



PRESS RELEASE

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GMC DEFEATED IN ATTEMPT TO PREVENT JUDICIAL REVIEW

The General Medical Council (GMC) have suffered a defeat in their attempts to avoid a judicial review of their refusal even to investigate allegations of forgery and 'cover-up' by doctors involved in the case of Robbie Powell, aged ten, who died following neglectful treatment in South Wales in 1990. The High Court have granted Action against Medical Accidents (AvMA) – the charity for patient safety and justice – permission to progress to a substantive hearing in their action to overturn the GMC's decision.

AvMA chief executive, Peter Walsh said:

"This is one small step towards justice and forcing the GMC to live up to its responsibilities. However, the very fact that the GMC threw all of their considerable resources at trying to avoid scrutiny of its decision is worrying. More worrying still is its position that even the grossest acts of dishonesty by doctors do not even warrant an investigation, provided the deceit is maintained for long enough. If allowed to stand, this would in effect create a 'liars' charter', sanctioned by the GMC."

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 24th 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 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.

8 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.

9 The judicial review 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. The hearing on permission and maintenance of AvMA’s protected costs order was heard on Tuesday, 24th February 2009 in the High Court of Justice, Queens Bench Division, Administrative Court, London. The date for the final, substantive hearing is yet to be announced.

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.

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