

Addendum to Complaint

Mar. 20, 2009

Dr. Andrew Wakefield filed a complaint on 13th March 2009 alleging that Mr. Brian Deer falsely accused Dr Wakefield of committing scientific fraud in articles published on pages 1, 6, and 7 of the *Sunday Times*. Dr Wakefield further alleges in this addendum that Mr. Deer failed to disclose in the *Sunday Times* articles material conflicts of interest with respect to his role in the GMC investigation and that Mr. Deer continues to mislead the public by denying his role in the GMC proceedings against Dr Wakefield and his colleagues.

In particular, Mr. Deer falsely denied that he “*did not lay the initial complaint* [before the GMC] *against Wakefield.*”¹, Further, Mr. Deer falsely claimed that GMC investigators initiated contact when they “*approached*” him asking if he had anything to substantiate allegations he had made in his original *Sunday Times* article in February 2004.² These

¹ [Brian Deer](#) on [February 12th, 2009 20:38:20](#)

“I did not lay the initial complaint against Wakefield. This allegation is a fabrication, albeit rather a small one in the MMR issue. The GMC asked me for my journalistic evidence arising from published stories. It was my public duty to supply my findings to this statutory regulator. The facts are at my site: <http://briandeer.com/mmr/lancet-summary.htm>”

<http://leftbrainrightbrain.co.uk/?p=1849#comment-56401>

² [Brian Deer](#) on [February 19th, 2009 19:13:11](#) Chris, Perhaps I can assist you with clarity by once again explaining that the GMC initiated its investigation in response to a furore in February 2004. This involved a report by me across the front and two inside pages of The Sunday Times, a call for an inquiry by the secretary of state for health (actually prior to my report, and following a statement by the editor of the Lancet, trying to pre-empt me), and a call by Dr Wakefield himself welcoming an inquiry and saying he would “insist” on one. As I have posted elsewhere on Kev’s site, the GMC’s procedures include monitoring media coverage for possible cases to be referred to fitness to practise committees. The GMC - following its own procedures – then **approached** me and asked if I had anything to substantiate what had appeared in The Sunday Times. I willingly supplied them with many of my files on the subject.

[Brian Deer](#) on [February 16th, 2009 23:42:20](#) On the other thing, yes, the timeline played out in Feb 2004 as follows:

(1) I put allegation to Horton at the Lancet that the Wakefield paper was not covered by ethical committee approval. At the time, the authors denied this and issued a statement. Now the defendants at the GMC have all repudiated this statement, and now claim they didn’t need ethical approval. (Horton, at the GMC, said otherwise, as does the prosecution).

Here are the statements the defendants and the RFH issued in 2004, and which the defendants now say were untrue: <http://briandeer.com/mmr/lancet-murch.htm> and <http://briandeer.com/mmr/lancet-hodgson.htm>

(2) Horton issues a press notice, and an interview to the BBC regretting publishing the paper due to the fact that Wakefield was being payrolled by lawyers: another point I raised. <http://briandeer.com/mmr/lancet-bbc.htm>

subsequent denials have appeared in internet blogs and are relevant here because they corroborate his complete lack of candor about his own role in the GMC hearing, his undisclosed conflict of interest, and his lack of professional integrity.

The above notwithstanding, whether or not Mr. Deer initiated the GMC investigation as ‘complainant’ in his letter dated Feb. 25, 2004, or acted as an ‘informant’ in an investigation already begun by the GMC, he did not disclose his own direct participation in the GMC investigation in his most recent accounts in the *Sunday Times*, intending to give the public the misimpression that he was acting as a neutral and disinterested reporter. By failing to disclose his dual role, Deer has breached the ethical standards of professional journalism and has no place in further reporting on Dr Wakefield in this matter. In breach of PCC rules and any ethical standard of journalistic conduct, it is alleged that Mr Deer has sought to mislead, not only by his non-disclosure of matters material to his conflict of interest, but in denying his role in these matters. Based upon the available evidence, one can reasonably conclude that these allegations are true.

Obviously, published investigative reports have historically prompted government investigations and often, corrective action has followed. This is the proper role and expectation of an investigative reporter. However, in Mr. Deer’s dual role as reporter and unofficial investigator for an agency of the government, he has surrendered source material that is closely held by any journalist. In Deer’s case, he has not only provided source material but he is the actual complainant and this means he has an interest in the outcome of the process. How can he objectively or even fairly be expected to cover an investigation in which he plays an undisclosed but significant role for the investigating agency? How is the public to know, for example, whether he is making false statements to the GMC simply to enhance his role, his salary, or his reputation as a journalist? This is akin to an arsonist setting a fire and then rushing back to the firehouse where he works and gets paid to put out fires.

For the avoidance of doubt a chronology of Mr Deer’s interaction with the GMC and its agents, is presented below.

On February 25, 2004, three days after his first article attacking Dr Wakefield had been published in the *Sunday Times*, Mr. Deer wrote to the GMC in the following terms:

(3) The then-secretary of state, John Reid, said he thought the GMC should investigate. <http://www.timesonline.co.uk/tol/news/uk/health/article1027465.ece>

(4) Wakefield said he welcomed a GMC investigation and would “insist” on one. (see same link)

(5) GMC staff **approach** me and say that Reid and Wakefield want an investigation, did I have anything to contribute.

(6) I say, yup, you bet. Like countless journalists before me, I supplied my findings to a statutory regulator, with a view to them getting to the bottom of the matter. IMO, the ethical issue was plainly a matter of possible serious professional misconduct, since it was quite plain that no IRB approval covered the Lancet paper. <http://leftbrainrightbrain.co.uk/?p=1849#comment-56697>

*“Following an extensive inquiry for the Sunday Times into the origins of the public panic over MMR, I write to ask your permission to lay before you an outline of evidence that you may consider worthy of evaluation with respect of the possibility of serious professional misconduct on the part of the above named registered medical practitioners. [Andrew Wakefield, John Walker Smith, and Simon Murch.]”*³

This reads as a spontaneous contact by Mr Deer with the GMC and unprompted by them, for the purpose of requesting “*to lay before them*” the substance of his complaint and in fact, doing so i.e. making a *complaint*. In opening, Mr Deer’s letter does not refer in any way to “Further to your telephone call of...” or “In response to your request for information on”. It specifically asks “*permission*” of the GMC to evaluate his findings and suggests only that they “*may*” consider these findings worthy of evaluation. Had the GMC initially contacted him, members of the GMC staff would already have made up their minds that his findings *were* worthy of evaluation. Clearly, on the basis of this letter alone one is entitled to believe that Mr Deer is the one who initiated the correspondence with, and hence the complaint to, the GMC in this matter.

The GMC have so far been unable or unwilling to provide an original attendance note (if one exists) from Monday 23rd or Tuesday 24th (which would certainly have accompanied any contact initiated by their staff with Mr Deer). Such an attendance note would have to explicitly document the fact that the GMC initiated the contact with Mr Deer. The existence of any such document is the subject of a current question to the GMC and it has yet to be identified and provided. The existence of any such attendance note would still require an explanation of the language of Mr Deer’s original entreaty to the GMC¹ which, in itself, would be bizarre if the GMC had made the initial request of Mr Deer.

The fact that Mr Deer’s letter constituted a “complaint” is confirmed by the GMC’s letter to Dr Wakefield of April 8th 2004 that stated:

“I am writing to confirm that we have received *complaints* about you from a number of sources.”⁴

The GMC’s letter to Dr Wakefield continued by reiterating many of Mr Deer’s complaints from his letter of February 25th 2004. In addition to the substance of Mr Deer’s complaint, Dr Wakefield was supplied with letters from two other

³ email from Brian Deer to Tim Cox-Brown, Caseworker GMC, 12.16 pm 2.25.04. This is a six-page letter concluding with the statement “*As a matter of public duty, I write to offer this outline of my main findings, and to offer the GMC my fullest cooperation in getting to the bottom of these matters*”.

⁴ Letter from Tim Cox-Brown, Caseworker GMC to Dr Wakefield 8th April 2004.

‘complainants’⁵. Only the complaints of Mr. Deer were formulated into allegations and subsequent charges by the GMC.

Mr Deer followed up on his original complaint letter with a further email of July 1st 2004.⁶ This is a 14-page document that elaborates upon his earlier allegations, introduces new allegations against Dr Wakefield and his colleagues, and provides numerous links to documents and statements on his website. The letter opens:

“Dear Tim,

Following my previous communications, I wish to report to the GMC claims made by the above doctors in statements published by the Lancet under the editorship of Dr Richard Horton, a former Royal Free Hospital colleague of the above, on February 20 2004.”

The letter ends with:

“I hold copies of any documents not available at my website, and am willing to provide them to the GMC, or to give any other help that may be required.

I trust that you will notify me, in whatever way is appropriate, of how my concerns are progressed.

With best wishes

Brian Deer”

Forensically, this is an important letter: it opens with, *“Following my previous communications”* clearly demonstrating a correct stylistic approach to a sequence of correspondence i.e. opening by referring to the last communication. It is highly significant that this opening is not to be found in his initial letter¹. At the very least, it provides a further basis for believing that Mr Deer, as the complainant, initiated the contact with the GMC.

The letter’s closing is also of forensic value since Mr Deer stresses the proprietary status of his *“concerns”*, i.e. not primarily the GMC’s concerns with which Mr Deer was assisting, but Mr Deer’s concerns that he was disclosing to the GMC. He also encourages the progression of the investigation of *his* concerns by the GMC.

⁵ The two additional complaints included one from an R. Sarkel of 21st Feb 2004 in which the only named doctor being complained about was not one of the Defendants in the current GMC hearing. James Walsh of the GMC responded on 26th Feb 2004 saying that the GMC *“will not be taking any further action at this stage”*. The second ‘complaint’ was anonymous, purportedly from the Royal Free Hospital. In a memo of 18th March 2004 Tim Cox-Brown of the GMC wrote, *“I don’t think there’s much we can do with it, but it looks as though it should probably be kept with the Wakefield papers.”*

⁶ Letter from Brian Deer to Tim Cox-Brown of the GMC, July 4th 2004.

The allegations formulated by the GMC against Dr Wakefield, and received by him from the GMC on August 27th 2004 were constructed based largely upon Mr. Deer's original complaint, his subsequent elaborations on these complaints, and extensive documentation supplied by him to the GMC.⁷

During the course of defamation proceedings, according to Justice Eady (see below), Deer wrote again to the GMC as part of his complaint on 12th March 2004 and 1st July 2004⁸. Deer presented his findings to GMC staff in person on 24th Feb 2005⁹, in a meeting lasting 2 hours and 10 minutes, and again on 7th March 2005¹⁰ in a meeting lasting five hours. He made subsequent detailed written representations to the GMC on 12th February 2007¹¹, and March 6th 2007¹². These communications were intended to convince the GMC of Dr Wakefield's culpability and to urge the GMC in the strongest terms to prosecute this doctor.

In Mr Deer's letter of 12th February 2007, to Peter Swain at the GMC, he wrote:

Dear Mr Swain,

I've several times previously written to the GMC, or to its solicitors, Field Fisher Waterhouse (FFW), regarding my investigations for the Sunday Times and Channel 4 into the serious professional misconduct in which the above named practitioners were involved, between mid-1996 and late 2001, while they were employed at the Royal free hospital, Hampstead. My first email was dated 25 February 2004, summarizing my findings as of that date. I've made my submissions as a matter of public duty.

Although, quite properly, I've received no information from FFW, or from the GMC directly, it's clear from open sources, such as court proceedings and press coverage, that some considerable investment has been committed to looking into the matters I've raised.

The letter goes constitutes 18 pages of further baseless allegations against Dr Wakefield and his colleagues, urging prosecution of these doctors in the strongest terms. On any

⁷ Letter from Blake Dobson, Assistant Registrar GMC, to Dr Wakefield, 27th August 2004.

⁸ In a libel ruling in November 2006 arising from a Channel 4 Dispatches programme about the Wakefield affair, Mr Justice Eady noted that: "Well before the programme was broadcast [Mr Deer] had made a complaint to the GMC about the Claimant. His communications were made on 25 February, 12 March and 1 July 2004. In due course, on 27 August of the same year, the GMC sent the Claimant a letter notifying him of the information against him."

⁹ Attendance note Matthew Lohn and Jessica Owen with Brian Deer. GMC 24th February 2005

¹⁰ Attendance note Matthew Lohn, Kate Emmerson, Jessica Owen and Brian Deer. GMC 7th March 2005

¹¹ Letter Brian Deer to Peter Swain GMC on 12th February 2007

¹² Letter Brian Deer to Kate Emmerson, GMC March 6th 2007

reading, this is a letter from someone who is following up on an investigation that they have initiated. Note particularly:

“I’ve several times previously written to the GMC”

There is no reference to the GMC having initiated this correspondence.

“regarding my investigations”

Mr Deer references only his investigations and makes no reference to the GMC undertaking their own investigation.

“My first email was dated 25 February 2004”

There is no reference to any communication prior to this.

“I’ve made my submissions as a matter of public duty.”

There is no mention of the submissions having been made at the request of the GMC for the purposes of assisting with their investigation.

“the matters I’ve raised”

This is evidently an admission by Mr Deer that he, and not the GMC, raised the matters that were the subject of their exchanges.

Conflict of interest: Mr. Deer had and continues to have an irreconcilable conflict of interest in the reporting of the GMC hearing against Dr Wakefield and any and all matters arising from it, on the basis that, in the light of all of the available evidence, he was the person who made the original complaint against Dr Wakefield and his colleagues. His professional reputation is inevitably invested in the outcome of the charges against Dr Wakefield. Further, by willfully offering up his own research documents and source materials, Deer places himself in collusion with a regulatory agency by acting as an ex officio investigative arm of the GMC. Any ‘public interest’ claim does not mitigate misleading readers of the *Sunday Times*.

Intent to mislead

Allegation: It is alleged by Dr Wakefield that Mr. Deer has continued to report on a series of complaints and allegations of his own making and ones which, through the pending rulings of the GMC, have profound implications for Mr. Deer’s own professional and personal integrity, honesty, and opinion. In the interests of fair, balanced, and objective reporting, he should have recused himself from any further reporting of this case. Not only has he not done so but - as is evident from the allegations of factual misreporting in this document (see Dr Wakefield’s complaint 13th March 2009) - he has continued to report the case in a manner that is contaminated with bias and lack of objectivity. Not

only has he done this but also, at no time in his published articles has he disclosed the fact that it was he who made the original complaint to the GMC (or disproved as much by the provision of documentary evidence), the extent to which he is personally involved in the complaint, and its outcome for the Defendants. Rather, he has sought to categorically deny his role in this matter, as outlined below.

The substance of Mr. Deer's role in this matter and his intent to deceive is captured in the following article was written by Melanie Phillips in her blog on the website of *The Spectator*.¹³

Eleven days ago, Brian Deer renewed his onslaught against Andrew Wakefield in the Sunday Times. I wrote about it [here](#) and made the point that, since Deer's allegations sparked the General Medical Council case against Wakefield which would not have occurred without his involvement, he was effectively a principal player in the story he was reporting — a clear conflict of interest and breach of journalistic standards.

After I noted this, an American TV show last week accused Deer of journalistic misconduct in reporting a story in which he was a major player without acknowledging this fact. Deer has been trying to deny this ever since.

First he threatened to sue the TV station, denying that he had laid the initial complaint which formed the bulk of the GMC inquiry and [claiming](#) instead that the GMC had approached him for information about Wakefield following his stories:

“I did not lay the initial complaint against Wakefield¹⁴. This allegation is a fabrication, albeit rather a small one in the MMR issue. The GMC asked me for my journalistic evidence arising from published stories¹⁵. It was my public duty to supply my findings to this statutory regulator.”

This claim - “*I did not lay the initial complaint against Wakefield...*” is crucial in Mr Deer's litany of falsehoods. Herein, his contention does not rest upon the semantic interpretation of the term ‘Claimant’ but instead, denies specifically that he did not present or “*lay*” the initial complaint against Wakefield with the GMC. This claim can be scrutinized with the assistance of the relevant contemporaneous correspondence. The GMC wrote to Dr Wakefield on 8th April 2004 detailing their receipt of three

¹³ <http://www.spectator.co.uk/melaniephillips/3362116/a-deer-in-the-headlights.thtml>

¹⁴ It is alleged that this assertion is false, as demonstrated by his letter to the GMC 25th February 2004.

¹⁵ It is alleged that this is deliberately misleading: after he had written to them offering his ‘information’, the GMC requested it.

‘complaints’¹⁶. Only two of these complaints referred specifically to Dr Wakefield. These were received by the GMC on February 25th 2004 (Deer), and 18th March 2004 (anonymous ‘Royal Free Hospital’ author). Any way that one looks at this, Mr Deer did, in fact, ‘lay’ the original complaint against Dr Wakefield.

Melanie Phillips continues:

Well, various people did think that Brian Deer’s complaint was the trigger for the GMC inquiry. One of those people, it appears, was Brian Deer. Screenshots record that, on his website, Deer previously boasted that he had instigated the GMC hearing. In May 2007, his website noted:

GMC inquiry: After submissions by Brian Deer to the UK General Medical Council, the doctors’ regulatory body announced a public inquiry in to the affair. Sunday Times December 12 2004.

By last week, however, the wording had been changed to:

GMC inquiry: After Brian Deer’s reports, the UK General Medical Council, the doctors’ regulatory body, announced a public inquiry into the affair. The Sunday Times, December 12 2004.

In May 2007, he wrote on his website:

Pending a General Medical Council [GMC] fitness to practice panel hearing - **arising from the investigation set out on this page...** (my [Melanie Phillip’s] emphasis)

Those highlighted words have now vanished from the website, which uses instead this formulation:

Following Brian Deer’s investigation, and charges laid against Wakefield, Walker-Smith and Murch by the General Medical Council...

The perception that the GMC was investigating Deer's complaints about Wakefield was shared by no less a person than a High Court judge. In a libel ruling in November 2006 arising from a Channel 4 Dispatches programme about the Wakefield affair, Mr Justice Eady noted that:

¹⁶ The two additional complaints included one from an R. Sarkel of 21st Feb 2004 in which the only named doctor being complained about was not one of the Defendants in the current GMC hearing. James Walsh of the GMC responded on 26th Feb 2004 saying that the GMC “*will not be taking any further action at this stage*”. The second ‘complaint’ was anonymous, purportedly from the Royal Free Hospital. In a memo of 18th March 2004 Tim Cox-Brown of the GMC wrote, “*I don’t think there’s much we can do with it, but it looks as though it should probably be kept with the Wakefield papers.*”

Well before the programme was broadcast [Mr Deer] had made a complaint to the GMC about the Claimant. His communications were made on 25 February, 12 March and 1 July 2004. In due course, on 27 August of the same year, the GMC sent the Claimant a letter notifying him of the information against him.

Last week, Deer claimed that Eady was ‘mistaken’ and that he had not been the ‘complainant’ in the GMC hearing¹⁷. In the current narrative of the affair posted on his website, after noting that on March 6 2004 some of the authors of the original Lancet paper ‘retracted’ the interpretation that had been placed upon it, he goes on:

Shortly before this retraction¹⁸ [for the retracted “interpretation” text, check the opening abstract of the [Lancet paper](#)], the General Medical Council announced its own [investigation](#) into the affair, which it said raised questions over Wakefield’s fitness to practice medicine. GMC officials then approached Brian Deer¹⁹ and asked if, in the public interest, he would pass them his findings, and later requested him to supply his research materials - including [pivotal documents](#) - to the council’s retained lawyers, at the firm of Field Fisher Waterhouse [FFW] in London. Deer, however, is [not the complainant](#) in the case - which was brought on the GMC’s own initiative - and his information has been compounded with submissions, including complaints, from dozens of other sources, including parents directly involved.

To prove that he was not the complainant, he cites a letter written to him in May 2005 by the GMC’s lawyers, Field Fisher Waterhouse. This ran as follows:

I write further to your telephone conversation with Peter Swain last Thursday seeking clarification in relation to your role in the above General Medical Council (“GMC”) proceedings.

I have now had the opportunity to review the GMC’s files. My understanding is that further to your articles appearing in the Sunday Times in February 2004²⁰ in relation to your investigation into Dr Andrew

¹⁷ There is no evidence in the public domain that at any stage Mr Deer sought to correct this ruling by Justice Eady with the courts i.e. that Mr Deer had made ‘the’ complaint against Dr Wakefield.

¹⁸ It is alleged that this is misleading: the “Retraction of an Interpretation” was not made until March 6th 2004 *The Lancet* 2004;363:750. This is over a week after Deer submitted his complaint to the GMC.

¹⁹ It is alleged that this is false: the initial approach was made by Mr Deer.

²⁰ This is a letter of 25th May 2005 from Matthew Lohn of Field Fisher Waterhouse, the GMC’s lawyers to Mr Deer. The GMC refer to “articles”. Deer published twice in February on this matter in Feb 2004. The articles appeared on 22nd Feb ‘04 and the following Sunday 29th Feb ‘04. Lohn’s letter implies that the GMC approached Mr. Deer after the ‘articles’ had been published for further information. This is factually correct but potentially misleading since the implication is that this was the first contact between the GMC

Wakefield and the MMR vaccine, you were approached by GMC case officer Tim Cox-Brown, who asked you to supply the GMC with further information regarding this matter.

Your situation as a journalist who has carried out an investigation into the conduct of the practitioners in question is unusual for the GMC. I note from the GMC and FFW's correspondence files that there does appear to have been some confusion in relation to your role in these proceedings.

In GMC 'complainant' cases an individual will have approached the GMC with a complaint against a particular practitioner²¹. If the GMC decides to hold an inquiry, legal representation is offered to the complainant for preparation and presentation of the case before the Professional Conduct Committee.

As stated in Peter Swain's letter to you dated 16 December 2004, your role in this matter is that of 'informant' rather than 'complainant'. This is due to the fact that the conduct of the practitioners in question has not affected you directly and clearly involves issues of a wider public interest...

But what Deer does *not* reveal is that on February 25, 2004²², three days after his article attacking Wakefield had been published in the Sunday Times, he had written to the GMC in these terms:

*Following an extensive inquiry for the Sunday Times into the origins of the public panic over MMR, I write to ask your permission to lay before you an outline of evidence that you may consider worthy of evaluation with respect of the possibility of serious professional misconduct on the part of the above named registered medical practitioners. [Andrew Wakefield, John Walker Smith, and Simon Murch.]*²³

If Deer had previously been approached by the GMC for this information -- presumably in the two days that elapsed between publication of his article and this letter -- this was a strange form of words. For he made no

and Mr. Deer.

²¹ This is exactly what Mr. Deer did; the only difference is that the GMC decided not to call Mr. Deer as witness, neither did Mr Deer himself prosecute the case, and therefore he did not need legal representation. The latter aspect has no bearing upon Mr. Deer making the initial complaint.

²² email from Brian Deer to Tim Cox-Brown, Caseworker GMC, 12.16 pm 2.25.04. This is a six-page letter concluding with the statement "*As a matter of public duty, I write to offer this outline of my main findings, and to offer the GMC my fullest cooperation in getting to the bottom of these matters*".

²³ The allegations formulated by the GMC against Dr Wakefield, and received by him from the GMC on August 27 2004 were formulated based upon Mr. Deer's original complaint, his subsequent elaborations on these complaints, and extensive documentation supplied by him to the GMC.

mention that it had thus approached him. Instead, he asked the GMC for permission to lay out his evidence before it. So how can this apparently direct contradiction be explained?

One possibility is that Deer had *not* previously been approached by the GMC²⁴, and that there was some other explanation for its lawyers' letter to him (it does not say, for example, precisely *when* its case officer had asked him for further information)²⁵.

But if the GMC had indeed already approached Deer before he wrote to it, then it follows that his form of words was highly disingenuous – purportedly asking for permission to present his information while concealing the fact that it had already asked him to do so. And if this was the case, the GMC would seem to have been complicit in this contrived fiction.

Then consider the timing of all this. Deer says the GMC approached him for information after it had announced its own investigation into Wakefield and his colleagues. Deer's Sunday Times article appeared on February 22 2004. On February 23, the [Times](#) reported:

Investigators for the GMC would speak to Dr Wakefield before deciding what action to take. A GMC spokesman said: 'We are concerned by the allegations'.

On February 24 the Daily Mail reported that the GMC said it would be considering what action may be necessary.

On February 25, Deer wrote his letter to the GMC accusing Wakefield and his colleagues of serious professional misconduct. At that stage, the GMC had merely said it was considering what action to take. So whether the GMC approached him before he wrote that letter or not, it was Deer whose complaint was fundamental to the eventual GMC hearing and whose allegations – reinforced by two further letters of complaint to the GMC during 2004 — have formed the bulk of, if not all, the matters it has been investigating.

The GMC itself said Deer's role was confusing; indeed, its lawyers' letter to him was apparently in response to his appeal to clear up the confusion.

But the question of who actually made the first approach to whom is surely beside the point — as is the distinction between 'complainant' and

²⁴ If the GMC (Tim Cox-Brown) made the initial contact there will be an attendance note written by Tim Cox-Brown of him making the initial contact with Deer. This has been requested from the GMC by Dr Wakefield but the GMC have so far not provided it.

²⁵ This letter should have been provided to Dr Wakefield by the GMC but has not been. It has been requested by him.

‘informant’, which is clearly a technicality resulting solely from the fact that Deer was not himself personally involved with these doctors. By any standard, his letter of February 25 was a complaint to the GMC.²⁶

The overwhelmingly important point — reinforced by these letters — remains that Deer was absolutely central to the GMC’s investigation. Deer did not merely supply information. His letter laid before the GMC allegations of serious professional misconduct. Moreover, whatever its technical status in the eyes of the GMC it was presented as a formal complaint, giving the full names of the doctors and their registered medical practitioner numbers and phrased in officialese. The GMC lawyers’ letter refers to further meetings with him on 24 February 2005 and 7 March 2005. None of this involvement was mentioned in his story in last week’s Sunday Times.

But what about the GMC’s own use of Brian Deer? In his book *MMR Science and Fiction: Exploring the Vaccine Crisis*, the Lancet editor Richard Horton provides the following startling cameo from the political crisis that engulfed the GMC in February 2004 when, during the weekend of Deer’s Sunday Times article and the denunciation of Wakefield by the Lancet, the then Health Secretary Dr John Reid demanded the GMC hold an inquiry into the Wakefield affair:

Indeed, the GMC seemed nonplussed by Reid’s intervention. The best their spokeswoman could say was: ‘We are concerned by these allegations and will be looking at what action, if any, may be necessary’. In truth, they had not a clue where to begin. At a dinner I attended on 23 February, one medical regulator and I discussed the Wakefield case. He seemed unsure of how the Council could play a useful part in resolving the confusion. As we talked over coffee while the other dinner guests were departing, he scribbled down some possible lines of investigation, and passed me his card, suggesting that I contact him directly if anything sprang to mind. He seemed keen to pursue Wakefield, especially given ministerial interest. Here was professionally led regulation of doctors in action — notes exchanged over liqueurs in a beautifully paneled room of one of medicine’s most venerable institutions.

Two days after this reported exchange, Deer wrote to the GMC asking permission to lay out his allegations before it. So if, as Deer maintains, the GMC *had* previously approached him for his information, then from Horton’s account it looks as if the GMC found in his claims a way to

²⁶ This is confirmed by the GMC’s letter to Dr Wakefield of April 8th 2004 that stated: “I am writing to confirm that we have received complaints about you from a number of sources.”. It continued by reiterating Mr Deer’s complaints almost verbatim from his letter of 25th February 2004.

respond to the pressure from Reid for an inquiry. This pressure had itself been occasioned by the Lancet's denunciation, which had in turn been provoked by Deer's allegations. So if this version of events is correct, the GMC solicited Deer's allegations — while purporting to be their passive recipient — to provide it with the means to throw the book at Wakefield et al and thus pacify the Health Secretary. If that is true, then the GMC was party to a deception in the pursuit of a politically driven attack.

Now here's another strange thing. Last week there was a big vaccine damage judgment in the US – the 'Cedillo' case – in which the court said the Wakefield theory about MMR was out to lunch in la-la land. This is what Deer posted on the [Left Brain Right Brain website](#) in the wake of that case:

That said, I'm also very proud that, like the GMC, the US government sought my help in mounting its case in Cedillo, copiously borrowing pages of evidence from my website and displaying some in court. I was surprised by this. I assumed that they would have sophisticated contacts with other governments and with industry, and could pretty much get what they wanted. However, on a number of occasions I would come home, find an email from the department of justice asking me for a document, and see that the next day it was being run in court. Bit of a seat of the pants job by the DoJ (brought about by the plaintiffs changing their case at the last minute). Indeed, I recall supplying a key document on the O'Leary lab business, which the DoJ didn't seem to know about just weeks before the hearing. Hence the late surfacing of Bustin and Chadwick. It was me wot done that, and I'm glad. I don't say these things to boast, only perhaps to wonder why — if there are all kinds of grand conspiracies behind the defence of vaccine safety — governments and regulators are so untogether that a mere journalist can get ahead of them in the game.

If his boast is true, it would seem that the US court — whose ruling looks pretty thin to me — arrived at its conclusion based on Deer's allegations. In other words, two major quasi-legal hearings relating to Andrew Wakefield's theory, one of which is being reported by Deer, have depended significantly or wholly upon a journalist's own allegations.

He also posted up on the same site a bizarre and incoherent riposte to the critics who have been hammering away at him on the blogs:

If I am as central to the GMC's case as the cranks and liars say, why would I publish a front page and two inside pages story which wasn't true? Indeed, if it wasn't substantially true it would be a very serious libel indeed, and bound to be found out. It would amount to professional suicide.

If what I published is misleading (and it isn't) the GMC panel (two lay members and three doctors) would see that I had published a baseless story. They, after all, have the children's medical records (at least for 11 of them). Given the number of times they have reviewed this material, the data probably stalks their dreams.

Why would I put my name to something that would defeat myself? Obviously I wouldn't. Although there is no risk of prejudice to the hearing (GMC panels are deemed by the court of appeal to be beyond prejudice, providing they are properly advised), there could be no possible explanation as to why I would publish gross falsehoods that are open to such intense scrutiny by the panel of a statutory inquiry.

This matter should not be arbitrated upon a nominal ambiguity i.e. 'complainant'. For example, on the first day of her closing submissions to the GMC hearing it is somewhat remarkable that Miss Smith, leading Counsel for the Prosecution should specifically take up the matter of Mr Deer's role when it had not been raised previously in this hearing in the specific context of defining Mr Deer's role.

It is a fact – and you are very well aware of it – that the charges relating to these events took place many years ago, and you have heard evidence as to the circumstances in which the matters charged first came to light. That, you have heard, was through an investigative journalist, Mr Deer, who made allegations in 2004 to Dr Horton, the editor of The Lancet; and in addition he wrote a lengthy article in the Sunday Times.

Subsequently the General Medical Council investigated what you also know is the complex background to the case, and I should remind you that the prosecution has been brought solely on the instructions of the General Medical Council – Mr Deer is not the [C]omplainant. The fact is that no matter how this issue came to prominence the public interest issues raised meant that the General Medical Council investigation was inevitably required.²⁷

Miss Smith starts by confirming that it was solely on the instructions of the GMC to their solicitors Field Fisher Waterhouse that the prosecution was brought and follows with what appears to be a *non sequitur* i.e. "Mr Deer is not the [C]omplainant". Alternatively, in GMC parlance the "[C]omplainant" is synonymous with the person or body who instructed the legal prosecution of the case (in this case the GMC). While Deer urged prosecution he never instructed solicitors in this manner, nor has it ever been so alleged.

A reasonable interpretation of Miss Smith's position, therefore, is that it is not the person (or persons) who laid the initial complaint that is nominally the "Complainant", but those who instruct the "*prosecution*" of the complaint i.e. the GMC itself. It is notable that this

²⁷ Smith S. Closing submissions. Day 122 GMC hearing

meaning bears no relationship whatsoever to the reason given to Mr Deer previously by lawyer Matthew Lohn of Field Fisher Waterhouse on 25th May 2005, when he wrote:

“As stated in Peter Swain’s letter to you dated 16th December 2004, your role in this matter is that of ‘informant’ rather than ‘complainant’. This is due to the fact that the conduct of the practitioners in question has not affected you directly and clearly involves issues of a wider public interest.”

Melanie Phillips ended her Spectator online piece with an ominous conclusion:

The Sunday Times might be well advised to take a very hard look at its ‘objective’ reporter and his involvement in his own story. And the GMC has some questions to answer too.

Conclusion

In the matter of Dr Wakefield and the GMC, and based upon forensic analysis of all the available documentary evidence, one is entitled to believe that Mr. Deer was the original and only substantive complainant to the GMC, whether or not he was the ‘Complainant’ who instructed the legal prosecution of the case (which was the GMC through its lawyers Field Fisher Waterhouse). Having constructed and filed the original complaint he was and remains conflicted with respect to his continued reporting on the consequences of his complaint for Dr Wakefield. He has ignored this conflict inasmuch that he has continued reporting on the matter in a manner that is contaminated with bias and lack of objectivity²⁸. Relevant to the PCC, he failed to disclose his conflict in material that he has published on this matter in the *Sunday Times*. He has sought to mislead the public by: changing previous statements that he made on his website about his role in making the complaint, frankly denying that he laid the initial complaint against Wakefield, calling into question the ruling of a High Court Judge, and apparently (and most alarmingly), colluding with the GMC and its representatives to change his nominal if not his practical status from ‘complainant’ to ‘informant’ (for stated reasons which are at the very least inconsistent), thereby attempting to create the perception in the minds of readers of the *Sunday Times* that he is capable of reporting objectively on a case which is, in large part, one of his own instigation. Subsequent to Mr Justice Eady’s ruling in 2006 (at the latest) the Sunday Times were, or should have been aware, of Mr Deer’s status in the matter of the GMC vs Wakefield and ensured disclosure of this status in relevant subsequent articles in that newspaper.

²⁸ Complaint from Dr Wakefield to the Press Complaints Commission. www.thoughtfulhouse.org