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The GMC's Procedures and their enactment, in reference to Professor Southall's hearing.

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Send response to journal:

[Re: The GMC's Procedures and their enactment, in reference to Professor Southall's hearing.](#)

I appeared as an expert at the recent GMC hearing on behalf of Professor Southall at which it was decided to lift the sanctions that had been imposed in 2004. I was glad to be of assistance to the panel. The hearing was not about whether the 2004 panel had been right to impose those sanctions, only about whether those sanctions should now be lifted. I am pleased that the sanctions were lifted but I do, however, have concerns about the procedures of the GMC and about the enactment of these procedures which I would like to describe.

I was aware of my duties as an expert both in writing my report and in giving evidence. I had read the GMC's, "Acting as an Expert Witness" and was aware of their instruction; "You must give a balanced opinion". [1] I followed this instruction and had read the GMC's 2004 determination about Professor Southall. In my written evidence, I followed the instructions given to me by the defence solicitor [Professor Southall's solicitor] that I should accept the determination of the 2004 panel. I did not therefore go behind that determination; I accepted and reiterated the criticisms made about Professor Southall. However, I supported the lifting of the sanctions that had been imposed on him because I believed that he had been right to report his concerns to the authorities. I believed the logic of his concerns was sound but I accepted that aspects of how he presented his concerns were "inappropriately worded." In extracts of my written testimony, which is copied below, my criticism is quite moderate. However, in oral evidence, I was taken behind the 2004 determination, at times, by the barristers for both sides. At one point, I was shown an important letter written by Mr Wheeler that I had not previously seen and from which I will quote below. Having been taken behind the determination by the barrister, I was entitled to and did further moderate my criticisms. For instance, when asked at the hearing, "How serious a failing was it to omit the caveat stating that he had not read the reports about the child's nose bleed?", my exact words when I replied were: "I think, if I might, answer that by saying I wonder what the Judge would have said, if that had actually gone to Court? I think the Judge would have "tut tutted", a little like you - your eyebrows raised - when I made my (previous) comment" but "would probably not have distracted the Court with a discussion of it".

When a witness changes his mind.

A few days after I had given evidence, but before the hearing had finished, I was sent, unsolicited, information about the case that was new to me. It further changed my views about some of those critical comments that I had made about Professor Southall. The GMC's report, "Acting as an Expert Witness," states: "If, at any stage, you change your view on any material matter, you have a duty to ensure that those instructing you, the opposing party and the judge are made aware of this without delay." I therefore knew I should write to the panel explaining this change of views. I copy the whole of that letter below.

Dear Miss O'Rourke [for BMJ readers, Professor Southall's barrister],

I am contacting you because since the hearing about Professor David Southall at which I attended as an expert witness, I have been given further information that modifies some of the opinions that I expressed at the hearing. I am aware that I have a duty to inform the panel about this, as stated in the GMC's document, Acting as an Expert Witness, section 13. The document states that I can do this by informing you.

The new information that I have received is a full copy of the Medical Report written by Professor Southall (for BMJ readers, this Report was not in the public domain and I had not previously seen it) which he sent to Mr Wheeler (for BMJ readers, the solicitor acting for the surviving child) in response to Mr Wheeler's letter of 15th August 2000. Mr Wheeler's letter was read out to me at the hearing. It is the conjunction of the two documents that has forced me to modify my opinions. The full significance of Mr Wheeler's letter had not been clear to me during the hearing (for BMJ readers, this letter had not been in the public domain and I had not seen it before I appeared at the hearing), because I had not been shown it in conjunction with the Medical Report. However, as a result of seeing both documents together it means that firstly I am now aware that Professor Southall's report could not have been intended to be presented to Court and that the only people that should have read it were Professor David (for BMJ readers, Professor David was the court appointed expert acting for the surviving child and supporting Mr Clark in the care of that child), Mr Wheeler, and anyone else who would have been invited to Mr Wheeler's meeting.

Secondly, I see that Professor Southall has included cautions in his report of which I had not been aware. As these important documents are not in the public domain and I had not previously seen them, I wrote my expert's report in ignorance of them.

My prior knowledge of Professor Southall's case is largely described in my Family Law article. The information I acquired was gleaned from various sources in the public domain, particularly the determination of the 2004 hearing published on the GMC website.

In my report to the current hearing I stated:

The report he wrote for court was criticised because it stated with near certainty that Mr Clark was responsible for the death of his babies, and because Professor Southall had not interviewed Mr Clark before submitting the report. The report was also criticised because he did not include a caveat stating that he had not read the medical notes. Further, at the time, Professor Southall was barred by his Trust from undertaking child protection work. Finally, his actions were described as precipitous.

These statements were selected from the GMC determination. My interpretation of these statements was reported in two sentences which I then went on to discuss. Of them, I wrote:

I would agree that the report was worded too strongly. It appeared to usurp the role of the judge by declaring Mr Clarke's 'guilt.'

Having read the two documents I must modify that opinion for the following reasons.

1) My statement above opened, "The report he wrote for court". That is clearly inaccurate. Mr Wheeler's letter could not be more clear. Professor Southall's Report is to enable Professor David to write to the Court. Professor Southall's report will not be presented to Court.

Mr Wheeler's letter makes plain that Professor Southall is "Ordered to produce his points of concern," presumably by the Court. Mr Wheeler will "then form an Agenda and attend and Chair a meeting between yourself (Professor Southall) and Professor David." The minutes of this meeting will be circulated to the other parties. The meeting with you (Professor Southall) will "enable Professor David to provide an Addendum Report for the Court."

His Report could not therefore usurp the role of the judge. It was never intended that a judge would see it.

2) My statement, "I would agree that the report was worded too strongly", needs to be modified in the light of what I now read in Professor Southall's Report. There are bulleted paragraphs in his Report that demonstrate his uncertainty. These paragraphs were not known to me and are not in the public domain. They are:

- At the time Christopher was found dead, he was alone with his mother. The father was apparently attending a Christmas party. A neighbour described how he heard a commotion and gave the Clarke's house keys he had to the ambulance men to allow them to gain access to the house. It appeared that the door was locked and that Sally could not find the key.

And

- When Christopher died, Mr Clarke was called from a party and drove down the motorway to the hospital in Macclesfield (which motorway?). Sally had been alone with the baby at the time he was found dead.

The importance of these two paragraphs is that they show that Professor Southall is keenly aware of the weaknesses of his suspicions. He is aware that his suspicions are disproved if Mr Clarke's absence is verified. Furthermore, Professor Southall provides the simple means to disprove his own logic. Thus these paragraphs demonstrate that the report is provisional, in that it would be inconceivable to present a report to Court that says, in effect, "I am sure of my facts, except that these facts may be disproved by simply following my advice of checking Mr Clarke's alibi."

The Report discusses other medical causes of bleeding:

- There are other causes of bleeding from both nostrils in an infant but they are much rarer than intentional suffocation. Other clinical indicators of a serious illness accompany the vast majority. One cause would be a disorder of the clotting of the blood, such as leukaemia. Idiopathic pulmonary haemosiderosis can produce the coughing up of blood but usually this occurs through the mouth or the mouth and nose together. Infants with this latter condition have progressive respiratory failure and evidence of multiple haemorrhages before dying. Bilateral trickling of fresh blood, described by Mr Clarke would not be in accordance with this diagnosis. It is important to note that a doctor did not ever see Christopher prior to his death, which would be incompatible with this latter diagnosis or any other medical causes of nose bleeding except for intentional suffocation.

As such, it is a discussion of the likelihood of suffocation, albeit, coming down strongly in favour of that event.

My opinion, that Professor Southall's report is too strongly worded, is therefore modified by what I now know. The wording is somewhat too strong for a report to the Court, but it is not too strong for a discussion document for a colleague and a solicitor.

3) In my oral evidence I suggested an alternative explanation for Mr Clarke's description of the events in the hotel room. I suggested that he may have elaborated or exaggerated the events in order to assist his wife's appeal. That now seems to me to be incompatible with what Professor Southall says in his report:

- The statement of Liz Cox backs up the reality of the ALTE and that it could not have been fabricated to help clear Mrs Clarke, since her first baby was still alive. [for BMJ readers, Liz Cox is a friend of the Clarks who appeared in the TV interview with Mr Clark. ALTE means acute life threatening event).

I believe this means that Ms Cox states that she knew about the events in the hotel room before the first baby died. As such, I believe the alternative explanation I gave was wrong.

In light of modified opinion there is a further clarification that I must make. Mr Tyson opened his questions to me by asking if I had read the transcripts. I answered "Yes, in parts," or something similar. That answer was incomplete and I may have unintentionally misled the panel, leading them to believe that I had read Professor Southall's Medical Report. What I had read are extracts of the transcripts that are in the public domain. However, I have never had access to the full transcripts and have therefore not been able to select important parts to read. I had not previously read the Medical Report.

Yours sincerely,

Leonard Williams. GMC number 1471371

Until recently I thought that the GMC's barrister had objected to the letter being shown to the panel and that the Legal Assessor to the panel had advised that it was irrelevant, with the consequence that the panel never saw it, despite the efforts of Professor Southall's barrister. However, in response to inquiries, the GMC alleges that this letter never came to the attention of the GMC's barrister or the Legal Assessor or the GMC itself while the hearing was still ongoing. When invited to comment on Miss O'Rourke's claim that it had, the GMC declined, stating that it was not prepared to enter into a discussion about "a concluded case".

In its final determination the panel made the following comments about the manner in which Professor Southall expressed his 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."

"[2]

Comment

- The panel accepted that Professor Southall was right to report his concerns to the appropriate authorities and that his action with regards to not interviewing the parents should not now be criticised. I applaud them for going behind the 2004 determination. The conditions on his registration were to expire on 16th December 2008 but the panel decided to revoke them with immediate effect.

- The panel criticised the format of Professor Southall's report and the injudicious use of words. I had quoted and reiterated the criticisms of the 2004 panel in my written evidence. I moderated that criticism in my oral evidence when I was taken behind the determination and again in the letter that I wrote for the panel after I was given the Medical Report. Unfortunately, the news report for the BMJ by Clare Dyer[3] and by most of the major media outlets covering the result of this Fitness to Practice Review emphasised the criticism of Professor Southall's use of words and his apology rather more than the support he received from the experts and the panel.

- The GMC's instructions are clear and precise. If I change my mind about the evidence that I have given I must inform the judge. When I was given Professor Southall's actual report, rather than the descriptions given of it in the

2004 determination, I wrote to the panel explaining that I had further moderated my criticisms of Professor Southall's wording.

- However the omission occurred, my letter did not come to the attention of the panel, the "judge." The whole letter is copied above so that the reader can consider whether and, if so, to what extent what I had to say affects the passage I have extracted from the determination.
- If the panel had seen my letter might they also have been less critical of Professor Southall? This would have been a declaration of support to those who practise child protection.

References.

1. http://www.gmc-uk.org/guidance/ethical_guidance/expert_witness_guidance.asp
2. http://www.gmc-uk.org/concerns/hearings_and_decisions/ftp/20080921_ftp_panel_southall.asp
3. Clare Dyer News Southall is allowed to return to child protection work BMJ 2008;337:a1811:

Competing interests: I am a member of PACA, Professionals against Child Abuse, and I received a fee for appearing as an expert witness in the 2008 Southall hearing.