

7 February 2008

Mr Jack Straw  
Secretary of State for Justice  
Ministry of Justice  
Selbourne House  
54 Victoria Street  
London SW1E 6QW

An Open Letter

Dear Mr Straw,

Re: Guardian CiF: 'Seeing justice being done'

This is a version of the letter I posted in Guardian on-line in response to your article

Can you say that justice was seen to be done in the MMR affair? A decision was taken by the Legal Services Commission in secret, and upheld by a judge in secret, who turned out to be the brother of a businessman who was connected to the case in two ways. Just before the case was heard by the judge the integrity of the chief prosecution witness was attacked by the Chief Medical Officer and the Prime Minister. You have dismissed the complaint against the judge (though you apparently did not have the full information in front of you) and the investigation of the judge is itself currently being investigated. I do not wish to pre-empt the result, but I do not think that so far this is justice being seen to be done.

What we do not see is the Legal Services Commission standing up for ordinary citizens against powerful interests within the state, or in industry. Without this any real rights against the powerful are being eroded. When the MMR litigation was finally wound up last June, the remarks of presiding judge Mr Justice Keith were reported in the Financial Times:

"The judge stressed that it was the funding issues, rather than the merits of the case, which had driven the decision not to allow claims to proceed.

"It is not because the court thinks that the claims have no merit. Although this litigation has been going on for very many years, the question whether the claims have merit has never been addressed by the court," Mr Justice Keith said.

"The reason the claims had not been allowed to proceed, he said, was "because everyone has realistically recognised for some time that it is just not practicable for the claims to proceed without public funding"."

I also do not see any speedy attempt to seriously address the legacy of Drs Meadow and Southall, which has influenced thousands of decisions in the family courts, or the family court system being reformed with any sense of urgency. I draw your attention to a statement in Neville Hodgkinson's report on the Sally Clark case in the Spectator:

"An examination of related legal and other correspondence has now made clear the reason for this extraordinary omission. It is that child health experts, following public loss of confidence in vaccination when the risks of brain damage were first publicised, were trying to maintain a united front in preventing further debate. Even paediatricians who gave testimony on Mrs Clark's behalf told defence lawyers that if vaccination were mentioned as a possible cause of Harry's

death, they would dispute it. Not wanting to confuse the jury, and with judges having a history of bowing to dominant medical opinion, the defence decided to stay silent on the issue."

Surely, the position where a possible cause of death is not considered or investigated as a matter of covert official policy is an outrage against justice and decency? Sally Clark went to jail to circumvent the yellow card system. The Clark case brought some of these issues to light because it was conducted in a public court, but what about the many cases in family courts? Of these we know nothing, and can speculate much.

Please can you say what steps are being taken that ordinary citizens have adequate protection from the law in circumstances in cases of state or corporate negligence, without the Legal Services Commission trying to anticipate the views of the court at every stage, and consulting with hostile witnesses, in order to collapse proceedings before a court can ever hear them? Please can you say what steps are being taken to ensure that the possibility of iatrogenic damage is properly monitored in cases of infant death or sickness? Please can you say when the veil secrecy will be removed from the family courts, so that we can see whether justice has really been done?

Yours sincerely,

John Stone

(Hard copy will be forwarded)



# Ministry of JUSTICE

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Mr John Stone

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Our ref: TO 08/1849

28 March 2008

Dear Mr Stone,

Thank you for your letter received 4 March to the Rt Hon Jack Straw MP, Justice Secretary, in relation to vaccination proceedings and the role of the Legal Services Commission (LSC). I have been asked to reply on behalf of the Minister.

Decisions about funding in civil cases are entirely a matter for the Legal Services Commission (LSC), which is independent from the Government. As such, you will appreciate that neither Ministers nor Government officials intervene in or comment on decisions made about the grant of funding in individual cases. It is important that these decisions are, and are seen to be, free from political and government influence. That said, although I cannot intervene or comment on the way in which the LSC has handled the case, I have asked the LSC to explain the circumstances of the Measles, Mumps and Rubella (MMR) case, by way of background information.

The MMR case was a Multi-Party Action (MPA). MPAs are used where a large number of individuals have the same or similar claims to try to avoid duplication of costs. They tend to be very expensive and complex especially when they involve allegations that a drug is defective. As a consequence very careful scrutiny is given to such an application. In addition to the normal statutory tests of an applicant's means and the merits of the case, the LSC therefore also considers if it is able to afford to fund the case within its fixed budget for MPAs.

When taking the decision to discharge legal aid in the MMR case the LSC set out the reasons for their decision in writing to the claimant solicitors before any discharge was made. The claimant subsequently replied, but the LSC upheld their decision and discharged the certificate. An appeal was then made to the Funding Review Committee by the claimants' legal team (which included QC's) to reverse the decision. The appeal was refused and the claimant applied for Judicial Review. This Judicial Review was kept secret to prevent any harm to the case if it had continued to the Court of Appeal.

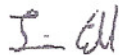
You express concern that the LSC deliberately collapsed proceedings in the MMR case by consulting with hostile witnesses before the matter could go to court. However, the LSC



courts, rather than on the people entering them. We also consulted on two further issues in the second paper. Firstly, whether we should allow people involved in proceedings to be able to share information and documents with a wider group of people than is presently allowed, and secondly, whether the identity of children should be protected beyond the end of proceedings. The consultation closed on 1 October 2007, and we will publish our findings on the responses in the spring.

I hope that this letter has helped to clarify the situation.

Yours sincerely,



**Iain Gill**  
**Civil and Family Legal Aid**

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3 April 2008

Dear Mr Gill,

I am grateful for your reply on behalf of the Justice Secretary, although it seems to me to be in several respects unsatisfactory.

Perhaps the most remarkable breach of the principle of justice is that you cite another government department in support of the view that the MMR case was unfounded: this illustrates the sort of problem I am complaining about when you seek to get a fair hearing from the system. That the Department of Health took a view on this matter long before any of the studies it chose to cite were conducted is a matter of record. That these studies and are themselves flawed is a matter of record. I cite, for example, recent correspondence relating to the Baird study which received much publicity in February [1]. This shows that Ministry of Justice approaches the issue with institutional bias and prejudice, and demonstrates the need for a justice system which operates independently of other parts of the executive. This is precisely the sort of joined up government which deprives ordinary citizens of their rights.

While I accept that certain kinds of litigation on behalf of citizens may be costly, they may not be as costly in the long run as leaving the rights of citizens undefended against powerful commercial interests and executive abuse. I cite the recent example of how the appointed legal firm in the MMR case, dealing with the residue of cases after the autism cases had been removed, arranged with the Legal Services Commission (LSC) to review the cases using government committee members, going above the heads of the litigant friends. Moreover, it is impossible for any such litigation to succeed if the LSC is constantly trying to second guess the outcome rather than support the case. The real sums of money saved - though beyond the reach of ordinary citizens - are also paltry in comparison to the size of the LSC's budget, or the importance of the issues. The MMR has been a major public issue, which is one good reason for transparency.

As I understand it - although this has never fully been in the public domain - the autism cases were abandoned by the LSC (upheld by Mr Justice Davis) because the laboratory evidence of John O'Leary had been disputed by the defence expert Stephen Bustin, which did not mean that O'Leary's evidence was irretrievable, but meant a delay to the timetable which had been deemed unacceptable by the LSC. This was therefore an expedient decision rather than one which served justice, not least because the entire matter was conducted in such a opaque way. Given that the Prime Minister, the Health Secretary and the Chief Medical Officer were all making their views known about matters which could not be heard in public, and subsequently became the province of a Sunday Times journalist, it was very hard to know what to believe. It is also known that the government signed indemnities for the first MMR vaccines with GSK (as they now are) because they were actually known to be faulty [2]. Even if the science in the MMR case is heavily disputed, the way government bodies have acted together or separately to achieve the present result leaves a bad taste.

I look forward to the proposals for greater transparency in the family courts but would also like to know what steps the Government is considering to extend this transparency to past decisions. In particular, I express further concern about the culture of unwarrantable inference which grew up around Drs Meadow and Southall, bearing in mind that the former was also a member of the government committee ARVI [3], which looked in adverse vaccine reactions. I doubt whether the latter fact has ever been disclosed in court.

**John Stone**

[1] Electronic letters to Baird *et al*, 'Measles vaccination and antibody response in autism spectrum disorders', Arch Dis Child 2008, <http://adc.bmj.com/cgi/eletters/adc.2007.122937v1>

[2] Clifford G Miller, 'Questions on the Independence and Reliability of Cochrane Reviews, with a Focus on Measles-Mumps-Rubella Vaccine', <http://www.jpands.org/vol11no4/millerc.pdf>

[3] JVIC/CSM Sub-Committee on Adverse Reactions to Vaccine, FOI documents: [http://www.dh.gov.uk/en/FreedomOfInformation/Freedomofinformationpublications/schemefeedback/FOIreleases/DH\\_4140335](http://www.dh.gov.uk/en/FreedomOfInformation/Freedomofinformationpublications/schemefeedback/FOIreleases/DH_4140335)



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Mr John Stone

Our ref: TO 08/1849

9 May 2008

Dear Mr Stone,

Thank you for your reply to my letter received 11 April 2008.

You state that I have relied upon the Department of Health's view concerning the safety of the MMR vaccine to support the view that the MMR case was unfounded, and that this shows that the Ministry of Justice has approached this issue with an institutional bias. In fact I referred to the Department of Health's view on the safety of the MMR vaccine as the reason why there are no special provisions in place to monitor the effects of the MMR vaccination.

The Ministry of Justice was not involved in the decision to withdraw funding for the MMR case. That decision was taken by the Legal Services Commission (LSC) and, as stated in my previous letter, neither Ministers nor Government officials intervene in or comment on decisions made about the grant of funding in individual cases. Unfortunately a confidentiality clause surrounding the Judicial Review into this application for funding prevents me from disclosing the exact reasons why funding was withdrawn. However, documents explaining all funding decisions in this case were provided to the applicants' legal teams. This should have been provided to the applicants through their solicitors if they had wanted to see it, and I would suggest that you contact your solicitors at the time if you would like any more information on why the certificate was discharged.

I can also confirm that the Funding Review Committee (FRC) which dealt with the appeal in this case is a committee of independent lawyers and are not representatives of the Ministry of Justice, or other public agencies. The FRC consider the merits of any case referred to them in full. They can make a binding determination on certain issues, such as prospects of success and whether a certificate should be discharged or revoked on the grounds of a client's conduct. In the case of the MMR application, the FRC was made up of experienced lawyers and chaired by a QC, and the claimants' legal team, which included two QCs, had the decision explained to them.

You state that it is impossible for litigation such as the MMR case to succeed when the LSC is trying to second-guess the outcome. I should point out that when assessing applications the LSC does not decide the issue between the parties. That is entirely a matter for the court. The LSC's sole function is to decide, on the information provided by the solicitor and

counsel's opinion, whether the applicant has a reasonable argument that a private client of moderate means would be able to put before the court. It is for this reason that the prospects of success are taken into account by the LSC when assessing funding applications. The rules for qualification are in legislation or other documents laid before Parliament.

Medicines are regulated in the UK by the Medicines and Healthcare products Regulatory Agency (MHRA). You may be interested in the information available on the MHRA's website ([www.mhra.gov.uk](http://www.mhra.gov.uk)) by searching for 'MMR'. If you would like further information regarding the studies into the MMR vaccine, or the Government's position on the benefits of the vaccines I would advise you to contact the Department of Health. However, my colleagues in that Department have confirmed that the Government did not sign indemnity contracts with GSK because it knew that its MMR vaccine was faulty.

Finally in answer to your question about whether reforms to the family court system will apply to previous cases i am not currently aware of any such provisions. However, the Government's response to the consultation on the paper *Confidence and Confidentiality: Openness in family courts — a new approach* will contain more information and will be published shortly.

I hope that this letter has helped to clarify the situation.

Yours sincerely,



**Iain Gill**  
**Civil and Family Legal Aid**

**John Stone Response To Ministry of Justice, 25 May 2008**

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25 May 2008

Dear Mr Gill,

Thank you for your reply date 9 May.

I cannot understand your defence in the first paragraph. I did not ask you or Mr Straw whether there were "any special provisions in place to monitor the safety of MMR vaccination", and it would have been a very strange question to ask the Lord Chancellor. I continue to find it puzzling and inappropriate that the Ministry of Justice should seek out a view on the subject in legal contention from another government department which was party to the dispute.

However, we seem to be in agreement on one point that it is unfortunate that the reasons why the Legal Services Commission and the Judicial Review withheld funding for the MMR litigation have been kept secret. It is particularly unfortunate bearing in mind the judge's conflicts which have subsequently emerged, and does not seem to be mitigated by the fact that reasons were communicated to the applicants' legal teams, because they were not to the applicants or the public. If it cannot stand public scrutiny - and is stitched up behind closed doors - why should we trust it? It will be recalled that my original open letter to Mr Straw was on the theme of " justice being seen to be done" inspired by his Guardian weblog, and it has not been seen to be done. Even if the Ministry of Justice cannot comment on the decisions it is manifestly both responsible for the administration of the Legal Services Commission and the courts.

The Legal Service Commission's frequent interventions in such cases are intolerable: if it was funding the defence in a criminal case it would not be allowed to intervene in this way. I wonder if you would be good enough to comment on the principle of the Legal Services Commission and appointed lawyers consulting with hostile witnesses above the heads of the applicants. Does it not make a charade of due process, and the suspicion inevitable that they may be protecting something other than their budget?

The DH would appear to be splitting hairs over the indemnities for Pluserix vaccine supplied GSK company SK&F. The contracts - including indemnities - were signed by the North East Thames Regional Health Authority. Presumably the indemnities were sought by SK&F, because of the product's dodgy prior history (having already

been banned in Canada), and were highly irregular. It is arguable that the NHS is not the government but this is patently misleading.

Let me express further my concern over the family courts. When Sir Roy Meadow was struck off (albeit temporarily) from the medical register, there was a great howl of anguish from elements within medical profession, not outraged by his shoddy evidence in the Clark case, but by doctors who apparently might be called to account for fabricating evidence in a similar way [1, 2, 3]. Moreover, Sir Roy and the now struck off David Southall remain heroes of the Royal Society of Paediatrics and Child Health, when you might have thought their activities ought to be regarded as a source for embarrassment [4]. I ask, then, how the public can continue to have faith in this child protection culture?

Yours faithfully,

**John Stone**

[1] Rapid Response to Clare Dyer, 'Meadow defends his role in conviction of Sally Clark', <http://www.bmj.com/cgi/eletters/331/7508/66-a>

[2] Clare Dyer, 'Prof Roy Meadow struck off', <http://www.bmj.com/cgi/content/full/331/7510/177>

[3] Rapid Responses to Clare Dyer, 'Prof Roy Meadow struck off', <http://www.bmj.com/cgi/eletters/331/7510/177>

[4] Owen Dyer, 'Paediatricians "have grave concerns" about GMC procedures for child protection work', <http://www.bmj.com/cgi/content/full/336/7650/911>