

GENERAL MEDICAL COUNCIL

PROFESSIONAL CONDUCT COMMITTEE

Tuesday 2 September 2003

44 Hallam Street, London W1

Chairman – Professor Peter Richards

Panel Members:

Dr Nihal Gunasekera
Mr Neville Harrison
Mrs Muktesh Kakar
Dr Charles Winstanley

Legal Assessor: Mr Douglas Readings

Case of:

EASTGATE, John William

(DAY TWO – PM PROCEEDINGS)

MISS JOANNA GLYNN QC, and MR A HURST, instructed by Messrs Withers, solicitors,
appeared on behalf of the Complainant.

MR JAMES TURNER, of counsel, instructed by Messrs RadcliffesLeBrasseur, solicitors,
appeared on behalf of Dr Eastgate, who was present.

(Transcript of the shorthand notes of T. A. Reed & Co
Tel No: 01992 465900)

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A

MISS GLYNN: Sir, C3 is being distributed to everyone. That is Mrs A's plan of Professor X's consulting room.

THE CHAIRMAN: Thank you. (Same handed)

B

THE WITNESS: Can I note to the Chairman that during the lunch break I was chased down the road by a photographer. That may or may not be relevant but I just thought I ought to point it out.

THE CHAIRMAN: Mr. Turner?

PROFESSOR HARRY ZEITLIN, Continued
Cross-examined by MR TURNER

C

Q Professor Zeitlin, I start by suggesting to you that there are two major ways in which the evidence that you have given confuses the situation that this Committee is faced with. The first of them, I suggest, is a fundamental confusion between the pre-referral to the Child Protection Team actions that may or may not be appropriate and the post-referral actions. Do you understand the point I am making?

A No.

D

Q Following the Cleveland Inquiry the emphasis was to encourage inter-authority inter-disciplinary liaison – is that correct?

A Yes.

E

Q It was felt that there should be liaison before important decisions were taken so that rather than one person dashing off and taking precipitate action a strategy could be considered as to what, if anything, be done in the light of concerns that might exist?

A Once you have determined the level of suspicion and concern, yes, I would agree that a strategy – in fact, I was one of the people involved in formulating the idea of a strategy meeting.

F

Q Of course, Cleveland very much left open the question of level of suspicion, did it not?

A No, I do not think so. It did not address it in great detail, but it was largely to do with the level of suspicion and the assessment of probability.

G

Q I am looking at the most recent report I have seen from you that is prepared in this case at paragraph 60. Have you got a copy of your report there?

A Are we talking about the ---

Q The compendious report. The Committee do not have this, this is just for the Professor's assistance. You are dealing at this point with the question of the stage at which reference to the Child Protection Team was made as a result of Dr Eastgate's actions, are you not?

A Yes.

H

Q You say at paragraph 60:

A “There is considerable reference in the literature to the indications for further action once the abuse is being investigated, but there is little written on the level of suspicion which should be regarded as high enough to merit referral to an agency outside the health system treating the child, particularly police and child protection systems.”

B Is that right?

A Is that right what I have written there, yes.

Q Is it right that you have written it?

A Yes.

Q Is what you have written correct?

C A Yes, there is relatively little written about levels of suspicion that would merit referral.

Q So what we have seen from the literature that has been referred to – and I am going to come back and refer to even more of it – is that there is a great deal of guidance as to what steps should or should not be taken, how things should progress, once there has been a referral; but what we do not have is a body of literature providing guidance and advice as to at what point there should be a referral.

D A There is a body of literature, and it is not very large, and there is relatively little, but there is a body of literature; and about the probabilities, I actually wrote on that myself in *The Lancet* in 1987, the year following Cleveland.

Q So you are relying on your own publications.

E A All I am saying is that there is a body of literature referring to the issues about the circumstances under which you would pursue an issue of abuse.

Q Because when we go through the various guidelines that have been produced to the Committee we will find various – I am not sure if ‘tests’ is the right word – but various suggestions. Suspicion in some seems to be regarded as enough; belief, in others; “reasons to believe” is another expression that is used – we can find all those expressions used, can we not, in the protocols and guidance that have been published?

F A I think the way that has been put is actually incorrect, or inaccurate and misleading. All of the guidance and the main issues, particularly, I say, post-Cleveland, which arose out of that, are that once there is reason to suspect – and in fact the guidance was that one should be more ready to consider abuse, but once you do, there is good reason to look for both verification of the facts – and that is in fact in your letter, that is stated in the letter from your solicitor confirming the GMC guidelines.

G Q That is tab 6 in the Committee’s bundle.

A Yes – that they should seek to verify, to ascertain the accuracy of facts. I can quote it if you like. But there should also be an effort to look towards some degree of corroboration. That was fairly clear. The whole issue – I am sure you have seen my original report where I discuss the problems about the use of the term ‘belief’.

H

A Q Do you accept that there is little firm guidance to be found in any publication that carries the sort of weight of *Working Together*, which really is a bible to those who operate in this field?

A There is far less concerning the initial referral, the nature of concern that would merit referral to special services – to child protection services.

B Q The bulk of the guidance that we have been looking at this morning relates to the steps that should be taken once there has been a referral.

A Some of it; not all of it.

Q I suggest the bulk of it, and we will go through it again in a moment, perhaps, and see if we can demonstrate that.

C A No, I would say it is fairly shared. For example, if we are referring to discussion with parents, that is consistent throughout, saying that parents should be involved at all levels. I can find them if you like, but it does not say “post-referral to child protection”. I am not disagreeing, but there is far more written about the process once it has been referred; I do not disagree with that. I am not saying that it is absent though from before, and it is a very important issue.

Q As I pointed out to you, you yourself in your most recent report say “There is little written on the level of suspicion that is required”. The problem that existed pre-Cleveland, or one of the major problems that existed pre-Cleveland, was that various professionals in various disciplines were taking precipitate action. Is that correct?

D A Yes. There appeared to be – and here I have to give you my professional opinion, though it is written in various places as well – there appeared to be a perception that if there was reason to suspect, then it probably has occurred. That was the whole issue that arose over the difference between disclosure, and why in the literature that we have been looking at it refers to ‘facilitation’.

E Q We had, for example, the situation that triggered the Cleveland inquiry, the particular diagnostic tool used by some of the doctors in Cleveland – Dr Higgs and others – which was looking at the anal sphincter – and once a particular thing was seen there, that was it, that was diagnostic proof, as it were, of sexual abuse, and children were being hustled off away from their homes and into care.

A Yes, I would agree with that.

F Q It was decided, after fully ventilating the subject at the Cleveland inquiry, that that sort of precipitate decision by one professional would not justify that sort of action; it would be much better if there was multi-disciplinary consideration, strategy and structured investigation, before any such dramatic, drastic steps be taken.

G A I do not think that is in accord with what actually happened at Cleveland, where social workers and psychologists – I am not denying that people should, when they consider the level of suspicion is sufficiently strong to take action, defer it. But in Cleveland that was not the case, that it was single professionals; it involved psychologists, it involved powerful investigation of children by psychological techniques; it involved social workers, and indeed you may recollect one of the social workers became acutely distressed. So, no, it was not that the main result of that was for multi-disciplinary involvement; I do not agree.

H

A Q Right, we will look at the Cleveland recommendations later on. But it was, do you agree, that as a result of the Cleveland inquiry that child protection committees and teams were set up around the country? They may have existed in some areas before, for all I know.

B A They certainly existed before, because I was sitting on one of them; that was one of the reasons why I was invited to Cleveland. There was much more concern about a systematic approach to the evaluation of abuse and the methods and mechanisms of identifying it.

Q And it was felt that that could be much better done by a team rather than one area of professionals or one individual professional taking precipitate action.

C A No, the team approach was endorsed, but the team approach was certainly in place beforehand. I can see the point that one is concerned, and that is that it is safer to confer, and, yes, once there is a given level of suspicion that is correct; but that was not the main thrust. There was certainly multi-disciplinary evaluation of abuse prior to that, indeed in the late seventies – Westminster, which I think is where we are now, certainly had one; I sat on that committee with a large number of additional professionals. The thing which principally comes out of Cleveland was the systematic appraisal of the evidence for abuse, its evaluation, and a systematic approach to the reaction.

D Q A systematic evaluation and appraisal and investigation before damaging action is taken?

A Yes, yes.

Q A mere referral to the child protection team is not itself damaging action, because the whole purpose of the team is to avoid precipitate action.

E A I do not know if you or the Committee have my earlier reports, the other reports, where the reason for looking at this I pointed out – in fact I have used the example previously in other locations – Cleveland itself was not so important; it is pre that era, because the same problems arose countrywide. There was Cleveland, Orkneys, Birmingham, Manchester. The difficulty was that within the enthusiasm to identify abuse there was not a systematic appraisal; there was an assumption that if there was reason to suspect, then it probably had occurred. I can quite seriously show you the mathematics of why that belief led to the chaos. Once that era was passed, and one starts looking systematically, the advice, which was quite extant, was that if any criterion that could be associated with abuse was present, you should consider the possibility of abuse. Why it was important, for example, that one gets to look at this, because children on the ward – I used Cleveland as an example, but it is not the sole example – were considered to have been abused if, for example, they had anal excoriation. Another example that has been used is vulval vaginitis. It would be expected now systematically that if any child was considered to have vulval vaginitis, you should consider the possibility that abuse had occurred. If you referred every child with vulval vaginitis to the child protection team, you would create chaos. It would not be an automatic assumption in the teaching that has been extant since then that if a professional has grounds to consider that abuse might have occurred, there would be an automatic referral to child protection; it would be chaotic. The vulval vaginitis position is a real example, and that has been to court.

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- A Q Do I understand your answer there to be that you could not do it in practice because there would just be too many referrals?
A It would be highly inappropriate and damaging to a large number of children.
- B Q What would be damaging to the child? If the doctor has a genuine concern as to whether there has been child abuse – as in this case a concern because, number one, the child has said that – and we will come back to see just how spontaneous that was – but because the child has actually said it and given some considerable detail of it, because it actually fits some aspects of the background of the case – a disturbed child, a child with eating disorders – although an eating disorder does not equal sexual abuse it can be consistent with sexual abuse, is that right?
A I do not want to give a lecture on the alleged association between eating disorders ---
- C Q I thought I was just parroting what you said in your evidence-in-chief about eating disorders.
A No. The issue about eating disorders is that there was a major concern – I can probably find you the dates as to when this arose – what appears to have arisen out of that is that whilst eating disorders can be associated with sexual abuse, the majority are not.
- D Q But it would certainly provide in some cases an explanation; so if one has an allegation of sexual abuse in a background of disturbed child, eating disorders, self-harm, it fits the picture, does it not?
A No, it is not that it fits the picture. It should certainly – it would be perfectly reasonable and correct for a doctor who sees that combination to consider the possibility that there was abuse, and that abuse was causally linked to this phenomenon.
- E Q Yes. It would not be determinative, but it would be a cause for reasonable concern?
A To be considered inter alia.
- F Q The question then arises, should the doctor himself then go on to investigate and, as you have suggested, I think, at one point, phone up the person against whom the allegation has been made, talk to the parents in detail, or should that doctor say “No, this is not my proper job. I will refer this on for guidance to the child protection team so a strategy can be adopted”?
A Sorry, I am not quite sure what your question is.
- G Q What is wrong with that?
A What is wrong with that is that if you do that in all circumstances where you might consider abuse, then you will do harm. I would quote – if you would like me to quote – from your quotation of the GMC guidelines, which really indicate that it would be incumbent, particularly under those circumstances, on the doctor to seek to verify the facts. The question should be as to how rapidly steps should be taken to protect the child, and under these circumstances you have a safe environment where the last possible event was eleven months previously, where there are reasonable grounds to consider other causes and to take some steps to verify that would be reasonable before setting in train the events involving child protection, as you would
- H

A with other issues which would raise the concern of a doctor but would not themselves lead you rapidly to make a referral – as, I would say, with vulval vaginitis. There is a particular reason why a misunderstanding took that to being considered in the High Court.

Q But what are the events you are setting in train? You are not setting in train a precipitate removal of the child from home; you are not setting in train an allegation being made openly against any other person. What you are setting in train is a calm, considered strategy meeting.

A It is hazardous to go further than the events of that particular referral; but, for example, what appears to have been set in train is reference now to “the abuse” both by Dr Eastgate and by the ward staff. The point, once you make the referral, is that you of necessity breach confidentiality – of necessity – and I would still say that it was incumbent on the doctor to take at least some steps to verify the facts as you have stated in your letter.

Q So you say it is for the doctor to act as the investigator rather than for a team decision to be taken as to what, if any, further investigation is appropriate?

A Do you mind if I refer to ---?

Q Please do.

A I am referring to the letter of 24 May 1999.

Q This is our tab 6.

A It says:

“Dr Eastgate was aware of the GMC guidance in force at the time which stated ‘... *Before taking action you should do your best to find out the facts, then if necessary you should tell someone from the employing authority or from a regulatory body*’.”

Q What is said there is that Dr Eastgate did take reasonable steps, certain steps, but it is question of how far one goes. He took steps to verify the truth of the allegations:

“... specifically listened for specificity and congruity, and looked for appropriate emotional response. All these were present.”

There is information there – although I appreciate you will say “Well, there’s nothing in the notes to confirm that” – about the layout of the room and the explanation that the girl gave as to how the doctor was able to touch her in the way she alleged, without the accompanying parent being aware. And of course this was all against the background of a disturbed child in any event. We then have Dr Eastgate contacting the senior social worker, joint coordinator of the local child protection team, to get further guidance to discuss with him the way forward. What is wrong with that?

A I refer back to what actually happened here yesterday afternoon. The Committee sought to ask the mother simple questions to clarify the layout and the circumstances. I am sure Dr Eastgate would be aware, just as anyone else is, that if you take an account from a disturbed person, technically speaking the whole of that account is part of the mental state. If you are considering the validity of an allegation,

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A to actually look is quite reasonable. It is perfectly satisfactory to get a further explanation from the child; but that is not validation, that is further clarification. I have to point out that in these circumstances, the way in which this is initiated, and the circumstances should have led him to at least have sought to meet with the people who would have been present, and say “We’ve got a problem. There’s something quite serious here that we’re concerned with. Could you do ...” – and ask exactly the same questions that were asked. They were not complicated, they were not difficult, but could give him some idea. There could have been other things that could have taken place, but that was the natural reaction here. I cannot see here that there was any huge urgency to have moved to referral with that rapidity.

B
Q It is not suggested that there was any huge urgency as far as Miss A was concerned, let me make that clear, because she was not at home in any event, she was not seeing the doctor in any event; she was in a safe environment on any view of things.

C
A I agree.

Q But there was urgency, was there not, for other children, because if there was a child abuser working as a paediatrician with children, that would be a situation which should be investigated sooner rather than later. Yes, eleven months had passed; eleven months too long already.

D
A I think I would have to leave it to the Committee to consider whether the hazard potential from proceeding along those lines – bearing in mind that this gets into the records as being abuse by the medic – that is written several times – that is actually quite difficult to get rid of once you have done that. But for the GMC to consider whether to have delayed the referral until a consultation could have been made with the parents – which is in all the guidelines – was sufficiently merited on a degree of urgency to protect other children, I have to with retrospect point out that of course that even though this had been transmitted to the child and into the ward records, that caused the child to discuss it, as far as I know, with other children, there at the end was no validity to it. I am pointing this out as some of the hazards of having acted with that degree of rapidity without at least some attempt to clarify what could have happened.

F
Q So your view is it was for the doctor to investigate further with the parents rather than see what the team thought and leave it to whoever was delegated by the team to carry out any perceived necessary investigation with the parents?

A At that point, given the nature of the content that is reported at that interview... If there are more detailed records which make it much clearer, then I would need to see those, but at that point, with the information that appeared to have appeared and the nature of its appearance, yes.

G
Q So it is a question of judgement in the particular situation as to whether to go to the parents or whether to seek further guidance elsewhere first?

A Any decision requires judgement. I am saying that there is a clear, and I think in all the documents, unequivocal mandate to consult and take the parents with you at every step. There was not a clear indication for urgency on the speed with which this was done.

H

- A Q Have you stopped to consider possible disadvantages of consulting the parents before an overall strategy has been considered? Of course, the parents might go off and inadvertently tip off the person who was the subject of the allegation. They might, in a rage, phone up Professor X and say: “What is going on here?”, giving him the opportunity to cover his tracks before a structured investigation was carried out. That is one possibility. It is also well known, is it not, that sometimes children make false allegations of abuse against one person as a sort of tentative precursor to making genuine allegations of abuse against another. Is that right?
- B A That is possible. How valid that is I think may be slightly dubious. Yes, that could have been the case. I am not quite sure what your question was from the first part of that, about the parents.
- Q My first risk is that the parents will inadvertently tip off the person against whom the allegations are made, who can then cover their tracks.
- C A I cannot actually see the difference in that with regard to involving the parents before reporting it, compared with conferring with the parents afterwards. I am not quite sure what the point of that is.
- Q Are not the police a more appropriate body to deal with that than a busy practising doctor?
- D A Then the guidelines would actually have to say: “Do not confer with the parents until after the police are informed if you have suspicion.” That is not what it says.
- Q The guidelines, I suggest, Professor, are not written in stone, are they? They are what they say. They are guidelines.
- A Yes.
- E Q You are aware that the President of the Family Division, Lady Justice Butler-Sloss herself, who chaired the Cleveland Inquiry, has said many times they are not intended to be prescriptive; one must look at the individual circumstances of individual cases.
- A It was I who suggested to Lady Butler-Sloss that there should be a check list rather than prescriptive guidelines.
- F Q So one has always got to take an individual judgement in an individual case as to the extent to which the guidelines actually relate to that situation at that moment, and look at the potential risks either way?
- A Could you clarify for me whether at that point there was reason to suspect involvement of the parents?
- G Q I am not suggesting there was positive reason to suspect involvement of the parents, no. There could have been abuse by Professor X; it was possible there was, it was possible there was not. It was possible that that was simply a precursor to an allegation of abuse by anyone else.
- A Then the guidelines do not indicate that you should not communicate with the parents until after... What I am actually putting is I could not see a reason in this particular case to make the judgement to go against the guidelines. The guidelines are quite clear, that you should involve the parents at any stage, of course, unless there is
- H

A reason to do otherwise. They are not cast in stone, but I do not know what the reasons would have been to avoid that extremely important step.

Q I suggest that the guidelines require involvement of the parents before any decision is taken that has an effect on the child. I suggest that referring the matter to the team is not itself a decision that can have a detrimental effect in itself.

B A I think that the Committee would have to decide that. That is not normal practice.

Q Applying for an emergency protection order, taking the child away from home, would be something. The police using their other powers to take a child away from home without an order of the court would be something.

C A Normal practice and normal accepted practice, according to the guidelines, would be to involve the parents at every step and to discuss, and it is in the documents that we have read out.

Q You say that. You have also suggested, in paragraph 94 of your most recent report, that that is what has been said by the European Court of Human Rights, have you not?

A Yes, that is referred to in one of the documents.

D Q But, unless you can show me a decision to the contrary, I suggest it certainly has not. What the European Court of Human Rights has said in the context of care proceedings is that parents must be fully involved before the tie between parent and child is severed, or any action detrimental to the relationship between parent and child is taken.

A I am sorry, I am not really following.

E Q Not that parents must be involved in a situation like this, a decision whether to refer a matter to the Child Protection Team for consideration. There is nothing in the European Court jurisprudence to suggest that, is there?

F A I do not know the European Courts. I am pointing out that that was an issue there. I would go by the guidelines that have been discussed before, which is that there should be discussion with parents at every step. I totally agree that if there were special reasons not to do so, or indeed there is reference to the fact that if the parents refused to allow it to proceed, then consideration should be given to under what circumstances you go against the wishes of the parents. But I do not think that that in any way is contrary to the policy which was quite clear, as far as I can see, that you should involve the parents at every step.

Q So a matter of judgement on which you say Dr Eastgate erred?

G A I think that would be for the GMC to decide, not me.

Q What is the damage to the child of a reference to a body which is set up to implement the philosophy that precipitate action should not be taken?

H A If for no other reason the failure to be able to clarify the circumstances... I can take a number, but the failure to clarify the circumstances under which the interviews took place would be one. The risk of increasing the division between parent and child and, indeed, I could probably look for them, but some of the guidelines point out that

A it would be important under those circumstances for the child to feel that there is the support and help from the parents. If you actually separate them ---

Q How does the mere reporting or referral ---

THE CHAIRMAN: Should we just let Professor Zeitlin finish his sentence?

B MR TURNER: I am sorry. He paused for breath, presumably, and I had taken it to be the end of his sentence. I am sorry, I did not mean to be rude and interrupt.

A It is creating a rift and a division between the child, the clinicians and the parents, and precipitate action – I think this is in the Kolvin paper – can cause lasting damage.

C Q Precipitate action can cause lasting damage, but I am suggesting that a mere referral to a team the whole ethos of which, the whole rationale of which is to avoid precipitate action, cannot itself be regarded as precipitate action?

A Once you refer to the social services, the social services, as far as I know, even under these circumstances are an independent body. Once you have done that, if nothing else you have taken the decision to act to break the confidentiality, if nothing else. That may be necessary, but I would still press that that is an important decision which should be discussed with the parents prior to doing it. This happens lots and lots and lots of times. It is not something which one is saying, well... It happens lots of times. You then have to make a decision, if the parents say “no”, as to whether the grounds are sufficient to overrule that and make a referral. The social services and the police are independent bodies and, particularly at that time, if the police felt there was need to act, they could do so independently. I heard what you said before that they did not, and that is actually very important.

E Q Of course, that really is the proof of the pudding in this case, is it not?

A No.

Q The matter was referred and no action was taken.

A There have been very considerable consequences to this. We would not be sitting here ---

F Q We are told that no causal effect is relied upon.

A And yet you have a number of people who are referring, following that, to abuse by the medic, even though it appears to be agreed that there was not abuse.

Q No, it is not agreed there was not abuse. It is agreed ---

A In law, I am talking about.

G Q So there is a question of judgement of at what point one makes a reference. There is little guidance on that, I suggest. If we look at tab 3 of the literature bundle there is the DHSS guidance, which was published in 1988, so that would be post-Cleveland, would it not? It is page 10.

THE CHAIRMAN: Remind us of the tab number.

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A MR TURNER: It is tab 3, page 10. So this is Department of Health guidance post-Cleveland. Paragraph 9 is headed “Initial Response and Strategy Discussion.”

“9.1 Once any doctor suspects”,

now there is the word “suspects”, not “believes” or “has reasonable grounds for believing” or “reasonably believes” or “reasonably suspects”, but:

“Once any doctor suspects that child sexual abuse may have occurred, prompt discussion in confidence with a colleague in the same or another discipline is essential to decide the next step. Telephone discussion at this stage with a professional, who is working in child abuse, is likely to be most helpful in considering the differential diagnosis and planning the next step to explore the situation, and decide what needs to be done to protect the child.”

C Why is not a discussion with the senior social worker, the joint co-ordinator of the Child Protection Team, not an appropriate response in the light of that guidance?

A Within the team, yes, that may be something to discuss, but first of all that does require... When you talk about “suspect”, it does not differentiate between when you have an association or a likelihood, possibility, of abuse, but it says when you suspect it has occurred. We can discuss endlessly at what point that would refer to. I come back again and say that where there are ambiguous circumstances it is necessary to take some steps to clarify before proceeding. The decision to go further is still very much dependent on the consultant psychiatrist and I have to keep my advice that this should not have been done until after discussion with the parents in these circumstances.

Q We go on with paragraph 9, for completeness:

“9.2 Decisions should be made as to
a. who should now see the child and where.”

F THE CHAIRMAN: Just before you go on, Mr Turner, can I raise one matter. It would be very helpful if you would clarify your statement “It was not agreed that there was not sexual abuse.”

MR TURNER: The matter has never been investigated. I am not suggesting there is, but there has been no determination that there has been or not been sexual abuse by anyone here. We know there were care proceedings, ultimately, that were described, I think on all sides, as having “fudged” the answer to whether there had been sexual abuse by anyone.

G THE WITNESS: I think that is not actually following the point. When I referred to “in law” what I am referring to is that there has not been a finding of abuse in a civil case, there has not been a criminal prosecution, there has been a denial since. And yet we are sitting here and we have heard evidence, years later, from the person who was involved. What I am saying is that it would have been reasonable at least to take some steps to clarify the circumstances, because to say that there has been no

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A consequence from it is not correct, in my opinion. The Committee may have a different view.

THE LEGAL ASSESSOR: Mr Turner, I am sorry to interrupt. I think the Chairman's intervention may have been slightly because of something I raised when you said that it is not agreed that abuse has not occurred. It raises the question, does it not, whether Dr Eastgate is going to suggest that abuse may actually have occurred.

B MR TURNER: If we were raising the wider question, as I suggested yesterday, that point might well arise, but we are told that the wider question does not arise, despite – and I have looked at the transcript for yesterday – Miss Glynn's words that this was the seeds of the allegation that were to come.

C THE LEGAL ASSESSOR: We can proceed on the basis that all the parties here agree that abuse did not occur, can we not?

D MR TURNER: I am afraid, sir, we cannot, because there has never been a determination by a court that there has been no abuse – either there has or there has not. We have heard of the care proceedings, ultimately, in which all those complex issues were raised and on which there was even more evidence than there is available to this Committee, much, much more evidence. There were a number of parties involved, there were a number of other experts who had reported. One would have to look at all that and decide that, to decide, to whatever standard one is looking, whether the burden of proof be a balance of probability or beyond reasonable doubt. One would need to look at all that. All that we can say in this case before the Committee is that there has been no finding one way or the other. Indeed, I think Professor Zeitlin himself has said: "Well, there may or may not have been sexual abuse". We are certainly not in a position to judge that. Certainly there has been no pursuit of any charge against anyone for it. It would be going too far for us to concede that there had never been sexual abuse by anyone unless that whole issue is opened up and investigated.

E THE LEGAL ASSESSOR: I think the Committee's concern might be that Professor X came and gave evidence here today which was unchallenged.

F MR TURNER: Yes.

THE LEGAL ASSESSOR: And flatly denied that there had been any abuse by him.

MR TURNER: Yes.

G THE LEGAL ASSESSOR: And everybody here accepts that he is telling the truth.

MR TURNER: I have not sought to put Dr Eastgate's case on the basis that Professor X sexually abused this child. I think I said as much to the Professor when he was giving his evidence.

H THE LEGAL ASSESSOR: Mr Turner, perhaps the basis of passing on, of dealing with this and getting on with the case, would best be that it was not really necessary to say that it was not accepted that there had been no sexual abuse.

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MR TURNER: That we certainly can accept.

THE LEGAL ASSESSOR: And I could, as it were, advise the Committee to put that out of their minds for the time being.

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MR TURNER: I am absolutely content with that.

THE LEGAL ASSESSOR: You can pass on from there.

MR TURNER: Yes, because it is not a decision that is before the Committee's consideration in any event.

C

THE LEGAL ASSESSOR: Thank you.

THE WITNESS: Could I just clarify the point that I was actually making in answer to the question that there has been no consequence. I was simply making the point that there has been.

MR TURNER: You say that in your view it was an error of judgment not to involve the parents?

D

A It was an error of judgment, and it was against good practice – against the written guidelines of good practice, yes.

Q If that be the case – which is disputed, you appreciate – we all make errors of judgment from time to time in our particular professions and jobs, indeed in our personal lives, do we not?

E

A Yes.

Q The other error that I suggest can be demonstrated on a general basis in your evidence is a failure to distinguish between the therapeutic interview with the child, and a diagnostic interview with the child. Do you accept that there is a difference between the two?

F

A There can be, but in these circumstances, here is what appears to be an exploration. Look at the morning session of the 9th is an exploration, but this is in the middle of quite a long process. You can probably tell me how many times Dr Eastgate had met with the young lady previously.

Q I cannot, but be that as it may.

G

A Yes, but what I am saying is, no, under these circumstances I do not think you can make a distinction between an exploratory or an investigative interview and a therapeutic one. These two processes, as far as I can see, were going hand in hand at that point in time.

Q I did not say “exploratory”, I said “therapeutic”.

A Sorry. I thought you said therapeutic or investigative.

Q Or diagnostic.

H

A Yes.

A Q Diagnostic, investigative, but investigative with rather more of a spin on the use of the word?

A Sorry, I may have misunderstood. I thought you were saying that these two were distinct, and what I am saying is, here you have what may well be part of a therapeutic process but in the middle of this we also have an exploration for investigation to clarify circumstances. So I am answering your question, "No." They may be separate. Certainly I do enough examinations for investigation that are different to therapy, but in these circumstances elements of both are likely to be present. I hope that is a clear answer to your question.

B

Q I will come back in a little more detail, if I may, in a moment to the distinction between the two. The purpose of a therapeutic session is very different from the purpose of an investigative session, is it not?

C

A I have just tried to answer your question in saying that if they are separate, then they are separate, but if they are not, no. Here we have a circumstance where they are not separate and therefore if you are saying that clarification cannot have or does not have – cannot have – a therapeutic value, no; that is not what therapy is about.

D

Q So do you say if an interview with a child has an investigative element or cause comes up to be concerned as to potential child abuse, one must then always treat it as a diagnostic, investigative interview and follow the guidance as to forms of questions, and so on and so forth, that are in the *Working Together, Memorandum of Good Practice* and the other guidance?

E

A The guidelines for not leading children would apply whether this was in the middle of therapy or not. Indeed, most people would take therapeutic sessions as having even greater imperative to be non-directive. I am sure there is a style of totally non-directive therapy. But with the principles that we are referring to here about the nature of inquiry, I see no reason to distinguish this type of interview, if it is in a therapeutic one, and certainly not by the session on the 11th, when it seems pretty clear, even if there was doubt about the previous days, that there was major concern that this was possibly abuse.

F

Q So if the issue of child abuse, or suspicion or question of child abuse, arises during a session with a child, the person conducting that session should always then revert to the no leading questions; the memorandum of good practice guidance?

A Yes, but it is not particularly good therapeutic technique anyway, but yes. If at any point there is a possibility of abuse, then it is important not to influence the child.

G

Q I will show you in a moment a judgment of the Court of Appeal where Dr Jones, the author of the book from which we have extracts at tab 1, was being criticised by one of the parties in a care case for asking leading questions when he came into the case. Lady Justice Butler-Sloss not only rejected that criticism on the basis that he was conducting a therapeutic rather than an investigative interview, but also said that the results of that interview, albeit it did not follow the memorandum of good practice but involved leading questions could, indeed, be taken into account by the court and given such weight as the court thought fit in particular circumstances. It depends on the case.

H

A I do not know. I have not seen any transcript of that. I have no idea of ---

A

Q I will show you that in just a moment.

A I cannot possibly comment. I do not what the questions being asked were.

Q Before I come back to that question of the distinction between the therapeutic procedure and the investigative procedure let me ask you this. Do you agree that an expert witness should be wholly independent, irrespective of the party who formally instructs him or her?

B

A I would point out that in this particular case you would have had exactly the same reports from me as would the other solicitors. That is certainly my practice and my teaching.

Q You would have followed just the same course, would you?

A Yes.

C

Q Would you have interviewed Mrs A?

A Yes.

Q Mr A?

A If they were there, yes.

D

Q The child?

A Yes.

Q Dr Eastgate?

A This was put to the instructing solicitors. I would always have to follow the requirements of instructing solicitors and yes, I did put that question. I agree with you that under those circumstances I would have to follow from the evidence of the instructions, but the opinions that I would give would take that into account – and I certainly read what was written.

E

Q When you say, “instructing solicitors,” you mean the solicitors through whom you are being employed? The solicitors acting for Mrs and Mrs A?

A An expert can only actually accept instructions.

F

Q So there would have been a difference in the procedure you would have followed, albeit not in the way in which you would have approached your task. Is that what you are saying?

A There would not have been any difference in the critical analysis of the data that I had. You were saying to me that I might well have had additional data in terms of an interview with Dr Eastgate. Yes, I might well have had additional data. If there is additional data that I should take into account then, if it is put to me I will consider that additional data.

G

Q In order to give an opinion on whether Dr Eastgate’s conduct was appropriate in relation to the allegations about Professor X, why did you need to interview parents?

A There are various reasons. First of all, it would be important to get information from the girl – not that my opinion depends on what the child says, except that were the child to say to me, “Well, actually, yes; it did all happen and

H

- A I was abused by all the people that I said,” then clearly, if I had been asked that or tried to clarify that, it would be rather strange. But also, it is to get some understanding of the character and nature of the people concerned. If they were available, in fact, you may be aware that there was some question as to whether I should do it entirely as a paper exercise but I think it added to getting a perception.
- B Q I suggest it would have been far more appropriate, would it not, to do it as a paper exercise. If what you are doing is, with the benefit of hindsight, looking at what happened and giving an expert opinion on whether the procedures that were followed, the techniques that were followed, were appropriate, how on earth can anything the parents or the child tell you influence that opinion?
A It can give me ---
- C Q Proper influence, I should say?
A It can certainly give me a perception of the character of the people involved. I am sure you are aware that the heads of complaint included a very long list, a considerable number of which – the majority in fact – I said I did not think were of the severity or nature that had led to these proceedings. Now doctors are governed by guidelines and rules and standards, but parents are not. Therefore it was helpful to me to get some idea of the perceptions and character of the people concerned. Certainly it was not that I listened to them and accepted everything that they said because I am sure you are aware from documentation that that is certainly not what occurred.
- D Q The trouble is, Professor , I suggest that you can subconsciously be influenced by those who you speak to, subconsciously, as it were, want to take their side?
A I do not think actually that their solicitors would say I have particularly taken their side. If that is your opinion, then that is your opinion.
- E Q I am asking whether it is a risk?
A I have been involved now in about 1000 legal cases. No, I think I am capable of making up my own mind. I think it is helpful to get the character and nature of people if at all possible involved, but I do not think that I have been recruited to taking their side. In fact, I have to say in this particular case, nothing would give me greater pleasure if, when I had eventually said what I thought out of all of the complaints were incorrect practice, if that had not been considered grounds for GMC proceedings, I assure you. I would certainly not have been pleased about that. I do not think that I was influenced to be on the side of the parents of the child.
- F Q So you think it has helped you in your task to speak to the parents and child. So equally, presumably, it would have given you even greater help in your task to speak to Dr Eastgate?
A It might have. It would not – as I am sure you are aware – have actually determined the opinion that I have given. It might have helped me to understand the person concerned, which is what I am saying about the parents.
- G Q In a sense, you are really doing exactly what you said Dr Eastgate should not have done, forming conclusions without discussing it with an interested party?
A I took – I cannot remember how long, actually – a great deal of time to sift through the information. I think that I have looked for the hardest evidence that I could find. I have looked to search out corroborative evidence. I have actually
- H

A challenged my own view on this – which is my normal practice. It is what I teach. I run a course on this. No – I do not think that I acted precipitously, nor did I actually support the majority of the heads of complaint.

Q You see, you in your position now have certain advantages and certain disadvantages over Dr Eastgate back in 1996, when he was doing what you now seek to criticise, do you not?

B A Sorry? Are you saying I have hindsight of ten years?

Q I am saying that on the advantage side you have the advantage of looking back with the benefit of hindsight. That is point one on the advantage side.

A But I am not sure with regard to what. I am sorry?

Q With a regard to looking at what happened?

C A Yes.

Q You are not just looking at ---

A We all have.

Q You are not just looking at it as from 9 July, which is the perspective Dr Eastgate would have been looking at it from on 9 July when he did, or said, whatever he said. You are looking at it from the perspective of what happened on the 10th, the 11th, the 12th, the 16th and thereafter?

D A Yes, one has to look at the sequence of events, but I think that it is perfectly feasible, and I hope that this is what I have done, is to look at each of these actions at the time that they occurred. I actually have quite a lot of experience of analysing quite long past records, because I have been involved in a number of cases where it is necessary to look back over a sequence of events, but I think that it is quite possible to look at the end of the 9th, to look at the report of that in its own right. I agree with you that I have referred to, “If this was the situation on the 9th, we can look and see what happened on the afternoon of the 9th and what happened on the 10th and the 11th.” But I think that I am perfectly capable of looking at the import and nature of the events on the 9th in their own right. I would have been delighted if I had learned that there were detailed records of what was kept on each of those occasions.

F Q But you have looked at it in the light of what happened afterwards in the subsequent allegations of abuse, have you not?

A You must be aware that I have separated those two fairly clearly. I do not think the GMC have an account of all the reports I have said but I was asked to consider all of those. I do ---

Q Do you --- Sorry!

G A I do not agree. I think that I have separated these out fairly carefully because I am not referring to the subsequent events.

Q And you have the advantage, I suggest, of being able to consider all these matters of what should or should not have been done at leisure?

A I would not call it “leisure,” but yes, I have taken a lot of time.

H Q Well, leisure – you know what I mean.

A A I have taken a lot of time to look each of these events. For example, you must be aware that there were concerns about whether the admission for the evidence was appropriate or not, and my advice is that it was. So it is not that I am taking a side and supporting all the heads of complaints. I have tried to pick these apart and look at them as carefully. Yes, I certainly had a lot of time to do that, but the task that I am being asked to do is different to the one that was taking place then.

B Q Yes. That is the point I am seeking to make because what you are doing is, looking first of all – taking the example of the 9th, the afternoon of the 9th – you are looking at a note which purports to be nothing more than a summary of what happened, and judging Dr Eastgate’s actions on the basis of your interpretation of that summary note?

C A If following that there had either been detailed discussion with the parents, and they were fully informed of the details of what took place, and/or there had been a detailed verbatim recording, as Dr Eastgate himself had instructed, and he uses the words “word by word”, I think, then it may be that we would not be sitting here.

Q Which he had instructed immediately after the strategy meeting, you noted no doubt?

D A Yes. But we are talking about circumstances in which you would expect that to take place. What I am saying is, yes, I can see that there is a brief summary. My statements here are quite clear that once there was a suspicion, good practice – which is what I have been asked about – would have been to have kept detailed word by word or verbatim accounts, if possible during the session but otherwise written down as quickly as you can afterwards. I am still saying that it is not a matter to make a hurried decision to report, because all the indications were there – and I hope I have given my rationale to the Committee – as to why it was not a desperately urgent situation. It would have been reasonable even under those circumstances to have been able to act in a way that would have been appropriate practice. I do not think that there was a special pressure at that time to do otherwise.

Q You are criticising him for the afternoon of the 9th, to some extent the morning of the 9th, for what you perceive and understand to have been certain forms of questioning, are you not?

F A In some of them, yes. We went in fairly careful detail through that this morning.

Q Without the disadvantage of having been there in the heat of the moment and having to decide once something had been said by the young lady what response one should follow that up with in the context of what, on any view of things, had started out as a therapeutic interview?

G A I think that if one followed that systematically then if a surgeon met an unusual situation they would react in all sorts of ways. I think that training and experience for a consultant are supposed to be able to enable somebody to have a means of dealing with these situations. That is why somebody is in this position. I should say incidentally that when I was asked for an opinion on each of these points I was not aware that it was even – I knew that there had been previous consideration by the GMC but that was not the purpose. I was just simply being asked to look at a series of points as to whether they conformed with reasonable practice or not. I am

H

A still saying that to have acted precipitously there – I was not there in the heat of the moment, but that is the purpose of a trained person in that capacity.

Q Of course the memorandum of good practice – and I have got one that post-dates by a year the incidents that we are talking about, I have got the 1997 version here – the memorandum of good practice sets out the ideal way in which questions should be structured and asked, one should try to avoid leading questions and closed questions, and so on and so forth. That is in the context of a structured interview after a strategy meeting that is planned in advance, is it not?

B A It would certainly apply to structured meetings that had been planned in advance, but the principles were well known to apply once you have consideration of the possibility of abuse. Either the person should consider themselves qualified to pursue it or, once they had a suspicion, not done anything further at all. Here we are talking about the application of principles that were well known, that were available and should have been easily accessible to a person in this capacity where there was not an urgent imperative to act very quickly.

C Q We are speaking at the moment not about the acting and referring on, we are speaking about the form of the questions.

D A Maybe I have misunderstood. I thought it was being put to me that in the heat of the actual event, was there not plenty of time, that maybe it would be reasonable under those circumstances not to use the principles and guidelines which would apply generally but particularly to structured planned interviews. I thought that is what I was being asked.

Q I was suggesting that the same criteria do not apply to a structured planned interview as to discussions during a therapeutic interview, or on any view of things what starts out as a therapeutic interview?

E A I thought I have already answered that.

Q You had the disadvantage, I suggest, of not being there on the spot during those days in July and getting the full flavour of what was coming out from Miss A.

F A If we had a verbatim account of the details that had taken place then I would be able to comment more, but that is one of the problems that we are faced with and that was one of the principles of good practice.

Q You thought it would be helpful for you to see her now. It would have been even more helpful if you had been a fly on the wall sitting there seeing not only what she was saying in full but the way in which she was saying it?

A Yes.

G Q That is right, is it not?

A Indeed, that should be part of the detailed account.

Q Part of the detailed account of an investigator, but recording things in a therapeutic interview is not quite as easy, is it? You have said that you may do it but it is not general practice, is it?

A These days it is certainly what one would teach. In a purely therapeutic ---

H Q Is it general practice?

A A It certainly was general practice in my training days when it would be expected --- For me to talk about my personal experience would be difficult. If we go back to the days in the Maudsley, going back a long time, you would be expected, as trainees, to divide the page in two and write down the comments of the psychiatrist on one half and write down the replies, the spontaneous comments, of the patient on the other. The reason for raising this is that the suggestion that one should, wherever possible, keep a detailed account is not new. If it is general practice now, it is certainly our teaching that you should. It is certainly the requirements or the suggestions of the protection societies. Under these circumstances, which we seem to be going away from, once there was a question or a suspicion of abuse I would advise that it was extremely important to follow the guidelines that Dr Eastgate, himself, propounded shortly afterwards. I am trying to say that if there had been detailed records we probably would not be in this position now.

C THE CHAIRMAN: Mr Turner, I think that point has been made very clearly to the Committee.

MR TURNER: This sort of picking over of notes and the form of questions that were and were not asked is everyday fare in the Family Division in care proceedings, is it not? You have appeared as a witness many, many times, I expect, in such proceedings?

D A "Picking over", that is your term, I am not sure that I would use it. I would say, yes, detailed problem analysis in the Family Division, even criminal as well as civil actions, is what one would expect a witness to do. What one would expect a witness to do is a detailed, critical problem analysis on the available information.

E Q Do you accept that to a clinician in Dr Eastgate's position on 9 July Miss A presented very serious challenges? Indeed, generally she presented very serious challenges?

A Yes, they are serious and they are difficult, but that is the purpose of having a child as an in-patient in a psychiatrist unit. You do not admit children who do not show serious emotional behavioural problems.

F Q As with many areas of medical work, there are some differences between the views that different practitioners take to the same problem in the field of investigation of child abuse, are there not?

A If you tell me an example of what you are referring to I can comment.

Q I will ask you generally first of all if that be the case?

G A I really would have to say that is such a general question. We could refer to the efficacy of antidepressants, yes, there is a debate. If we are talking about principles of good practice then principles of good practice are written there for that reason.

Q For example, there is a difference in emphasis at least, or some might say different schools of thought as to the precise stance that a practitioner should adopt towards the disclosure by a child of alleged abuse, is there not, the extent to which one should indicate acceptance and belief of what the child says?

H A Not as much as one is putting there because you, once again, come back to this issue about belief. It has been stated, and perhaps I can clarify this, that the confusion

A is whether you should be supportive and encouraging and accept the seriousness of what the child is saying – that is to say, “Go on, I am concerned, I wish to listen” – and transmitting an opinion to the child about its significance. The indications are that once you think there may be abuse you should not transmit an opinion. I think we read that out this morning. That is quite different to saying to a child, “I am concerned about what you are saying, go on”. Those are very different things. I do not think that there is a difference of opinion in the profession about that.

B

Q You were very critical, for example, if we look at C1, tab 2, page 8, the notes of the sessions between Dr Eastgate and Miss A – looking at the afternoon session of 9 July you were very critical of what you perceived as being Dr Eastgate expressing his opinion to Miss A there, were you not?

A Yes. Well, you say “very critical”, I am actually saying that to tell the child that he was worried that “it” might have been done to other children was inappropriate and against the guidelines of not transmitting an opinion to the child.

C

Q What I suggest to you is that what Dr Eastgate, firstly within the therapeutic context rather than the investigative context, was actually saying to her was not that it was his opinion that there had been child abuse but that if what she said had happened had happened it was wrong and it was necessary to do something about it?

A Well, I am not quite sure whether the mind of a child who is listening to that would be aware of the distinction between being told that something that was done to her was wrong and using the word “abusive”. I do not know of anywhere where the child herself has actually said that she was worried or has referred to other children. This is a new statement introduced to the child at this particular point. I do not know of any other place – it may be there, but I do not know of where the child herself has raised any question about “it” being done to other children.

D

E

Q It does not appear, does it, from that summary note that Dr Eastgate was expressing an opinion as to whether “it” had happened, whatever “it” may be, but simply explaining to Miss A that if what she said had happened on the account she had just given him had happened, something wrong had happened?

A I do not think that – the trouble here is that we do not have a verbatim account of what was said here. If you say to a child, “Gosh, that sounds wrong to me, I am concerned it may happen to other children”, I think it would be difficult, for me at least, to escape the conclusion that an opinion has been transmitted to the child at a very crucial point in the process of a child’s statements. If we go a little bit further on – and I am not referring to the circumstances of the other claims but to the nature of the approach where it is said that it refers to having been felt, the comment there is, “I do not think that this is yet a child protection issue”. Caution about hearing statements about being wrong was certainly there, or at least my understanding was there. We have a concern here that there may have been abuse. My understanding is that that is what that is referring to. Yet here is the transmission of an opinion, and the guidelines appear to be quite clear that at this point, not only about not leading, but you should not make an emotional response, transmit an opinion to the child. If you say there were no consequences I would have to say to you that it does look as though there have been quite considerable consequences. She went and discussed this with other children as well.

F

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- A Q If what she had said, as recorded there, had happened it would have been wrong. It would have been a wrong thing for Professor X to do?
A It would have been, in my opinion, inappropriate under any circumstances at that point.
- B Q It would have been necessary to protect other children against that?
A We have been round this earlier, and I have to say whether the urgency – if, in fact, there is ---
- Q We are looking at it in the context of what Dr Eastgate said now, not in the context of what he did in terms of a few days later in the context of the Child Protection Team?
A Either it was fairly clear that this was a reference to abuse, in which case there should have been no reason to be very cautious, or there was not, in which case this is transmitting a new opinion, or at least this is likely to influence the child in that direction. One cannot have it both ways.
- C Q If she had made a clear allegation that Professor X had touched her in that way that would have been, as you accept, wholly inappropriate conduct by Professor X?
A Sorry, I thought you were talking about conduct by – I am terribly sorry, I had misunderstood you.
- D Q We are at cross-purposes.
A If, in fact, there had been an allegation which was clearly, or had a high probability of being inappropriate behaviour by another senior professional then it would have been correct, first of all, for the doctor to have sought reasonable means to clarify the facts, and then to take action because of the potential seriousness, and we are aware that this has occurred in other cases around London. I do not think at that point that was the case. There were other explanations and there were reasonable steps which could have been taken to get some clarity, as this Committee did yesterday.
- E Q From a common sense point of view if the girl says, “This is what this person did to me”, what is wrong with saying to that girl, “That should not have happened, that was wrong and we need to ensure that it does not happen to anyone else”? She has got to be involved if there is going to be a taking forward of that, has she not?
A Because it was far from clear that that is what had happened and by all accounts it did not.
- F Q You say that without having been there on the spot seeing and hearing the way in which she made the revelation?
A Nonetheless, there is good reason not to transmit the opinion to the child come what may at that particular point.
- G Q Not to transmit the opinion that, “What you have just described sounds a bad thing to me, it sounds wrong”?
A To give an emotional response. Again, I can quote what the guidelines were. Certainly to say, “I am worried that it might happen to other children” is likely to influence the child, and indeed it appears to have done so. I think I have answered to the best of my ability.
- H

A

Q Should one's stance on that sort of questioning and discussion be conditioned by the context in which the practitioner is dealing with the children, as I have suggested before, the distinction between the contexts of therapeutic involvement on the one hand, and investigative involvement on the other hand?

B

A I think I have already indicated that I think, under these circumstances, that is an artificial division. In fact, many psychotherapists would say that immediately you see a child you are into a therapeutic process, which would mean you could never have one without the other. No, I do not think that the principles that we are concerned with do other than include this sort of situation.

Q You say it is an artificial division. I suggest it is certainly a division that the courts have found to be legitimate?

C

A The courts may well have done so. I answered the question before saying that there are certainly circumstances where you are carrying out an assessment clearly, and that would be different to a therapeutic session, and I do these as a screening assessment on pretty well every youngster I see. There would be certainly certain sessions with given techniques in the middle of therapy, but here we are referring to a circumstance where it appears that a suspicion has arisen and I would expect that any practitioner would recognise this and if it is making an explanation which is related to abuse then you apply the principles of good practice.

D

Q Let me take you to the first of the authorities I have suggested to see how the courts regarded the two roles. Would you have a look at a law report, which will be distributed.

THE CHAIRMAN: I wonder, Mr Turner, if this would be a good moment to take a break?

E

MR TURNER: Yes, certainly, sir.

THE CHAIRMAN: You have both had to work very hard and we have had to listen hard. Shall we continue at 3.30. If we could have this document distributed now it would give us a chance to read it.

F

MR TURNER: There is another law report on the same theme. One is pre-Cleveland and the other is post-Cleveland. I have got the two just two examples. (Same handed)

THE CHAIRMAN: This is D3. The other can be D4. Perhaps we should say 3.40 so that we really have had time to read these ourselves so we can listen economically to what you have to say.

G

MR TURNER: I am just going to highlight when I come to it the important part. It is not the facts of the case but the view that the court takes to the distinction between the therapeutic interview on the one hand and the investigative role or interview on the other hand.

H

A THE CHAIRMAN: I think that is something that is likely to interest the Committee in principle, because it could be that lawyers and doctors see things slightly differently.

MR TURNER: We are “working together”!

B THE CHAIRMAN: We will continue at 3.40.

(The Committee adjourned for a short time)

THE CHAIRMAN: Before we continue can I just remind you, as I think the lawyers on both sides know, that one member of the Committee would be greatly obliged if we could finish at a quarter to five; but we are in your hands.

C MR TURNER: I am afraid I still have quite a lot of questions for the Professor. I do not know if it is going to cause any difficulty for him to come back tomorrow.

THE CHAIRMAN: I gather he is going to come back tomorrow anyway – is that correct?

D MISS GLYNN: Yes; and it is right to say I will have quite a few as well, and he will be here to hear Dr Eastgate’s evidence if he ---

THE CHAIRMAN: So I think there is much to be said for not doing too much tonight, on first principles.

MR TURNER: Have the Committee had the chance to skim the documents?

E THE CHAIRMAN: We have had a chance to skim them. It does, for those of us who are not child psychiatrists, raise lots of new concepts and languages, and getting round these quite concentrated summaries is hard. But we can read them again tonight, if the points raised here are major issues.

F MR TURNER: Let me try to highlight, if I may, the important parts that we suggest. (To the witness) Professor Zeitlin, I expect you are actually familiar with these cases anyway, are you not?

A Yes, particularly the earlier ones.

Q Mr Justice Waite – or Lord Justice Waite, as he became – because it featured in Cleveland, did it not?

A I am sure if you perused the totality of this document you would see there are some cases of mine in the same document.

G Q Yes; and indeed in the Cleveland inquiry report there is express reference to this case – the earlier one, the *Re H (Minors)* one – in an approving way, because the same conflict had been aired before the inquiry – the conflict effectively between the Great Ormond Street approach and the approach of various other practitioners, especially those at Westminster?

H A I think probably the inquiry ought to know that at this time I was a senior consultant at Westminster.

A

Q I do know.

A Yes, I thought you might.

Q And indeed at Cleveland there were certain conflicts in the material put before the inquiry between Professor Bentovim on one hand from Great Ormond Street, and from you and – is it Dr or Professor Israel ---?

B

A Kolvin?

Q Kolvin, yes.

A He was a Professor at Newcastle.

Q Yes. But there were two different schools of thought there, were there not, that were being expressed to the inquiry?

C

A Not as far as I know between myself and Professor Kolvin.

Q Not between yourself and Professor Kolvin, but between the two of you on the one hand, and the Bentovim approach on the other hand?

A Would it be helpful to the Committee if I try and explain the circumstances as I understand them?

D

Q I am not going to stop you doing that, because I am going to come on to the Cleveland report itself, and in particular that part of the inquiry report that deals with that evidence, in due course, so we will be able to see first hand, and it may be that the Committee will want to take that away with them as well, to have a look at. The *Re H (Minors)* case came just before the Cleveland inquiry, did it not?

A I am trying to think back on the dating. The actual report is dated 1986, but I cannot remember when the actual case was. It refers rather curiously to ---

E

Q 21 July 1986 the decision was delivered. We see that from the front page.

A Yes. I am a little bit puzzled, because – is it appropriate, again, to refer – these are public documents – but to refer to the doctors?

Q This is a public document available to anyone who cares to buy a law report.

F

A I am a little puzzled, because they refer to Dr Bentovim – oh, sorry, I follow. It says Dr Bentovim some years ago was senior registrar.

Q Yes; he had gone up in the world since then.

A Quite some time since then.

G

Q If we look at page 334 – for those who do not know their way around law reports, the law report will start off with italics on the first page, with a very truncated keyword summary of what is going on. There is then what is called a head note, which is a rather more expanded summary, including under the little sub-heading “Held” the essence of what the court ultimately decided. Then over on page 334 we actually have the full judgment starting from Mr Justice Waite. His Lordship there sets out a little bit about the background of the case. It concerned a 14-year-old boy, and the question of whether he had actually been sexually abusing some little girls. Is that right?

H

A A As I understand it, yes. I read the other one first, so I have not quite – but I am pretty sure, yes, I understand that to be correct.

Q In any event, concerns as to whether he had or whether he had not led on – we see down the left-hand side of this page some little side letters to guide us through. At letter e:

B “These anxieties led to his referral to the Hospital for Sick Children at Great Ormond Street for a general psychiatric assessment.

C While that was still pending, another episode occurred which gave additional ground for concern. His mother found him, while he was at home for the school holidays, in circumstances which led her to suspect that he had been touching in an inappropriate fashion the vagina of one or both of his twin sisters. Great Ormond Street Hospital therefore decided, when this was reported to them through the social services (to whom the mother had expressed her anxiety), that when the time of the assessment interview arrived the right policy would be to establish at the outset whether any, and if so what, sexual abuse by the boy of the twin sisters had in fact occurred. The technique employed in establishing that diagnosis was one that has become familiar to the courts of the Family Division in recent months. Some indeed might say that it has become all too familiar, for the hearings to which it has given rise are invariably long and anxious, and they loom large in the Division’s already pressing case load. It will be necessary for me all the same to say a word or two about the technique at this point, because its merits or demerits have figured prominently in the hearing of this long and anxious case.

D
E The hospital’s sexual abuse team, founded about 5 years ago to provide therapy” –

So there we have the first use of that important word ‘therapy’ – that is the purpose for the technique in the first place –

F “for children known to have been the victims of sexual abuse, found that it was an important element in such therapy to get the child to talk of its experiences. That is seldom an easy task. In addition to a natural reticence about such topics, abused children have often been told by the abusing party that they must not disclose what has happened. Various methods have been traditionally employed to break these barriers down. One is play, in which the subject is gently broached by the use of toys, drawings or dolls. Another is the use of the ‘as if’ question (as it is sometimes called) to give the child a refuge in hypothesis as an alternative to the harsher implications of a direct question. Another is a process which lawyers would call cross-examination, which in this therapeutic context represents an attempt to test the veracity or accuracy of the child’s responses by pressing the same question again by the use of different language or approach.”

G
H I pause there to say that cross-examination of course involves leading questions, as you will appreciate, does it not?

A A It would appear to, yes.

A

Q “The specialist team at Great Ormond Street was quick to attract ...”

Could I just pause there and deal with what a leading question is. A leading question is a question which actually suggests the answer. “Did you come here by train?” is a leading question, whereas “How did you travel here?” is not a leading question.

A Yes. There may be various definitions, but in broad terms, yes.

B

THE LEGAL ASSESSOR: Mr Turner – Chairman, with your leave – you put it to the witness that cross-examination involved leading questions. Of course cross-examination may involve leading questions, but in the context in which cross-examination is referred to here, in this report at page 335, it appears to mean asking the same question in different words.

C

MR TURNER: I think, as we will find when we go on, it involves leading questions as well; but certainly at that point that is the express reference.

THE LEGAL ASSESSOR: Yes.

MR TURNER: The pressing and some might say harrying of the interviewee ---

D

THE LEGAL ASSESSOR: But while I am intervening – and I am sorry to have done so, but now I have done – I wonder if you could just help the Committee by telling them what the purpose of this line of questioning is? Where does it lead?

MR TURNER: The purpose of the line of questioning is to show how the courts have drawn a distinction between therapeutic interviews and investigative interviews, and have not sought to criticise the carrying out by practitioners of therapeutic interviews, which involve for example techniques such as leading questions – the sort of techniques which have been criticised when used by Dr Eastgate.

E

THE LEGAL ASSESSOR: Does your case lead on from there that Dr Eastgate will say “I was conducting a therapeutic interview, therefore it was not wrong to ask leading questions or to make suggestions”?

F

MR TURNER: My case is that even had he been conducting what he perceived to be an investigative session, then there would not be much to criticise even then. But if and insofar as the Committee determine that in the context of an investigative session there is something to be criticised, his answer would be “But I was not carrying out, as I perceived it certainly, an investigative function; I was carrying out a therapeutic function, and the very reason I referred the matter to the child protection team was so that they could decide who and in what way this should be investigated”.

G

THE LEGAL ASSESSOR: I hope the Committee will find that helpful. But then to come back to the first point, since all you are pursuing this line of questioning for is to elicit from the Professor, if you can, his agreement that the courts appear to have drawn a distinction between therapeutic and investigative interviews, it could probably be done by fairly short reference, could it not?

H

A MR TURNER: But not simply that – accepting that it is appropriate in circumstances even where what is being discussed between the child and the practitioner is sexual abuse, for questioning to take place other than in the sort of form that would be appropriate for a full-scale investigative ---

B THE LEGAL ASSESSOR: Right. Bear with me for one last point then, please. That is, I hope you appreciate that this Committee, being a professional and intelligent Committee, will undoubtedly read it all themselves, everything that is put in front of them.

MR TURNER: Yes, indeed.

C THE LEGAL ASSESSOR: So it will not really be necessary to go through it in the greatest of detail.

MR TURNER: Certainly. I will bear that in mind.

(To the witness) Mr Justice Waite goes on to chart the history of how that therapeutic technique had developed and been used also for investigations when certain cases had been referred to the Great Ormond Street team. Is that right?

A I am not going to refute what it says here.

D Q Sorry?

A If that is what it is referring to here.

E Q In the case before his Lordship there, the question that his Lordship had to answer was, was there sufficient evidence that there had been sexual abuse committed by this boy? The problem that his Lordship had was that some of the material on which he was being asked to decide that was material that had come from Great Ormond Street interviews. He was being invited, as it were, to discount that material as being an inappropriate form of questioning for such a purpose, and worthless. That was the argument that was being put forward on the Dr Boothroyd-Brooks/Westminster side, and being resisted on the Bentovim/Great Ormond Street side.

F We find the upshot of all that really at page 337, which is probably as far as anyone needs to concern themselves, because from there on it is just the application of those conclusions to the particular facts of the case. His Lordship says just above letter e:

“Before I turn to the detail of the present case it would be right, I think, to state what, in my judgment, is to be made of this remarkable conflict of eminent medical opinion.”

G You remember I bruited with you earlier the question of whether experts disagree on various approaches in child protection matters.

“A consideration of the best interests of the child concerned – which I must of course treat as paramount” –

H because his Lordship was proceeding in a Children Act application which requires consideration of the child’s best interests as paramount –

A “ – does not in my view require the court to make a judgment as to which of the conflicting approaches should be regarded as *clinically* correct. The law has directed that decisions affecting the welfare of children shall be made by the courts engaged in the familiar judicial process of finding facts on the balance of probability. It is a process which must inevitably depend to a very substantial extent upon medical opinion, but which can never be ruled by it.

B That is why it is unhelpful, in my judgment, to treat these cases as though the Great Ormond Street interview technique was itself on trial. The judge in each case must form his own view, gathered from a survey of the totality of relevant circumstances in which medical interviews may play a significant, but never an exclusive, part. For this reason I decline to take any rigid view of the Great Ormond Street technique. It would be wrong, in my judgment, to reject it out of hand, as Dr Boothroyd-Brooks would propose. In principle I see no reason why it should not play a useful and valuable role in achieving the early detection of sexual child abuse within a family; and, indeed in alerting and educating society to the existence of, and the dangers posed by, such abuse.

C Equally, I am unable to give it the status of virtual infallibility which it has clearly gained.”

D That relates, does it not, to the idea that “If the child says it, it must be true”? That sort of approach was what his Lordship would appear to have in mind there, would you agree?

A I have no idea what his Lordship had in mind. One of the issues was around, exactly as you say, the misinterpretation of statistics, that if a child made an allegation, then it must be true. That is based on – well, if you want me to explain, I can, but it was a misunderstanding of statistics.

E THE LEGAL ASSESSOR: Mr Turner, I do not think a fair chance to this witness to comment on the passage that you have read would be given to him if you did not read on into the next page, where I think you will find a reference to the grave risks involved in the use of this technique.

MR TURNER: Let me continue.

F “Equally, I am unable to give it the status of virtual infallibility which it has clearly gained, for example, in the mind of the area group leader of the social services department, who expressed her loyalty to it in evidence with unaffected candour. As Dr Bentovim was the first to agree, it is a pioneering technique undergoing a constant process of modification in the light of experience. Most of its results, though well documented, have still to be published and scrutinized by the profession. That is why there are grave risks

G involved in the use of this technique by outsiders who, however ardently they may admire it, have not been fully and thoroughly trained in its use. So what it comes down to in the end is that the court is faced with its familiar duty, painful though it may be in such circumstances as these, of deciding a pure question of fact on the balance of probability; and that is a decision which will depend more upon giving due weight to each piece of evidence in its proper context than upon the application of any psychiatric nostrum.”

H

A I hope that is sufficient.

THE LEGAL ASSESSOR: Thank you very much.

B MR TURNER: (To the witness) What was of course being considered there was, in a sense, a million miles away from what Dr Eastgate was doing here in any event, but the full-blooded Great Ormond Street technique at that time went far further than the asking of one or two not entirely open questions, did it not?

C A It covered – I have to say that I am not really sure that this is appropriate, to rehash the whole issue about the technique that was used. I am sure you are aware that it was one of the main issues, as you pointed out, of Cleveland. This is 1986. It is one of the reasons for the – I will not say plethora, but for the production of the guidelines that then followed that, and the ones that we have been quoting, which are post this. You might notice, for example, that guidelines came out in 1988, which is the year following this.

Q Yes. That is why I want to take you to a later case as well.

D A I saw that. But we could rehash the arguments here, but I think there has been a lot of evidence that the techniques that were used, a variety of techniques, including circular questions, including – I can describe them all to you – I was there, so to speak – were inappropriate. It is not – to come down to a battle between Dr Bentovim and Dr Boothroyd-Brooks I think would not be appropriate to these hearings, but the techniques and the problems with the techniques that are talked about here would over the next few years have been seen as inappropriate in the handling of investigation of children who might have been abused. I am sure that this is well known, that this was an issue that was clearly extant at that time.

E Q I am not suggesting for a moment that in the present day the approach that was followed at Great Ormond Street in those days would be an appropriate approach in any event. All that I refer to the case for is to show that there is a distinction drawn between a therapeutic approach and an investigative approach, and the real problems arise when you have one person doing the two things.

F A In fact it refers here to this starting out as a therapeutic approach and being developed into an investigative one. I think in this context it is artificial to base the inappropriateness, the leading questions, questioning techniques and styles, on that distinction. I am being very cautious because I happen, for very obvious reasons, to know quite a lot about what was happening here and the subsequent events. I think the key point is I was actually being instructed by the Official Solicitor at this particular time. The key point is that following Cleveland, which was the year before, and following cases like this, there was good reason over the subsequent ten years – this is now ten years before the events we are talking about – to give clear guidelines about techniques that could be used for children. I would say that would be much more important than looking at the pros and considerable of what was discussed between Dr Brooks and Dr Bentovim.

G Q You see, the problem in the *Re H* case was that the information gained by a technique that had been primarily designed for therapeutic purposes was being put forward in court as helpful to the investigative process, and that is where the problem arose, was it not?

H

A A It really was not as clear as that. It really was not like that, I have to put. It was being developed, or at least it was being put forward, as a technique to elucidate what might have happened – or at least, not what might have happened, but what had happened to children. These techniques were very much based on disclosure. Again, I am concerned that we can go down the line of what was happening then. I really would stress that the whole issue about cases like this was that it led to the development of guidelines – the distinction between therapeutic and investigative in this sense is not helpful, in my opinion.

B

Q I think we may be at cross-purposes, because the point that I am seeking to make to you is that what may be appropriate for one purpose – the therapeutic purpose – may be dangerous for a different purpose, the investigative purpose. Would you agree with that?

C

A No.

Q So you think it might be helpful?

A No, I am sorry. I misunderstood. If, in an investigative process, there is an approach to interacting with children that would be seen as hazardous because it could influence the judgement and the understanding of children of what had happened, then is it equally inadvisable to use the same technique therapeutically, and as you may be aware, we have run into all the issues about so-called false memory syndrome. I have quite a lot of experience of children who appear to remember things because of the manner of introduction of material to them in apparently therapeutic interviews.

D

The principles which would be applying to investigation: I agree with you that therapeutic sessions are different to investigative ones, but the principle of the influence of the interviewer affecting the perception of the child does not differ between an investigative one and a therapeutic one on any fundamental basis. The purpose in a therapeutic interview, for the most part, is to be able to hear what the child says. I agree with you that there are interventions, there are cognitive interventions, all sorts of interventions, but the risks of influencing the recollection and memory of the child are something which has come up from both.

E

THE CHAIRMAN: Do you wish to go on to the second case?

F

MR TURNER: Yes. If I can just pause there a moment, though, the purpose of the therapeutic interview is to help the child, is it not?

A The child do what? Sorry.

Q To resolve whatever emotional difficulties the child may have.

A Yes.

G

Q The purpose of the investigative interview is to obtain material that will assist a court in deciding issues.

A In a minority of investigative interviews they are to do with that. The majority of investigative are to actually try and understand for therapeutic purposes. That is a very biased(?) thing, to say that it is for legal purposes. I do not think it alters the issue that making statements to children that might influence their perception has also arisen as a problem within therapeutic interviews, and hence we have the whole

H

A problem about the recollection of what children have experienced because of the introduction of material to them in therapy.

What I am putting is that there is a distinction under some circumstances, but in terms of the principle of introducing the method of questioning or of introducing opinion to the child, there are the same issues present.

B Q Would you agree that if a practitioner is engaged in a therapeutic interview and, during the course of that, disclosure is made of what appears to be sexual abuse, that situation raises some of the most difficult problems for the practitioner to deal with?

C A Not some of the most. It raises the difficult problem that is not particularly a novel one. It is certainly something which happens not infrequently and it is something which senior practitioners should be aware of, of a method of handling, and certainly at this particular point in time, when you have cases like this, when you have had discussions in the recordable past, actually about the caution that one then needs to put in place about the manner of proceeding. To be honest, I wish it were otherwise and I wish that it was not as... But I am afraid at this particular point in time these issues were around, they had been discussed, as this actually very amply illustrates.

D Q So you say the same interviewing technique should be used whether it is therapeutic interview or whether it is investigative interview?

A I have not said that.

Q What are you saying then?

E A I am saying that if an issue about exploring the child's memory arises during an interview and that that raises issues about abuse, then the practitioner should have special caution and should have been aware of the need for special caution in terms of approach to the child and of recording. That is not saying that there are fundamental differences. I am still saying that it is just as hazardous. I am not talking about the style of interviewing. For the most part therapeutic interviews are very much more unstructured. Again, I am sure that the Committee is aware of the difference between a leading interview and a structured interview, or semi-structured interview.

F Nonetheless, the principles of what is likely to influence a child's perception coming from the interviewer or the therapist is just as likely to have an adverse effect on the child, whether it occurs as part of an assessment or part of therapy.

Q I do not think we are in disagreement about that. It is likely to have precisely the same effect. It is whether it is more appropriate in one setting than the other.

G A I do not think that it is more appropriate and we are very aware that it has raised problems over things like whether there are true memories. There is research to show that if you give an opinion to a child, or indicate an answer to a child, then the child may well come to believe that that has happened. In this particular case the child is older and, therefore, the likely influence is less, but the principle is still there. The principles are very clearly stated in the guidelines that were extant at the time that these were taking place, not to indicate an emotional response under these circumstances.

H

A We can in fact pursue it and say, well, in the first interview, the morning of the 9th – and I have already said this, I think, in giving my advice – may be there was some doubt as to what was emerging. By the afternoon it seems highly unlikely that there would not have been a clear indication that there should be great caution about transmitting an opinion. I am afraid I think trying to make the distinction in this particular case between therapeutic and assessment and investigative interviews becomes quite artificial, because there is quite clearly now an investigation.

B

Q Let me see if I can now put what you are saying correctly. Once it becomes apparent that there is a potential issue as to sex abuse, then you say one should simply proceed with caution or one should follow the guidelines that will be followed in a formal memorandum interview?

A I think I have already answered this actually.

C

Q If you could just bear with me.

A The principles of not influencing the perception of the child would apply in both. Once you think that there is likely to be a risk of abuse, then there is reason for being particularly cautious, but I do not think it changes the principle.

Q And something which would influence the child would be a leading question?

D

A No, something which might influence the child giving an opinion. I have actually said that there are two quite different things. One is asking specific questions that indicate some degree of answer, like: “Could it have been in London?” and knowing this medic, is one thing; transmitting an opinion with an emotion, which is referred to in these documents, is a different thing. Doing both is likely to have a powerful effect on the child’s perception.

E

Q So if Dr Eastgate had said to the child: “Well, we have now got to the stage where we have discovered you have some sort of problem with Professor X” and had then said to her: “Did he stroke your breasts?”, that would clearly be an outrageous way of conducting the interview, would it not?

F

A The difficulty we have got with this is that we do not know what the dialogue was. I have to say that these things go together. If there had been a recording of the dialogue, according to the guidelines, then we would have a much clearer idea. When you put all of these together we only have access – and it is in my reports – to the fact that in the morning the interview became more leading, with more closed questions. We do not know about the nature of the dialogue in the afternoon. If it is the same as the morning then it is much more leading, but we do not know, and we do not know because of the problem that there was no clear detailed account under these very special circumstances, for which there would have been a special indication to do so. I am sorry, I have given this already, before, and I am not quite sure how I can clarify that further.

G

THE CHAIRMAN: I think it is very clear what you are saying and I doubt that the Committee will have any difficulty in understanding it. We may hear different evidence from another expert, I do not know.

H

MR TURNER: With respect, it does not actually answer the question that I had asked, which was this. Let us take a hypothetical situation. Dr Eastgate, having learned that the girl had some sort of problem with Professor X, says: “Well, did he

A stroke your breasts?” That would be the clearest form of inappropriate question, would it not, because it suggests an answer. It places an idea in the girl’s mind.

A It would be a leading question.

Q But if he said to her a question to the effect of: “Well, what has he done that has caused you to be upset with him?” that would be a perfectly proper question, would it not?

B A Yes, I think that would be appropriate. It would be reasonable under the circumstances to ask a non-specific question if the girl was indicating spontaneously that she was concerned.

Q And if he had then said to her: “Well, tell me what he did?”, and she had volunteered that what he did included stroking her breasts, that would not be an inappropriate form of question, would it?

C A If she volunteered it, then it is not a question, it is a response. But we do not have a record of this.

Q I fully understand your point.

A We do not have a record of it.

D Q I fully understand your point that from the note we have of the interview on the afternoon of the 9th we do not know, because we do not have a tape recording, a video recording or a verbatim transcript.

A We have no recording. I am sorry, but I have to put this. We do not have any recording. These cases refer to the video, and in fact the concern over one of the video machines being broken down. In my office I have two video cameras.

E Q You say it would have been appropriate at that stage, or good practice would have required at that stage for a detailed contemporaneous record to be kept of question and answer?

A It would have been essential.

F Q Turn then, if we can, on this question of distinction between therapeutic interview and investigative interview, to *Re M (Minors)*, decided on 14 October 1992 by the Court of Appeal, and the effective judgement given by Lady Justice Butler-Sloss, who presided over the Cleveland Inquiry. One can find many cases where the distinction is drawn between therapeutic and investigative interviews, but this is perhaps important because it is post-Cleveland and it is Lady Justice Butler-Sloss. It was a case, we can see from the facts, where there were children of a family, the mother had suggested that the father had sexually abused the girls and care proceedings were started. In the course of the care proceedings Dr Jones was instructed by one of the parties (and that is Dr Jones, the author of the work we have in the literature bundle) to see the children. If we look at the bottom of the first page at (3), the last paragraph, we see:

“The consultant had been asked to assess the children by the local authority for the purpose of advice as to their future care.”

H

A He was not being asked to advise, we note, whether they had been sexually abused. That was not the specific request that was made of him. He was asked to advise as to their future care.

“This involved a need to elicit whether any abuse had occurred.”

B So the purpose of it was not to discover whether there had been abuse, but for therapeutic reasons it was necessary to discover whether there had been abuse. Does that make sense?

A I can see it goes on to assessment for the purposes of investigation, assessment or therapy, but I thought this was for the purpose of assisting the local authority to plan, but maybe I have misunderstood it.

C Q No, you have understood it absolutely. He was asked to assess the children for the purpose of advice as to their future care. It was: ‘How should they be looked after in future?’ not: ‘Can you help us with a view to determining whether the sexual abuse has actually taken place or not?’ That was not his instruction. His instruction was: ‘Advise us about their future care’. Unfortunately, in order to advise he felt it necessary to make inquiry as to whether or not there had been abuse, because, of course, you would not want to place the children back in a home where there was likely to be abuse, would you? So you would need to investigate that for the purpose of advising on future care. Correct?

A That is my understanding of what this was about, yes.

Q I am still looking at the headnote on page 823:

E “The consultant interviewed the children 6 months after the allegations were first made and after they had already been interviewed by the police. The doctor could not be criticised for the style of questioning which he had adopted. His objectives were not specifically to provide evidence for the court”,

and here I seek to draw an analogy with Dr Eastgate; that was not his objective when he was dealing, in July, at any stage, with Miss A,

F “but to make an assessment of the children. The way in which he elicited the answers was such as to entitle a judge to rely upon those answers for the purposes of family proceedings.

G (4) It was important to draw distinctions between interviews with young children for the purposes of investigation, assessment or therapy. It was desirable that interviews with young children should be conducted as soon as possible after the allegations were first raised, should be few in number and should have investigation as their primary purpose”,

and you would agree with that, presumably?

A Yes, but the next sentence is quite important.

H Q

A “However, an expert interview of a child at a later stage, if conducted in such a way as to satisfy the court that the child had given information after acceptable questioning, could be a valuable part of the evidence for consideration as to whether abuse had occurred. No rigid rule could be laid down and it was for the court to decide whether such evidence was or was not of assistance.”

B The point I make is the court was not criticising Dr Jones for the form of questions which he asked, which were not in the form of completely open, non-leading questions, as we will see. If we look at page 827, letter g, we find the criticism that was being made in the Court of Appeal. At letter g, the end of the line there, the sentence that starts with Lady Justice Butler-Sloss saying:

C “The third issue is that the interviewing of the three children by Dr Jones did not conform to the Cleveland guide-lines and the questions were not appropriate for evidential purposes and the answers should not be relied upon.

The point was, he had not been questioning the children for evidential purposes. He had been questioning for other purposes. Then dealing with that issue at page 830 under the sub-heading, “*The third issue: evidence of the children*”.

D “I turn to P first, whose interviews with Dr Jones are the only relevant ones for the purpose of this appeal. But Mr Corrie...”

- counsel who was making the argument –

E “... pointed to the type of questioning of the other two children to illustrate the pressure put all three children to make disclosures which were not freely made and upon which no reliance ought to be put. Dr Jones is a distinguished child psychiatrist who is particularly experienced in interviewing children. That does not mean that he may not stray outside the principles of good practice which guide the experts in this difficult and delicate area of interviewing young children.

F Dr Jones had certain difficulties which he explained in his evidence. He was asked to assess the children by the local authority for the purpose of advice as to their future care. This involved a need to elicit if possible, whether any, and if so, what abuse had occurred. He was in interviewing the children 6 months after the allegations were first made and after they had already been interviewed by the police. As Mr Corrie put it, the [trail] was cold. Dr Jones acknowledged that he had used some ‘facilitation’ at certain stages....”.

G What do you understand by the phrase ‘facilitation’?

A That was an extremely important distinction between the techniques used for disclosure. Indeed, it came from, as it happens, Dr Kolvin, Dr Jones and myself, for the need to be able to use questions which might produce some pressure on the child but did not indicate an answer. It was based on the assumption that there may be a variety of explanations, whereas ‘disclosure’, of essence, has at its heart the view that abuse has taken place and you therefore ‘disclose’, you get the child to disclose what took place. I am not sure how comparable these are. Dr Jones, as far as I know, had

A | been video-recording the interview. I cannot see where it says that he is leading questions. I am not quite clear.

Q | The point is that there was pressure being put on the children to make disclosure?

B | A | Yes. But it is quite interesting that they then quote – my understanding, I would suspect because there is confusion here – that Dr Jones would point out that the nature of the technique he was using was facilitation. I presume that is why it is in quotes. It is in quotes, is it not, I think? Yes.

Q | Yes. It was facilitation in a therapeutic, as it were, environment rather than an investigative context.

C | A | I am sorry. I am puzzled. I did not think that Dr Jones was taking part in a therapy session here. I do not know if this was really comparable.

Q | He was not, as is apparent, following the Cleveland guidelines. That much is clear, is it not?

A | I do not know. The trouble is I do not know what it was that was supposed to differentiate ---

D | Q | Let us carry on and see. Her Ladyship says;

“Having seen the video-recordings and read the transcripts, I can see points at which a court should be very careful whether to place any reliance upon answers to certain questions.”

Then further down the page, half way through, between letter g and letter h ---

E | THE LEGAL ASSESSOR: I am not sure you should do that, Mr Turner, with respect. The very next sentence was:

“As it happens, those questions did not elicit the answers one might have expected.”

F | MR TURNER: Yes, certainly. I will read as much as anyone wishes.

“As it happens, those questions did not elicit the answers one might have expected.”

G | So in the first instance, it is what might be thought to be an inappropriate form of questioning but it did not produce the answer that one might have expected, the obvious sort of answer, therefore one can perhaps place more reliance on it than otherwise because the child is able to cope with that form of questioning. Would that be ---?

A | But we do not know what the questions were. I agree with you entirely. It is interesting that one would say there was an “expected answer”. Hopefully if you are interviewing children, in the circumstances you do not have an expected answer, otherwise you do not ask the question. Under these circumstances, the interviewer put questions in such a way that the child was able to give a free answer.

H |

A Q But the danger was ---
A We do not know what Dr Jones was asking.

Q But the danger appears to have been that the questions which did not follow the Cleveland Guidelines might have been expected to produce certain answers. Happily they did not because her Ladyship continues:

B “In the case of M...”

– one of the children –

C “... he was a match for the questions and avoided them. In the case of R, she refused to answer. But in P’s first interview, which is the most important one, in answer to Dr Jones saying that M had told him things, she said, ‘He shouldn’t have said it’ ...”.

So we have Dr Jones telling one of the children that the other child has told him things. That certainly would not confirm to Cleveland practice, would it?

A I am trying to think what was... It should not because that was a problem which had come up in Cleveland.

D Q You should not be saying, “Oh, someone else has told me this so it is all right for you to go on and tell me it”?

E A You see, again, I do not know. I do not know whether it is suggesting. Our task here is not, as far as I know, to consider Dr Jones’ techniques. Dr Jones was one of the people who has promulgated guidelines on methods to be used. We can speculate all sorts of things about what is meant here. If he said to the child – and I have to say it would surprise me, but Dr Jones is not the person subject to these questions at the moment – if he had said, “Oh, so-and-so said such, the other child said this, this and this to me,” then that would not be appropriate. It was certainly one of the issues which came up and actually was made public from one of the cases in Cleveland. Again, I have to point out, it was Cleveland because it aired all of these issues.

F Q But this case is a decision post-Cleveland?

A Yes.

Q By the very judge who chaired Cleveland, so if anyone knew what they were talking about, it was this judge?

G A Yes. What I am putting is, we can speculate as to what Dr Jones might have said. Dr Jones uses the term ‘facilitation’. Facilitation is much more, and was intended to imply open-ended questions that it might be reasonable to urge the child to continue to say more, but that facilitation is not based on the assumption that something had taken place. I do not know further than that and there is notion to use this interview as a paradigm. I still do not think that alters the issue that all the people, including Dr Jones, had help produce a set of guidelines on how to proceed if you are exploring the possibility of abuse.

H Q The purpose for which I rely on this case, Professor, is to show that even post-Cleveland, it has been acknowledged by the courts that it may be appropriate to ask

A questions or to conduct interviews with children in relation to sex abuse in a style that does not fully accord with Cleveland if one is not engaged in the evidence-gathering exercise, if one is engaged on some different form of exercise?

A What I am trying to point out is, we do not know in what way it was said to have differed from the Cleveland guidelines. We do not know what he is saying. It may be that I am missing something here, but we do not know what it was, and therefore to speculate, I think, is hazardous.

B

Q We do know, with respect, what it was, do we not? Dr Jones is saying M had told him things to the other child.

THE LEGAL ASSESSOR: Mr Turner, that is irrelevant. That is something, if I may say so, ambiguous. It may be that he said, "Look, M has told me things," or it may be, "M has told me that this happened and that happened."

C

MR TURNER: Would you approve of either of those formulations? "Now, young lady, your sister or your brother has told me all sorts of things. Are you going to tell me things?"

A I think for the purposes of legal proceedings that that is open to question, because it clearly was. In terms of whether it could indicate the type of answer, it does not appear to have been so in this case.

D

Q And we can see there in the following lines the fact that disclosures were then made by the little girl, and halfway through letter g and f, Lady Justice Butler-Sloss says this:

"The judge..."

E

– that being the judge who tried the case at first instance –

"... relied on these answers, which, as I have already said, were clearly reluctantly given..."

So not spontaneously given but clearly reluctantly given.

F

"... as one can see from the video-recording..."

A Can I point out, quite – the whole point about the safety here in these circumstances, is that there is a video----

G

Q You have made that point several times, if I can say so; that there was the point here that one knew exactly what Dr Jones had said because there was a video-recording and a transcript?

A That is right.

Q But having seen the way in which he had conducted the questioning, the judge relied on the answers –

H

"which, as I have already said, were clearly reluctantly given as one can see from the video-recording, as important and not in breach of any memorandum

A of good practice. I entirely agree with hi. In my view, the doctor cannot be criticised for any of the style of questioning which he adopted.”

And now the passage that I rely on.

B “His objectives were not specifically to provide evidence for the court, but as he made clear, to make an assessment of the children. In the process of trying to ascertain what had happened he asked questions of P in an entirely appropriate fashion.”

Bearing in mind the context, the purpose.

C “Further, the way in which he elicited the answers was such as to entitle a judge to rely upon those answers for the purposes of family proceedings.”

For my part, I am not concerned with the precise nature of the questions; simply that differences in approach may be appropriate depending on the context of the interview. That is the sole point that I am seeking to make?

A I do not disagree, the different approach maybe depends on the context of the interview. I do not think that that is relevant to the particular issue we are looking at now.

D Q Do you accept that Dr Eastgate, certainly as at the morning of 9 July, was conducting a therapeutic interview in a clinical setting?

E A Yes. Well, the difficulty is, we do not know because we do not have a transcript of that either. However, I am not actually stating that at that point this was investigating. In fact, I have pointed out that the interview appears to change its character during its course. I gave that in evidence this morning. It may well be that this started out as part of the therapeutic process to investigate background factors, and it starts out talking about who had let her down.

Q You say “the interview changes its nature”.

A As reported.

F Q The interview as such does not. You say the purpose for which the interview took place should have changed its nature. Is that really what you are saying?

G A I have to put it, we do not know. The nature of the report changes from being much more open to talking about who had let her down, or the fact that she felt let down and because progressively more specific, until it begins to raise questions as to whether “it” had happened to her, “it” could have happened to her in London, and we know via a medic that there was only one particular person. It changes its character. What I am saying is that at that particular point, with all of the guidelines present, you cannot compare it with this, but there now becomes a concern as to whether there should have been special precaution firstly not to influence the girl, and secondly to make sure that there was a careful recording of what was said. I am not sure how I can put that any differently. That is my opinion. I am afraid that is my opinion about that.

H Q Let us try to put that questioning on the 9 July against its background context. We have here a girl who had apparently an eating disorder which was getting worse?

A A Not at this point. Dr Eastgate's opinion was that she was depressed, and did not have an eating disorder.

Q We have a girl ---

A It does not matter precisely.

B Q --- who had an eating disorder. Dr Eastgate, I think, did not dissent from that view. He did not agree that it was anorexia or a precursor to anorexia nervosa, but he agreed that she had an eating disorder which he attributed to a depressive state rather than anorexia?

A The loss of appetite? I will not particularly argue because that is being a bit picky here, but I do not think that anybody would actually call the loss of appetite associated with depression an eating disorder. That puts a very different slant on it. It may not be relevant. I do not know if it is relevant, but I do not think somebody would call it an eating disorder. Loss of appetite associated with depression is common; it is a known fact.

C

Q There had been difficulties with her at home?

A Yes.

Q Increasing in recent times?

D

A There had, in fact.... I could go back to the notes, but I think not the week-end immediately before this, but the week-end before there had been quite a lot of distress about the home, about the home visit. That is correct. You can factually...

Q Dr Treasure, in tab 1, page 7, before Dr Eastgate's involvement, reported tearing her clothes and threatening self-harm. That is the letter to Dr Woodhouse on 25 April 1996.

E

“[Miss A] appeared to have become distressed at school, tearing her clothes and threatening self-harm.”

A Yes.

Q Disturbed behaviour?

F

A This girl showed evidence for marked disturbance.

Q The early stages of Dr Eastgate's sessions with her, we see in May, tab 2, page 2, discussion about certain alleged problems in her life. Then, about half a dozen lines down:

“[Miss A] agreed but felt there were other things.”

G

So there is something that she feels is a problem in her life which she is not disclosing at that stage. There is nothing more about that apparent from that note. Then the next note, page 3 ---

A Can I ask? I am not quite sure of the significance of “[Miss A] agreed but felt there were other things.” There could be a myriad of other things. I am not quite sure of the significance there was.

H

- A Q But the point is, the point I simply make here is that Miss A, from that stage, that early stage, had been saying there was something else. There was some problem that she was not at that point disclosing?
A That is an assumption. I am not trying to be picky, but that could equally well mean that the things that he is pointing to – remember, this is a girl who is large, she is a tall girl, she had maybe educational problems at school. We do not know.
- B Q Who knows? A multitude of potential reasons?
A A multitude, yes, yes.
- Q Things that she had in mind.
A That does not mean to say that there were things that had not been disclosed. There might be. She refers to Tamsin there – and it occurs on the next page – to what is happening. “The only person who knows what is happening is Tamsin.” There could be a myriad of things.
- C Q Then page 3, the file note for 12 June. Following discussion she –
“Said there was something that was bothering her...”
There is no clear indication, certainly from the note, of her giving any real explanation of what it was that was bothering her, is there? Then it is recorded:
“The only person who knows what is happening is Tamsin.”
Tamsin, we understand, is a friend. Then Dr Eastgate says that he asked if she felt she would be safe. She said she did not know, would he be cross with her if she told him. Then she said she had stopped taking the pills. We know that there was then the taking of too many pills, an overdose, let us call it. That, against a background of threats of self-harm, would be interpreted by you as what?
- E A A distressed, oppressed girl who had taken an overdose.
- Q Not a catching up with medication because she had not taken it for a couple of days and decided to catch up with it in one go?
A I am sorry, I misunderstood. It is quite clear, I hope, in my report that it might have been unclear, and this was in one of the original heads of charges. If there was doubt as to whether or not this girl was taking the tablets to catch up or whether she was suicidal in intent, was taking them to harm herself, it is safer to err on the side of caution. The action to admit her would have been doing just that and would have been appropriate whether or not this was a catching up or an intentional or even an accidental overdose. It is much more important to go for safety.
- F
- G Q You, I expect, in your perusal of all the papers in this case, or the large number of papers you have seen, whether they be all the papers or not, have seen the note addressed to Dr Eastgate that is said to have been found Miss A’s room at the school following this incident of taking too many pills. We have got it as our exhibit D1 now, and I expect it is in front of you somewhere, but you will have seen it in the past?
A I have, but it would be much more helpful, if you are going to refer to it, if I could have it in front of me.
- H

A

Q I am not going to look at it in detail but do you have a recollection of it in general terms?

A I would not want at this point – we are late in the day, I have looked at lots of papers – to comment on it without having it in front of me.

B

Q I wonder if we could track down where the witness copy of that has gone to.

THE CHAIRMAN: Can we give you a copy?

A I have probably got it somewhere here.

THE CHAIRMAN: We will give you a copy and just try and get this out of the way before we break.

C

MR TURNER: I notice the clock.

THE CHAIRMAN: I think you should finish this point.

MR TURNER: Certainly, sir. (Document handed to the witness) Does that document shed any light, in your view, on the question of whether it was simply Miss A catching up on her medication not having taken it for a couple of days or whether it was what should be called a cry for help?

D

A Can I just glance through it very quickly?

Q Yes, of course.

A (After a pause) I am going through it very quickly. My recollection is that when I first got the papers I could not locate this and then we located it and went through it and it struck me as being fairly typical of a distressed and actually quite articulate young lady. It is consistent with distress. Do you want me to go through it? If there is anything in it which I have missed I could --- It is actually quite interesting in that in the distress it is very nicely written.

E

Q It would be consistent with not an attempt to kill herself but a cry for help, as one might put it in layman's terms?

F

A It does not give an indication of suicidal intention, but I am sure you are aware that there is a very considerable literature on the fact that some children – well, quite a lot of people – who take overdoses will do it as a communication rather than as a death wish.

Q Yes, that is precisely what I am suggesting here. It would not be consistent with her simply having forgotten to take her tablets for a couple of days and then deciding to catch up with them as being the appropriate approach to oversight?

G

A If I remember rightly – I am sorry, it is quite long and it is quite late in the day for the Committee, I cannot recollect that it actually refers to anything. It does not actually refer to anything like wanting to kill herself or be done with it. It is not supportive of that. All I can say is that it would be consistent with an articulate distressed girl. Again, I am not trying to manipulate, but it is dangerous to draw specific conclusions that you do not have ground to do here. If this was written and there was a distressed girl and she had taken an overdose, as I have already said in my reports, the safest thing to do was to admit her to a circumstance where she would be

H

A protected. It is not always the only thing because you can get circumstances where children can be looked after at home with adequate protection, but it is not inappropriate that she should be admitted under those circumstances on the basis that if it was an overdose and she could harm herself, either from suicidal intent or from the communication, it was correct to act for safety.

B MR TURNER: Sir, that is a separate point of one of the points leading up to 9 July, and if the Committee wish to adjourn that is as good a time as any.

THE CHAIRMAN: Thank you, we will continue at 9.30 tomorrow morning.

C MR TURNER: Sir, one final thing. As I say, tomorrow I shall be asking the Professor to look at various aspects to the Cleveland report. I do have copies of the passages that I am going to take him through and I wonder whether it would be helpful to give those to the Committee and to the Professor now?

THE CHAIRMAN: I am sure it would be helpful to him and to the Committee, thank you. That will be D5. (Same handed and marked D5) We will continue again at 9.30 tomorrow morning.

D (The Committee adjourned until 9.30 a.m. on Wednesday, 3 September 2003)

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