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GMC FACES CHALLENGE OVER REFUSAL TO INVESTIGATE SERIOUS ALLEGATIONS

The General Medical Council (GMC) is facing a judicial review of its decision not even to investigate allegations of 'cover up', fraud and perverting the course of justice by doctors following the death of a ten year old boy due to negligence. Action against Medical Accidents ('AvMA') – the charity which promotes patient safety and justice for people affected by medical accidents – will today (12th August 2008) apply for a judicial review of the GMC's decision about the allegations concerning the death of Robbie Powell in South Wales in 1990 and subsequent events, which were the subject of a complaint by Robbie's father, Will Powell. There has already been a successful clinical negligence action brought in connection with Robbie's death. A police investigation of the actions of several doctors involved in Robbie's case did not result in a criminal prosecution, but did lead the Crown Prosecution Service to conclude in 2003 that there was an "evidential base for prosecuting for offences of forgery and perverting the course of justice". The doctors have been accused of falsifying medical records in order to try to cover up failings in the treatment of Robbie. In full knowledge of this and of other evidence available concerning the alleged 'cover up', and allegations concerning it being perpetuated at an Inquest in 2004, the GMC refused even to refer the matters to a case examiner for investigation. The Assistant Registrar cited the GMC's 'five year rule' which says that unless there are exceptional circumstances and it is in the public interest to do so, allegations made more than five years after the events giving rise to the allegations, will not normally be investigated.

AvMA are challenging the GMC decision on two main grounds. Firstly, it believes it is not credible for the GMC not to recognise the exceptional circumstances of this case and the necessity for them to investigate in the public interest. The charity believes the case has profound implications for public confidence in the GMC and the medical profession, and for GMC and public policy on 'being open and honest when things go wrong'. Secondly, AvMA argue that the GMC have wrongly applied its five year rule not only in failing to use the discretion it has to waive the rule in exceptional circumstances, but also in the way it argues when it was first aware of the 'allegations'. Although Mr Powell's formal complaint was not lodged with them until 2003, the GMC itself concedes it was aware of the allegations about the doctors (which were reported in the national media and therefore public knowledge in 1994) as early as January 1995. It has also conceded that it was in possession of Police evidence and the letter from the Crown Prosecution Service, as well as the more recent allegations of the alleged 'cover-up' being continued, which all fell within five years before it made its decision.

AvMA's chief executive, Peter Walsh, said:

“This decision, if it is not over-turned, could mean the end of the GMC as a credible organisation. It would send a message that the GMC is quite prepared to tolerate the possibility of practising doctors indulging in gross dishonesty in the shape of cover ups, and that its own decision making and ability to act in the public interest are not fit for purpose. The Shipman Inquiry accused the GMC of appearing to be more interested in protecting doctors than protecting patients, and this decision could only add weight to that perception. Whilst we have immense sympathy with the suffering of the Powell family, and upmost respect for the way they have conducted themselves, we are fighting for wider public interests here which affect all of us. If the GMC has any sense, it will agree to its decision being quashed and think again.”

AvMA have also pointed out that the peculiarity of the GMC’s own rules mean that it can not review a faulty decision made at the very first screening stage of its procedures. Before considering taking legal action, AvMA asked the GMC if there were any means of seeking a review of its decision. The GMC confirmed that even if the President and Chief Executive were convinced that the decision were wrong, the only way of it being reviewed was as a result of a judicial review. AvMA hope that this action will also result in the GMC’s rules being changed, and have called for the Council for Health Regulatory Excellence (CHRE) to be given a role in hearing appeals about regulators’ decisions. Because of the substantial costs which can be involved in seeking a Judicial Review, which can run into tens of thousands of pounds, AvMA is reliant on being granted a ‘protected costs order’ from the Court which would limit its exposure, should its claim be unsuccessful. Peter Walsh added:

“It is a ridiculous waste of public resources for the GMC’s rules not to allow it to review and change its own erroneous decisions and to have no form of appeal to an independent body short of a Judicial Review. This kind of legal action is impossible for ordinary people, and this underlines the importance of charities like ours which protect the public interest to have their costs limited in these circumstances”.

Mr Powell, Robbie’s father, said:

"It is now over 18 years since Robbie's death and, as a family, we feel let down by every process we have turned to. We are absolutely astonished that the GMC refused to even investigate our complaint in the light of the weight of evidence of dishonesty and negligence against the doctors, which was amassed during the course of a police investigation by an English force between 2000-2003. The senior investigating officer's report to the CPS included 35 suggested charges, and the rationale behind these charges, which the GMC has completely ignored. However, in the letter informing us that our complaint had been rejected the Assistant Registrar had the audacity to criticise us for not complaining sooner when the evidence against the doctors of impropriety was not available until April 2003 - I formally complained to the GMC in June 2003 on the advice of Dyfed Powys Police and the CPS. We are

very grateful for the support of AvMA and are hopeful that the judicial review will be successful."

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