

**Fitness to Practise Panel  
Reconvened hearing beginning 23 November 2010**

**Amended determination**

**23 November 2010**

Mr Tyson and Miss O'Rourke

The Panel has convened today to continue the hearing of Dr Southall's case which was adjourned on 14 July 2010 owing to lack of time to complete the case. The case had been remitted to the original Panel by direction of the Court of Appeal on 24 May 2010. The original Panel proceeded to hear submissions and evidence between 6 and 14 July 2010. Since that time, the sole medically qualified member of the Panel, Mr McFarlane, has been forced to withdraw for medical reasons. An alternative medically qualified panellist, Dr Vaidya, has been nominated to join the Panel today.

The Panel first heard submissions as to whether it would be appropriate for Dr Vaidya to join the Panel as a medical member to make it quorate to adjudicate on the question of whether it is appropriate for him to become a member of the Panel hearing Dr Southall's case.

Mr Tyson submitted that this was a discrete issue and that the Panel was quorate. The requirements of the rules were satisfied in that at least three members are empanelled including a medical member, a lay member and a Chairman.

Miss O'Rourke submitted that the Panel was not quorate and did not have jurisdiction to deal with any issue connected with the case. She did not accept Dr Vaidya as a substitute. In her view there was no expressed power for a Fitness to Practise panellist to be substituted. She indicated that those acting on behalf of Dr Southall had requested the GMC to provide authority for the proposition that substitution of a Fitness to Practise

Panel member could take place after the commencement of the hearing. No response had been forthcoming.

The Panel accepted the Legal Assessor's advice that Mr Tyson's position was correct and determined that it would not be inappropriate for it to hear submissions on a discrete issue, namely whether to proceed with the case. The Panel then invited submissions from both Counsel.

Mr Tyson reminded the Panel that he represents the two individual Complainants in this case and does not act on behalf of the General Medical Council (GMC). He could not make submissions on behalf of the GMC as to why it wishes the Panel to proceed as it is now constituted.

Mr Tyson set out the Complainants' understanding of the GMC's position that the Panel was quorate for the purposes of determining the question of whether the Panel should proceed with a substituted panellist. He did not go on to address the Panel on the general merits of the Panel continuing in such a re-constituted form. It was Mr Tyson's view that, because the Court of Appeal had remitted the 'Dinwiddie' and 'SC Files' matters to the original Panel, only the original Panel could currently deal with those issues and the case would have to be referred back to the Court of Appeal.

Miss O'Rourke maintained her position that the Panel was inquorate for all purposes connected with the case. She declined to make further submissions but she did concur with Mr Tyson that the matter should be referred to the Court of Appeal for further directions.

The Panel, in light of those submissions, has had to consider how best to proceed. It has concluded that it would not be advisable to decide the broad issue of the fairness of substituting Dr Vaidya in the absence of submissions from either side on that specific issue. The question of whether or not substitution would be permissible under the Medical Act 1983 or the General Medical Council (Fitness to Practise) Rules 2004 has not been addressed in any detail by either party. Mr Tyson has advanced his understanding of the GMC's position as set out in paragraphs 2 and 3 of his skeleton argument. The Panel has not had the benefit of receiving submissions on behalf of the GMC which has not been represented before it today.

The conclusion that the Panel has reached is that it would not be appropriate to proceed today to adjudicate on the issue as to whether this Panel should continue to consider Dr Southall's case. The Panel believes that there is some force in the submissions made by both parties that the question of the current constitution of the Panel should be referred to the Court of Appeal.

The Panel has decided to adjourn further deliberations until 09:30 on Monday 29 November 2010 when the Panel expects to receive further information with regard to:

- a. the steps taken to refer the case to the Court of Appeal, and
- b. what further consideration the GMC has given to its own position.