

## **AvMA's Judicial Review of a GMC Decision not to investigate**

AvMA have been granted permission by the High Court for a judicial review of a GMC decision *not even to investigate* allegations of attempted 'cover-up', forgery and perverting the course of justice by doctors. The allegations centre on doctors who were involved in the care of ten year old Robbie Powell who died following delay in treating Addison's disease in South Wales in 1990.

### **Key Background to the Case**

- 1 Robbie Powell died aged 10 in April 1990, due to delay in the treatment of Addison's disease, in South Wales.
- 2 A local Medical Services Committee disciplinary hearing was held about the doctors in December 1990, at which it is alleged the panel were misled by the falsified documents. The chairman of the panel gave evidence to the police in 2001 to the effect that had he known the facts, he would have recommended referral to the GMC.
- 3 A settlement was made with regard to a clinical negligence claim over Robbie's treatment in 1996.
- 4 Mr Will Powell, Robbie's father, had become aware of inconsistencies in Robbie's medical records and complained to the police in 1994 about falsification of the records. (This first and a second police investigation by Dyfed Powys Police were later found to be institutionally incompetent and a third police investigation was ordered from an external force).
- 5 The GMC were made aware of the allegations of forgery/cover-up against several doctors involved in Robbie's case when they were sent a detailed article in the Guardian, dated 24<sup>th</sup> December 1994 by the Local Community Health Council. The GMC acknowledged receipt of the article in February 1995. The GMC were kept informed of the various investigations which subsequently took place and kept a watching brief.
- 6 A fresh police investigation reported to the Crown Prosecution Service in 2003. The conclusion was that there was an "evidential base for prosecuting for offences of forgery and perverting the course of justice". A prosecution was not brought due to "procedural" problems. The police, crown prosecution service and Mr Powell, were all however given the impression by the GMC that it would investigate.
- 7 An inquest into Robbie's death took place in 2004. Although the inquest was restricted to the cause of Robbie's death, it is alleged that at least one of the doctors committed perjury by repeating information known to be untrue, by relying on untrue records allegedly created to mislead the disciplinary panel in 1990.

- 8 Powys Local Health Board, on whose list some of the doctors continue to practise, formally referred the matter to the GMC in December 2004 asking for an investigation “irrespective of the passage of time”. The GMC responded in January 2005 telling the Local Health Board that the case would be investigated by the GMC’s case examiners.
- 9 In May 2008 the GMC decided that it would not investigate the doctors after all due to its “five year rule” (i.e. because the “events giving rise to the allegations” took place over five years before the allegations were “brought to their attention”, and because they saw no public interest or exceptional circumstance justifications for waiving the rule). The GMC argue that the allegations were not “brought to their attention” until Mr Powell wrote formally to ask them to commence their investigation in June 2003.
- 10 Before deciding to apply for a judicial review, AvMA sought a discussion with the GMC to ask it to review its decision. The GMC informed AvMA that the only way that the decision could be reviewed, even if they considered it to be badly flawed, was for there to be a judicial review.
- 11 A quashing of the GMC’s decision is being sought by AvMA because of the wider public interest significance of the case. Mr Powell is supportive of AvMA’s action and is listed as an interested party in the case, but AvMA is acting independently, in the wider public interest and not on behalf of Mr Powell. A hearing on Tuesday, 24<sup>th</sup> February 2009 in the High Court of Justice, London, granted AvMA permission to move to a substantive hearing. A date for this is awaited.

AvMA sees this as a landmark case which could resolve three key issues.

- 1 Whether the GMC can be proactive in upholding standards and protecting the public. The GMC is arguing it is unable to investigate the doctors because the events “giving rise to” the allegations took place over five years before a formal ‘complaint’ was made, even though they were aware of the allegations within five years of the original events. AvMA argue that a regulator must be able to act proactively and not wait until an individual or organisation formally asks it to intervene.
- 2 AvMA argue that the GMC have been irrational in the application of its five year rule, and that its interpretation needs to be clarified to avoid future mistakes. Firstly, because the GMC knew about the allegations through a detailed Guardian newspaper article within the five years, the rule should not apply. Secondly, the GMC have failed to use the discretion it has to waive the rule in the exceptional circumstances and in the public interest. They fail to see that public interest requires allegations of serious dishonesty in the practising doctors to be investigated or appreciate the exceptional circumstances. They are in effect saying that even if the allegations about the doctors are true and they have conspired to forge records in order to evade consequences to themselves, and to maintain

the deception about what happened right up to today, it does not even warrant investigation.

- 3 The hearing will also consider whether AvMA can continue to make the challenge under a “protected costs order”. This allows charities like AvMA to limit the potential costs they are exposed to if they lose a judicial review which they are seeking for public interest reasons. Without such protection, AvMA will be unable to continue with the action. The costs, estimated at tens of thousands of pounds, put judicial reviews beyond the means of individuals, and a negative ruling on this matter would mean that GMC decisions can effectively only be challenged by the medical defence unions, who have millions of pounds at their disposal to protect doctors from GMC actions.. The case also exposes the fact that under the current system there is no appeal or review mechanism to allow GMC decisions such as the one in question to be reviewed, short of someone being able to take out a judicial review.