Outcome of Fitness to Practise Panel

"Dr Southall: At your hearing before the Professional Conduct Committee (PCC) 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. 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 of Christopher and Harry Clark had occurred. On 2 June 2000 you met Detective Inspector Gardner of the Cheshire Constabulary, the senior investigating officer into the deaths of Christopher and Harry, and told him that you considered that Stephen Clark, Sally Clark's husband, had deliberately suffocated Christopher prior to his eventual death and was implicated in the death of Harry. You raised concerns about Stephen Clark's access to, and the safety of, the third child, Child A.

At that time, you were not connected with the case but made it clear that you were a consultant 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.

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. The PCC found your actions in doing so were precipitate and irresponsible.

On 30 August 2000 you produced a report at the request of Forshaws Solicitors representing Child A. 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 Stephen Clark had suffocated Christopher and you remained convinced that Child A was unsafe in the hands of Stephen Clark. Further, your report implied that Stephen Clark was responsible for the deaths of Christopher and Harry Clark. It contained no caveat to the effect that its conclusions were based upon the limited information about the case known to you. You declined an opportunity to place such a caveat in your report, stating that it was likely beyond reasonable doubt that Stephen Clark was responsible for the deaths of Christopher and Harry Clark. The PCC found that your actions were individually and/or collectively inappropriate, irresponsible, misleading and an abuse of your professional position.

The PCC found you guilty of serious professional misconduct and determined to impose one 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).
The Council for the Regulation of Healthcare Professionals (CRHP) appealed the decision of the PCC and, on 14 April 2005, the High Court allowed the appeal to a limited extent. Collins J ruled that the PCC's 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, Collins J ruled that the condition imposed was not tightly enough drawn to

prevent any involvement by you in child protection work. An Order, which was agreed between the parties, was substituted for the PCC's original decision. The principle terms were that: the PCC's condition would remain in force from 7 September 2004 for a period of three years. In addition, you were to report any concerns on child protection issues (whether within or outside the NHS and whether clinical, research based or otherwise) to the most senior child protection doctor working for your employer/ the relevant local primary care trust as soon as possible. You were not to take any further steps or have 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 to such concerns. You were required, every six months, to provide to the GMC details of any cases where you had reported your concerns. You were also required to 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.

On 23 July 2007 a Fitness to Practise Panel (applying the GMC's PPC and PCC (Procedure) Rules 1988) resumed and determined that the period of conditional registration should be extended for a period of twelve months.

This Panel has comprehensively reviewed your case under the GMC (Fitness to Practise) Rules 2004. It has recognised that this is a review hearing and not a re-hearing of the original case.

The Panel has considered, under Rule 22 (f) of the Fitness to Practise Rules 2004, whether your fitness to practise is impaired by reason of misconduct and whether you have failed to comply with any requirement imposed on you as a condition of registration. Mr Tyson, on behalf of the General Medical Council (GMC), has stated that you have complied with all of the conditions imposed on your registration. Having received no evidence to the contrary, the Panel has determined that you have complied with all the conditions imposed.

In reaching its decision on impairment, the Panel has considered all the evidence before it including your own evidence. The Panel has had the benefit of hearing evidence from five expert witnesses in the field of child protection called on your behalf. These were:
Mr David Spicer, the Assistant Head of Legal Services with Nottinghamshire County Council;
Dr Paul Davis, a Consultant Paediatrician;
Dr Leonard Williams, a Consultant Paediatrician;
Dr Jacqueline Mok, a Consultant Paediatrician, and
Dr Margaret Crawford, a Consultant Paediatrician.

The Panel has also taken into account the submissions made by Mr Tyson and those made by Ms O'Rourke on your behalf.

Mr Tyson submitted that the seriousness of your conduct has not changed since 2004 and that the Panel should take this into account when considering impairment.

At the end of his submissions, however, he stated that the GMC is neutral on the issue of impairment, and reminded the Panel that this decision is entirely a matter for the Panel exercising its own professional judgement.

Ms O'Rourke submitted that your fitness to practise is not impaired, that 8 years have elapsed since the events in question occurred and 4 years since the findings of the PCC, and that developments in paediatric practice since that time have changed perceptions of the seriousness of your actions in 2000.

The Panel has heard that, since the last review, you have resigned from your NHS locum consultant paediatrician post. You have continued to undertake some teaching in the field of child protection. You are now the Honorary Medical Director of Child Health Advocacy International where you work full time. Half of your time is spent in this country and half the time in other countries such as Pakistan, The Gambia, and Zambia. Your work includes writing programmes and developing aid programmes for maternity, neonatal and child emergencies, and you are an Advanced Life Support Group instructor in paediatrics. You told the Panel that, in future, you hope to work in a supernumerary capacity doing maternity work in an NHS hospital to learn skills to help with your international work.

The Panel has considered the GMC's Indicative Sanctions Guidance (April 2005), in particular, in section 1, paragraph 11 it states:

> "Neither the Act nor the Rules define what is meant by impaired fitness to practise but for the reasons explained below, it is clear that the GMC's role in relation to fitness to practise is to consider concerns which are so serious as to raise the question whether the doctor concerned should continue to practise either with restrictions on registration or at all."

Further at paragraph 32, it states:

> "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 he or she is safe to do so … 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."

The Panel has also considered the case of Cohen v GMC [2008] EWHC 581 (admin) in which Silber J stated

> "It must be highly relevant in determining if a doctor's fitness to practise is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."

The Panel endorsed the statement of the PCC in 2004 that there is a duty of care to raise child protection concerns in order to ensure the protection of children. In the context of 2008 this duty has been strengthened. As Mr Spicer stated, referring to the case of JD, the current opinion of the Law Lords is

> "…paediatricians and other professionals should not be inhibited from expressing their opinions and putting forward information by some fear that they are going to suffer some complaint by an aggrieved parent."

Current GMC guidance "0-18 years: guidance for all doctors" (2007) addresses this issue and states

> "You will be able to justify raising a concern, even if it turns out to be groundless, if you have done so honestly, promptly, on the basis of reasonable belief, and through the appropriate channels.
> Your first concern must be the safety of children and young people…you must be able to justify a decision not to share such a concern…"

The PCC in 2004 were critical of you for not interviewing Mr and Mrs Clark before submitting your report. They had heard the view of Professor Tim David that it was important to do so. This Panel has heard from 4 Consultant Paediatricians who say that this is not current practice. Dr Mok stated

> "I see it as normal practice that you do not interview parents."

And Dr Crawford stated

> "…it would be extremely rare to interview the parents where there are child protection concerns. … It is just not something that is done nor indeed do I believe should be done. … it is for the investigation authorities, that is police and social services, to do the interviews."

The Panel therefore accepts that your actions in this regard should not now be criticised.

The Panel found your evidence to be clear, cogent and reliable. You have acknowledged that you should have contacted your employer to inform her of your intentions and that, in future, you would also speak to colleagues before reporting your concerns.

The Panel has accepted your evidence that, whilst you were entitled to express your concerns and report your views, the language you used was "inappropriate", "injudicious" and "too strong"; that you were wrong to present your report in the format you did; that you were wrong to use phrases such as "almost certain" and "beyond reasonable doubt"; that you should have made clear the information on which your report was based, and should have indicated your lack of access to certain information. The Panel has noted your recognition that use of injudicious

language can damage the message a paediatrician is trying to put across, and your concern and regret that this is what happened in this case. You have also told the Panel that you went further than you should have in reporting your concerns. You stated that in similar circumstances you would now raise your concerns and stop at that.

You have made various other expressions of regret but have not resiled from your view that the events in the hotel room could have indicated non accidental injury. The expert witnesses before this Panel have shared that view. Dr Williams stated

> "I would have thought very very strongly that this must be looked into very carefully indeed."

You have acknowledged that you have learnt a lot from these proceedings and that it will impact on all the work you do. You have expressed regret for the impact that the PCC findings have had on the profession, and remorse that your actions have contributed to the fear that now exists amongst paediatricians involved in child protection work.

The Panel considers that you have demonstrated considerable insight into your previous failings.

The Panel is mindful that 4 years have elapsed since the PCC hearing in July 2004 and that 8 years have passed since the events occurred. The Panel has determined that, although the PCC considered your actions serious in 2004, the Panel today, in the light of the evidence given to it by eminent paediatricians and your expressions of regret and remorse, considers that a finding of impairment is not justified.

The Panel is satisfied that you have kept up to date in the field of child protection.

The Panel has determined that your fitness to practise is not impaired.

The present conditions on your registration will expire on 16 December 2008. In the light of the Panel's findings and the submissions made by both Counsel before the hearing adjourned in August, the Panel has determined to revoke the conditions currently imposed on your registration with immediate effect.

That concludes this case."