter mentioned in 8.a., and in those terms, being sent to an unnamed local paediatrician;

'9. Your actions as set out in 8.b. and 8.c. above, or either of them, were,

a. Inappropriate,

b. In breach of Child H's, and his parents', confidentiality;

'10. In the cases listed in Appendix 1,

a. You created, or caused to be created, an "S/C" File wherein certain original medical hospital records relating to the child were then placed,

b. The cited medical record is not elsewhere in the child's hospital medical records;

'11. The placing, or causing to be placed, of such original medical records in a "S/C" File,

a. Amounted to tampering with the child's hospital medical records,

b. Caused any such item to be inaccessible to others involved in the medical care of the child at that time or in the future;

'12. Your actions as set out in 10. and 11. above were,

a. Not in the best interests of the child concerned,

b. Inappropriate,

c. An abuse of your professional position;

'13. a. You treated both Child A and Child H at the Royal Brompton Hospital, and there created an "S/C" file for each child,

b. Each such "S/C" file contained original Royal Brompton Hospital medical records,

c. You took, or caused to be taken, the "S/C" Files relating to both Child A and Child H away from the Royal Brompton Hospital and to the North Staffordshire Hospital;

'14. Your actions as set out in 13.b. and 13.c. above were,

a. Not in the best interests of the child concerned,

b. Inappropriate,

c. An abuse of your professional position;

'15. a. On the computer system held at the Academic Department of Paediatrics, North Staffordshire Hospital you maintained, or caused to be maintained, the medical records set out in Appendix 2,

b. These computer medical records are not contained in children's hospital medical records at either the Royal Brompton Hospital (for Child A and Child H) or the North Staffordshire Hospital (for Child D),

c. Neither Child A nor Child H were treated at the North Staffordshire Hospital, but only at the Royal Brompton Hospital;

'16. Your actions as set out in paragraph 15. above,

a. Were not in the best interests of the individual children,

b. Amounted to keeping secret medical records on them,

c. Were inappropriate,

d. Were an abuse of your professional position;

'17. In the cases set out in Appendix 3 you failed to treat the respective children's mothers in the ways set out below, or any of them,

a. Politely and considerately,

b. In a way they could understand,

c. Respecting their privacy and dignity;

'18. Your failure/s in these respects,

a. Were inappropriate,

b. Were in breach of your duty to establish and maintain trust between yourself and the children's mothers while they were acting with parental responsibility,

c. Caused distress to each individual woman;'

"And that in relation to the facts alleged you have been guilty of serious professional misconduct."

ATTORNEY GENERAL'S OFFICE
9 BUCKINGHAM GATE
LONDON SW1E 6JP

Tel: 020 7271 2465/2440 Fax: 020 7271 2432

NEWS RELEASE

20 February 2007

ATTORNEY GENERAL ANNOUNCES REVIEW OF CASES INVOLVING PROFESSOR DAVID SOUTHALL

The Attorney General has announced today that he will conduct a review of cases where Professor David Southall, a consultant paediatrician, was involved as a prosecution witness.

The General Medical Council is conducting a hearing into Professor Southall's conduct, part of which relates to the holding of medical records. Professor Southall is alleged to have kept separate files on some patients, including files on cases which may subsequently have been subject of criminal prosecutions, and where proper disclosure of medical records may not have been made.

In a written ministerial statement to the House of Lords today, the Attorney General, Lord Goldsmith, said: "It is said that Professor Southall kept so-called 'special case' files containing original medical records relating to his patients that were not also kept on the child's proper hospital file. Concerns have been raised that in some of those cases criminal proceedings may have been taken but the existence of the files not revealed, resulting in their not being disclosed as part of the prosecution process. I share those concerns.

"What is not clear at this stage is the nature and extent of the failure of disclosure, if such it be. I have therefore decided that I will conduct an assessment of the cases where Professor Southall was instructed as a prosecution witness to determine if any 'special case' files existed in any cases involving criminal proceedings. Once that assessment has been completed, I will decide what, if any, further review is required."

There are believed to be around 4,450 'special files', and the review will go back 10 years. As a result of work previously done on Sudden Infant Death cases, cases where children died and Professor Southall appeared as a witness have already been identified.

The review will be conducted by the Attorney General's Office with assistance from the Crown Prosecution Service.

NOTES TO EDITORS

1. Where doctors are engaged as prosecution witnesses, they are obliged to record, retain and reveal all their material, either in statement or report form as evidence or, if not evidence, in an index of unused material.

2. Professor Southall is a consultant paediatrician and was professor at Keele University. He practised from the Royal Brompton hospital in London and North Staffordshire Royal Infirmary in Stoke-on-Trent. Professor Southall has co-operated fully with the GMC enquiry.

3. The GMC hearing into Professor Southall is adjourned until November this year.

Ends

For media enquiries contact Attorney General's Office on 020 7271 2465. For out of office hours enquiries ring pager 07654-384517.