

A summary of the case of Robbie Powell - by Will Powell

Robbie Powell died at the age of ten on the 17th April 1990 of a treatable condition called Addison's disease which, unknown to his parents, had been suspected four months before his death, when he had been an inpatient at Morrision Hospital, Swansea. The ACTH test to confirm the diagnosis was ordered by the hospital consultant but not performed. Addison's disease invariably results in death without treatment; however, if treated, the patient can live a full and normal life. The hospital informed Robbie's GPs of the suspicion of Addison's disease, by letter, and requested immediate referral if the child had a recurrence of, amongst other things, vomiting and/or abdominal pain.

Between the 2nd and 17th April Robbie was seen by five GPs from the local Health Centre on seven separate occasions [that is, on 2nd, 6th, 11th, 15th, 16th and twice on the 17th]. In the 2 weeks leading to Robert's death he had been vomiting [a characteristic symptom of Addison's disease which had led to his initial hospital admission], was so weak he couldn't walk unassisted and had excessive weight loss. On the day he died the child had dilated pupils and central cyanosis when he regained consciousness after fainting, while his mother assisted him to the toilet. In the light of these symptoms and the several earlier consultations a GP refused hospital admission on her first visit on the day of death. On her second visit the GP again refused hospital admission but eventually agreed to do so following a heated argument. However, the Powells' request for an ambulance was refused. On arrival at the hospital, Mr Powell watched his youngest son take his last conscious breath. Robert was declared dead shortly afterwards.

The hospital reported Robbie's death to the Coroner and a pathologist employed by the health authority that would subsequently admit negligence and liability, for Robbie's death in 1996, in civil proceedings, was instructed by the Coroner to perform the post mortem. The pathologist omitted from the post mortem report that Robbie had been suspected of Addison's disease, the previous December, and that the test to confirm the disease had been ordered by the hospital consultant but not carried out – had it been Robbie would not have died. The pathologist also misrepresented Robbie's external appearance by stating that he appeared normally nourished when his condition on arrival was subsequently described by the doctor, who treated him on arrival, as being like a child from a 'concentration camp'. Robbie had suffered two heart attacks because of severe dehydration – the second being fatal.

The Coroner failed to have preliminary inquiries notwithstanding the Powells alleged medical negligence and had formally requested an inquest. Based solely on the flawed post mortem report the Coroner decided that Robbie's death was natural causes and the Powells' request for an inquest was refused. It took the Powells ten years and a *Fiat* from the Attorney General before the Coroner agreed to open an inquest. The inquest was opened and adjourned in December 2000 pending the conclusion of a third criminal investigation by an independent police force [see below].

On the 20th April 1990, three days after Robbie's death, Mr Powell was devastated to learn, after reading Robbie's GP medical records, that Addison's disease had been suspected the previous December and that it was falsely claimed the parents had been told that an ACTH test was necessary – this test would have confirmed that Robbie had Addison's disease and he would have received the appropriate treatment that

would have saved his life. A further letter also stated that the GPs should re-refer Robbie immediately back to hospital if he had a recurrence of vomiting and abdominal pain and the GPs had clearly failed to do so. Mr Powell was so concerned about this information and particularly the pre-death suspicion of Addison's disease, and the GPs' failure to carry out the consultant's instructions to re-refer Robbie, that he asked his closest friend to witness and contemporaneously note the GP medical records. Mr Powell took the view that the GPs, in the light of this information, had no defence whatsoever to their negligence. Mr Powell was advised by his friend to ask someone wholly independent and, as a consequence, the local vicar agreed and the relevant content of Robbie's GP medical records were witnessed and contemporaneously noted six days after Robbie's death.

It was established that only one GP actually read Robbie's GP medical records. This GP, on the 11th April [six days before death], informed the Powells that he would refer Robbie immediately back to the hospital. However, he failed to do so, and the letter was typed post death and backdated. It was later accepted [by the police and the CPS] that this letter was backdated to mislead the reader into believing that the referral had been made and was in fact a forgery.

It was also established some years later that the GP's consultation notes, regarding the day of Robbie's death, were not written until weeks after the child's death and were later proven forensically to be forgeries.

Thirteen days after Robbie's death the Powells made a formal complaint through the NHS complaints procedure because the senior partner of the health centre had refused Mr Powell's request for an investigation. A Medical Services Committee ['MSC'] found, nine months after Robbie's death that four of the GPs had not been in breach of their terms of service, but that the GP who had seen Robbie twice on the day of death had been. She was told to conform to her terms of service in future, which was the minimum reprimand. The proceedings were a complete whitewash and the evidence of the Powells and that of their witnesses was completely ignored. The Powells' allegation regarding the post death falsification of Robbie's medical records, which was subsequently accepted by the police and the CPS, was also ignored. The MSC members, when shown evidence regarding the falsifying of Robbie's medical records, agreed that the GPs had misled them.

The Powells appealed to the Secretary of State for Wales against the MSC's decision and a hearing was listed for three days in March 1992. However, due to lack of time, the appeal was adjourned for six months. At the reconvened hearing it was established that Robbie's medical records had gone missing from the Welsh Office and had been tampered with by the addition of medical notes, which originated from the respondent GPs, but had not been present or disclosed to either the Powells or their legal team previously. As a consequence of the appeal chairman's refusal to adequately investigate this matter or call in the police the Powells were forced to withdraw from the appeal as they had lost all confidence in its independence. Although the Welsh Office had received Robbie's GP records, by recorded delivery, directly from the Powells' forensic document examiner, a week before the appeal hearing started in March, the Welsh Office denied receipt, and continued to do so for three years. The receipt of the GP medical records was only accepted after the Powells submitted irrefutable evidence.

Following the Powells' withdrawal from the appeal they complained about the Welsh

Office to the Parliamentary Ombudsman, via their MP, but were told that a complaint of maladministration against the Welsh Office was outside his jurisdiction. However, five years after the appeal the Parliamentary Ombudsman agreed to investigate the Powells' MP's further complaint that the Secretary of State for Wales had falsely answered a Parliamentary Question regarding the Welsh Office's receipt of Robbie's GP medical records. Seven years after the actual withdrawal from the appeal the Welsh Office was found guilty of maladministration and criticised for causing the collapse of the appeal. The Welsh Office refused to reconvene the appeal hearing claiming there was no provision in law to do so. As with the MSC members the Welsh Office panel also subsequently accepted that they had been deceived by the GPs.

In April 1993, with the support of public funding, the Powells issued writs against both the health authority and the GPs for negligence and causation. In June 1996 the trial was listed to be heard in the High Court in Cardiff for a period of six weeks. However, a month before trial, with the same information that was available on the night Robbie died, the health authority admitted medical negligence and liability for Robbie's death and paid £80,000 into court. Simultaneously, the GPs made an application to the court to strike out the Powells' claim for post death damage as a consequence of the GPs' negligence and dishonesty. The Powells refused to settle, as they wanted their case heard in court. However, before the trial could start, the judge had to consider whether or not to exercise his discretion to hear the GPs' **late** application to strike out the case against them. In his wisdom the judge decided to hear the application and, after four days in chambers, struck out the case against the GPs, but gave the Powells leave to appeal to the Court of Appeal.

At this stage, the Powells' legal team and representatives from the Legal Aid Board informed the Powells that if they refused to accept the compensation from the health authority they would not be publicly funded to appeal against the judgment and therefore denied the opportunity to challenge the High Court judgment in the Court of Appeal.

The Powells were left with no other option but to accept the compensation on behalf of Mrs Powell. The £80,000 compensation was secured by the court pending the outcome of the Court of Appeal. The appeal was unsuccessful and the £80,000 compensation was therefore completely absorbed in legal costs. There was also an order for costs against the Powells for the deficit. With public funding the Powells petitioned the House of Lords but their petition was rejected without explanation.

The House of Lords subsequently agreed to consider a case in November 2001 regarding assisted suicide when Lord Bingham stated that that case "**raises issues in which the Courts in this country have not had previous occasion to deal**". As a consequence of this comment, the Powells instructed their solicitor to write again to the House of Lords, as this same argument applied in **Powell v Boladz**. However, as before and without explanation, the House of Lords rejected the Powells' further submissions.

In 2008, more than a decade after the perverse Court of Appeal judgment in **Powell v Boladz**, the House of Lords overruled the judgment in the case of **Total Network v Her Majesty's Revenue** [Sessions 2007-08 [2008] UKHL 19 - on Appeal from: [2007] EWCA Civ 39].

Not only did the House of Lords deny Robbie and the Powell family justice, as well as the many other cases that failed subsequently, as a consequence of this erroneous Court of Appeal judgment, the Powells were charged £80,000 for the privilege with an Order for costs against them. The Powells take the view that if the House of Lords had addressed this point of law when petitioned in 1997 the Court of Appeal judgment would have been overruled then.

Following the House of Lord's rejection to permit the Powells leave to appeal against the Court of Appeal judgment the case was then submitted to the European Court of Human Rights but erroneously deemed inadmissible on 4th May 2000 [Application no. 45305/99 by William and Anita POWELL against the United Kingdom]. Please note that irrespective of the perversity of such a judgment, the applicant has no right to appeal. The letter that accompanied the judgment stated, "***The decision is final and is not subject to any appeal either to the Court or to any other body***"

The following interpretation of the law was stated at the bottom of page 15:

"Whilst it is arguable that doctors had a duty not to falsify medical records under the common law (Sir Donaldson MR's "duty of candour"), before Powell v Boladz there was no binding decision of the courts as to the existence of such a duty. As the law stands now, however, doctors have no duty to give parents of a child who died as a result of their negligence a truthful account of the circumstances of the death, nor even to refrain from deliberately falsifying records."

The ECHR found:

1. That the Powells, by withdrawing their Welsh Office appeal, closed one of the options which may have uncovered the extent of the lack of co-ordination among the doctors concerned at the relevant time notwithstanding the Court had been provided with a copy of the Parliamentary Ombudsman's report, which found that the Welsh Office had been guilty of maladministration and had, by its actions and its failure to act, at the time, caused the collapse of the appeal;
2. That the Powells could not claim to be victims under Article 2 of the Convention because they had accepted compensation in civil proceedings notwithstanding they had been forced to do so by the restrictions of public funding in the UK and, in any event, did not receive the compensation;
3. That by accepting the compensation the Powells had denied themselves the opportunity for their case to be heard in the civil court. However, when negligence and liability is admitted in civil proceedings there is no provision in UK law for the merits of a case to be heard in the civil courts;
4. The court failed to recognise and adequately address the gross failures regarding the police investigation notwithstanding an independent police force subsequently found that the criminal investigation was so flawed that it demonstrated ***institutionally incompetence***; and

5. The Court failed to recognise and adequately address the Coroner's failure and refusal to have an inquest in 1990 in the light of the available evidence of medical negligence. The fact that an inquest jury found in April 2004 that Robbie had died of '*natural causes aggravated by neglect*' is undisputable testimony that there should have been an inquest in 1990.

A year after the Powells' case was found inadmissible the same court [and five of the same judges] found in **Jordan v UK** (*Application no. 24746/94 – 4th May 2001*) that civil proceedings do not fulfil the State's obligation under Article 2 – this was supported subsequently when this issue was considered under the *Human Rights Act* in **Wright & Another v The Secretary of State for the Home Department** (Case no. CO/4031/2000 – 20th June 2001).

The Powells feel that the ECHR has been in breach of their human rights with no course of redress.

Complaint to Dyfed Powys Police

In March 1994, the Powells made a formal complaint to Dyfed Powys Police about the falsification of Robbie's medical records. This investigation was so inadequate that Mr Powell, through his solicitor, asked to withdraw the complaint in November 1995, as it was obvious that the CPS would advise that there was insufficient evidence to prosecute anyone. However, he was informed that he could not withdraw the complaint, as the matters raised were so serious. As Mr Powell predicted, the CPS subsequently found in early 1996 that there was insufficient evidence to prosecute anyone and the head of CID then inappropriately informed the doctors, in writing, that no action would be taken against them. In March 2003, CPS York used this letter, as being one of the reasons for not prosecuting the doctors when there was sufficient evidence to do so. It later came to light that the GPs were actually employed by Dyfed Powys Police as police surgeons and there was some evidence that the Head of CID personally knew at least one of the GPs.

Between 1996 and 1998, Mr Powell attempted to highlight the inadequacies of the police investigation to senior police officers at Dyfed Powys Police. However, it was not until he made a formal complaint against the Deputy Chief Constable, that the police investigation was re-opened in January 1999. The complaint, as far as Mr Powell is aware, was not processed, and the person complained against was then promoted to Chief Constable of another Welsh Force. It wasn't long into the investigation before Mr Powell realised that this second police investigation was also inadequate and eventually met and raised his concerns with the then Deputy Chief Constable in April 2000. It was agreed that a Detective Chief Inspector from the West Midlands Police would be appointed to review the case. As a consequence of this review, the same DCI was appointed to conduct a third police investigation and Avon & Somerset Constabulary was appointed to investigate the failures of Dyfed Powys Police between 1994-2000.

In March 2002 a substantive file was sent to the Crown Prosecution Service ["CPS"] in York for consideration, which contained, amongst other evidence, over 100 Police Section 9 Statements and medical and forensic reports. The police file was sent to York because Mr Powell had complained about the local CPS. The DCI identified more than 30 possible charges against the GPs and their secretary some of which were alternative charges.

In March 2003 CPS York informed the Powells that, although there was sufficient evidence to prosecute two of the GPs and a secretary for forgery and perverting the course of justice, they would not be charged. According to the CPS it would not be in the public interest to do so because of the passage of time, the failure of Dyfed Powys Police to adequately investigate the case between 1994-2000 and because the head of CID had sent the GPs, who, as mentioned above, were acting police surgeons, an inappropriate letter in 1996 informing them that no further action would be taken against them. It would appear that an inappropriate letter, such as this, has more impact on a criminal case than the new reforms to the 'double jeopardy' law notwithstanding the same crimes were repeated after this letter was sent. Under the new reforms, had these doctors been charged, prosecuted and acquitted in a criminal court, they could be retried if further significant evidence came to light, as is the case.

Also in March 2003 Avon & Somerset Constabulary found Dyfed Powys Police '*institutionally incompetent*' between 1994-2000 with regards to their inadequate police investigations. The two Dyfed Powys senior police officers directly involved in the inadequate/corrupt investigations were permitted to retire following the serving of disciplinary notices and therefore did not participate in the disciplinary investigation. Due to the serious allegations being made by the Powells regarding, inter alia, misfeasance in public office, Avon & Somerset Constabulary had the power to interview these officers but failed to do so.

Also in March 2003 the CPS and Dyfed Police met the General Medical Council ["GMC"], the doctors' governing body, to inform them of the available evidence supporting the criminal activity of the doctors involved in Robbie's death. Following this meeting, and after the Powells were informed that the doctors would not be charged, notwithstanding there was sufficient evidence to do so, the police and the CPS advised the Powells to make a formal complaint to the GMC, which the Powells did on 3rd June 2003. The Powells were led to believe that all the relevant evidence would be disseminated to the GMC and the National Assembly for Wales, as a matter of urgency. However, it was not until the 3rd February 2006 that Dyfed Powys Police disclosed this evidence to both these authorities [50 lever arch files].

Mr Powell formally complained to the IPCC in October 2004 about the Chief Constable's failure to disseminate this information, without delay, to the GMC after advising the Powells to complain to the GMC. Following years of applications and appeals from Mr Powell, regarding this complaint, the IPCC in July 2008, did not uphold the complaint because the decision to disseminate this evidence falls under the heading of direction and control.

In July 2003 CPS Essex investigated Mr Powell's complaint against the local CPS and did so under the directions of the Director of Public Prosecutions. Astonishingly, this complaint was not upheld also. In 1996 the local CPS had given the local police advice that there was insufficient evidence to prosecute any of the doctors, but did so, in the absence of (a) an adequate police investigation and (b) Police Section 9 Statements from the Powells and all the potential prosecution witnesses – these statements, as confirmed by the subsequent independent police investigation, are crucial in the CPS's consideration of the available evidence and therefore no such advice should have been given in their absence. The local CPS also claimed at the time that the police had conducted a thorough investigation and that no stone had been left unturned, which is contrary to the subsequent finding of 'institutional

incompetence' against the police. When Mr Powell challenged the flawed findings of CPS Essex, with cogent evidence, the letter was forwarded to the Director of Public Prosecutions, who informed Mr Powell "*in the absence of fresh issues, further correspondence from you on this matter will be filed without response.*"

In April 2004, following a three-week inquest, which was spread over a three-month period, because of tactical adjournments by the doctors' representatives, an inquest jury found that Robbie had died of '*natural causes aggravated by neglect*'. It was reported in the local press that the inquest had been '*reduced to a circus*' and the article headed '*I promise to tell those bits of the truth which put me in a good light*'.

The First Minister of the National Assembly for Wales, Rhodri Morgan, is currently considering, following submissions by Mr Nick Bourne AM, as to whether the Robbie Powell case warrants a Public/Assembly Inquiry and has been considering this issue now for over eight years. However, when in opposition, in his capacity as Shadow Health Minister, Mr Morgan fully supported the Powells and wrote copious letters on their behalf. Mr Morgan actually stated the following on HTV Wales News on 11th December 1996:

"I think the history of the Powell case is so serious now, in terms of the cover up that was involved afterwards, that I think nothing less than an independent inquiry is probably ever going to really get to the truth."

The First Minister has refused to agree, or otherwise, to make a decision on the public inquiry using the ongoing GMC investigation as the sole reason for not doing so.

In May 2008, five years after the complaint was made to the GMC, the Powells were officially informed that their complaint would not proceed because of a five-year rule, which was introduced by the GMC in November 2002. The Powells had been informed formally in 1995 that there was no time limit in making a complaint to the GMC and therefore waited until irrefutable evidence of impropriety against the GPs had been secured. Furthermore, the GMC was fully aware of the Powells' pending complaint and that the senior investigating officer, from an English Police Force, appointed to review the Powell case in 2000, had met with an official of the GMC outlining the weight of evidence against the doctors involved in Robbie's death and the post death cover up. In the light of this information the GMC failed to inform the Powells and/or the police that a time limit would be introduced thus denying the Powells the opportunity to complain in advance of the introduction of this rule.

In the light of the GMC's recent decision not to proceed with the Powells' complaint the First Minister is now taking legal advice regarding the public inquiry.

The Powells' 18-year fight for justice continues.