

## PUBLIC RECORD

Date: 22/11/2023

Medical Practitioner's name: Dr David SIM

GMC reference number: 2645395

Primary medical qualification: MB BCh 1980 Queens University of Belfast

Type of case MPT - Preliminary

## Tribunal:

Legally Qualified Chair	Miss Samantha Gray
Lay Tribunal Member:	Dr John Smith
Medical Tribunal Member:	Dr Jonathan Davies
Tribunal Clerk:	Ms Ciara Fogarty

## Attendance and Representation:

Medical Practitioner:	Not present, represented
Medical Practitioner's Representative:	Mr, Andrew Hockton, KC, instructed by Carson McDowell
GMC Representative:	Mr Nicholas Hall, Counsel

## Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in private.

## Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

### Determination on Preliminary Matters - 22/11/2023

1. This determination will be handed down in private.
2. The Tribunal convened to consider the preliminary issue of the admissibility of evidence at the forthcoming hearing of allegations against Dr Sim. This followed a disputed application ('the Application') by Dr Sim to make redactions to the expert report of Dr I.
3. In reaching its decision, The Tribunal received in advance of the present hearing a defence bundle on preliminary issues, a skeleton argument from Mr Hockton, counsel for Dr Sim, and a skeleton argument from Mr Hall, counsel for the GMC.
4. On behalf of Dr Sim, Mr Hockton, counsel, has indicated that various passages in the expert reports are inadmissible, and sought their redaction. The GMC has responded to the effect that the redactions are not agreed.
5. Dr Sim faces a number of allegations due to be heard before a Medical Practitioners Tribunal on 27 November 2023 for 10 days.

### Background

6. Dr Sim qualified in 1980 from Queens University of Belfast and prior to the events which are the subject of the hearing Dr Sim was practising as a consultant obstetrician and gynaecologist.
7. The Allegation states:

That being registered under the Medical Act 1983 (as amended):

1. On 13 September 2021 you performed an emergency classical caesarean section ('CS') and sterilisation on Patient A. The sterilisation was inappropriate because:
  - a. Patient A had not:
    - i. consented to the sterilisation;
    - ii. expressed any wish to undergo sterilisation at any time prior to the CS;
  - b. there was no medical reason to perform a sterilisation at the time of the CS;

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- c. the sterilisation was not necessary to:
  - i. save Patient A's life;
  - ii. prevent serious harm to Patient A's health;
- d. you did not give Patient A information on effective contraception so that she could make her own decision as an autonomous adult;
- e. undertaking sterilisation restricted Patient A's rights and freedoms, including her future choice as to whether and when to have more children;
- f. to do so was in violation of Patient A's reproductive rights;
- g. by sterilising Patient A, you caused deliberate damage to Patient A's fallopian tubes to permanently impair their normal function;
- h. you caused Patient A direct harm in breach of the established ethical principle of non-maleficence.

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.

**The Application**

8. The present hearing relates to a preliminary application on behalf of Dr Sim to partially redact evidence on which the GMC proposes to rely at the full hearing scheduled to start on 27 November 2023.

9. The evidence which Dr Sim applies to redact is evidence of the expert report of Dr I, the proposed redactions were provided to the Tribunal by Mr Hockton in a document entitled 'Table of Defence Proposed Redactions to evidence of Dr I. This read as follows:

Document	Proposed amendment/redaction to evidence.
Expert Report of Dr I Dated 1st November 2022	

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Page 20, Part 2 – Background [as provided by the GMC]	“XXX”.
Page 24, Part 3 – Opinion Response to Question 3, paragraph (b)	<i>“...On neither occasion did Patient A indicate her willingness to undergo a sterilisation procedure.”</i>
Page 24, Part 3 – Opinion Response to Question 3, paragraph (c)	<i>“I note that during the Caesarean section procedure, Dr Sim paused the operation in order to discuss a sterilisation procedure, before noting that the decision to proceed was taken by himself. In my opinion, Dr Sim would not have sought the view of Patient A’s husband if he was already certain that she had consented to a sterilisation procedure, and therefore I do not believe that he had obtained her consent prior to the operation.”</i>
Page 24, Part 3 – Opinion Response to Question 3, paragraph (e)	<i>“...and that consequently it was not appropriate to have performed the procedure without her consent.</i>
Page 25, Part 3 – Opinion Response to Question 3, paragraph (f)	“XXX”
Page 25, Part 3 – Opinion	“XXX”

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Response to Question 3, paragraph (h)	
Page 25, Part 3 – Opinion Response to Question 3, paragraph (i)	“XXX”
Page 26, Part 3 – Opinion Response to Question 3, paragraph (j)	<i>“...I would consider that the violation of the patient’s reproductive rights by a specialist in women’s healthcare to fall so far below the standard expected that it was shockingly bad.”</i>
Page 26, Part 3 – Opinion Response to Question 4	<i>“...As the procedure was performed under general anaesthesia, Patient A was incapacitated at the time that Dr Sim made the decision to sterilise her.”</i>
Page 26, Part 4 – Conclusion ‘Standard of Care’ Question 5a and 5b Point 5 (below)	XXX
Pages 26-27, Part 4 – Conclusion ‘Standard of Care’ Point 6 (seriously below)	<i>“...I consider that this action falls seriously below the standard expected since to operate without consent is a violation of the patient’s right to autonomy in making decisions about her medical care.”</i>
Page 27, Part 7 – Conclusion ‘Standard of	<i>“...I consider that the violation of the patient’s reproductive rights by a specialist in women’s</i>

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<p>Care' Point 7 (Overall standard)</p>	<p><i>healthcare to fall so far below the standard expected that it was shockingly bad."</i></p>
<p>Document 4- Supplementary Report of Dr I dated 25th August 2023</p>	
<p>Page 33, Part 1- Introduction – paragraph 4 'Overall standard;</p>	<p><i>"...why they fell below the standard expected." "Overall standard" "You concluded in your report dated 1 November 2022 that the overall standard of care provided by Dr Sim fell seriously below the standard expected of a reasonably competent Consultant Obstetrician Gynaecologist. Please confirm whether your opinion as to the overall standard of care remains the same, or in light of your answers to the above questions whether your opinion has changed."</i></p>
<p>Page 35, Part 3 – Opinion Response to allegation 1(b) ii Point 2</p>	<p><i>2. Patient A states in her witness statement (expert bundle page 441): Overall, the sterilisation was not consented by me, and neither did I have any knowledge or conversation about this with Dr Sim".</i></p>
<p>Page 35, Part 3 – Opinion Response to allegation 1(b) ii Point 3</p>	<p><i>"3. In Exhibit ULB1, it is stated that (expert bundle page 446): "...Patient A said no, she would not have discussed sterilisation. She spoke to her GP about the coil and was not aware of the sterilisation process".</i></p>

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<p>Page 35, Response to allegation 1(b) ii Point 4</p>	<p>4. In the same document, Patient A is quoted in reply to a question: “...Patient A said she never would have been sterilised, may have had the coil fitted. She did have a coil with her 4/5 baby. She said a friend of hers explained how she was being sterilised and the process she was going through to be sterilised.”</p>
<p>Page 35, Part 3 – Opinion Response to allegation 1(b) ii Point 5</p>	<p>5. I have not identified any information in the bundle available to me which confirms that Patient A expressed a wish that she undergo sterilisation (or indeed that she considered that her family was complete)...”</p>

**Submissions**

10. Both counsel provided written skeleton arguments to the Tribunal, and also made oral submissions.

11. The reasoning on behalf of Dr Sim for this application were set out in his written skeleton argument and were as follows:

*“1. This case has been listed for a preliminary hearing in relation to the admissibility of aspects of the medical evidence relied upon by the GMC.*

*2. The admissibility, or otherwise, of the disputed passages in the expert reports has a knock on effect on the allegations set out in the Notice of Hearing, which falls to be amended, should the application succeed.*

***Expert evidence***

*6. The GMC has obtained expert evidence from Dr I, a consultant obstetrician and gynaecologist. He has provided two reports, dated 1.11.2022 [9-25] and 25.8.2021 [26-35] respectively.*

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7. *On behalf of Dr Sim, the Defence has indicated that various passages in the expert reports are inadmissible, and sought their redaction. The GMC has responded to the effect that the redactions are not agreed: hence the decision to hold a preliminary hearing in order to determine the issue of admissibility.*

8. *The proposed redactions with brief supporting reasons are set out in the table provided by the Defence to the GMC. For present purposes, only those redactions relevant to this application, concerning the expert report and allegations, are attached [note: the GMC has not responded to the remainder of the proposed redactions. If there is a substantive issue in relation to these, an early indication on this would be helpful in order to determine whether this might also be considered as a preliminary issue].*

9. *The reasons for objection to the relevant passages are set out in the Defence Table. They may briefly be summarised, as follows. The expert opines on matters outside the scope of the allegation [eg para 5 p20, contrary to the principle in El Baroudy, referred to below]. The expert opines on the facts, which is not part of his function [eg at para 3(b),(c), (e) and (f) at p18/19]. In opining on the facts, the expert demonstrates a lack of independence. The report contains emotive comment [“shockingly bad”, para 3(j) at p20; para 7 at p21] about conduct which is disputed [acting deliberately without consent]. In making reference, as he does, to the principles of non-maleficence and human rights [3(f)-(j)] the expert goes beyond the question he was asked to answer [whether it was appropriate to perform the procedure], and outside the proper scope of a medical expert.*

10. *It is not, in any event, clear what, in this context is meant by “the principle of non-maleficence” [para 3(f) at p19]. It is presumed that this refers to deliberately harming a patient. There is no basis here for any suggestion of Dr Sim’s having deliberately acted without consent, and it is not, in any event, a matter upon which the expert can or should opine.*

11. *The allegation set out under Rule 15 should contain the facts upon which it is based [not references to human rights, such as might be relevant in a different legal context].*

12. *The expert’s muddled approach to his task can be readily discerned from the comments on “Overall standard” at para 7 [p21]. The first sentence is unobjectionable. It states, as follows:*



“XXX.”

*Having rightly premised his comment about the overall standard upon any finding as to whether or not Dr Sim did deliberately sterilise the patient without her consent, Dr I, then proceeds to state, as follows: “I consider that the violation of the patient’s reproductive rights by a specialist in women’s healthcare to fall so far below the standard expected that it was shockingly bad “[p21].*

*Any qualification as to Dr Sim’s state of mind is removed. Dr I appears to conclude as a fact that Dr Sim deliberately acted without the patient’s consent. In so doing, his independence is clearly undermined. The language used may also be considered to be inappropriately emotive.*

*13. The instructions from the GMC in relation to the supplementary report [at p26/27] are based upon the premise that, in his first report, Dr I concluded that the overall standard of care provided fell seriously below the standard expected. As seen above, however, the specific observation by Dr I about the overall standard, is ostensibly based upon the qualification as to whether or not Dr Sim acted deliberately without consent.*

*14. The Notice of Hearing should be amended in the manner proposed to remove the heads of the allegation which are parasitic upon the inadmissible passages from the expert report/s.*

### **Legal principles**

*15. The principles governing the nature and scope of expert evidence in both civil and criminal proceedings are well-established.*

*16. For the sake of convenience, the summaries concerning expert evidence in civil proceedings under Part 35 CPR [White Book 2023] [36-86] and the commentary on opinion evidence in criminal proceedings [Chapter 10 Archbold 2024] [87-104] are attached.*

*17. Expert evidence is an exception to the general rule that only evidence of fact may be adduced. As held by the Supreme Court in the Scottish case of Kennedy v Cordia [2016] UKSC 6 [at 44], there are four considerations which govern the admissibility of expert evidence:*

*(i) whether it will assist the court in its task;*

*(ii) whether the expert has the necessary knowledge and experience;*

*(iii) whether the expert is impartial in their presentation and assessment of the evidence. At [51] the Supreme Court made it clear that an expert's failure to comply with their duties of independence and impartiality may render their evidence inadmissible; and*

*(iv) whether there is "a reliable body of knowledge or experience" will depend on the subject matter of the proposed expert evidence. Expert evidence falling within a "recognised scientific discipline" will present little difficulty. More challenging issues may arise "where the science or body of opinion knowledge is not widely recognised."*

*It is not the function of the expert to give their opinion on issues of law. "Evidence tending simply to provide the expert's view on the credibility or reliability of a witness is generally inadmissible" [ Short v Falkland Islands [2020] EWHC 438 (Admin) at 40;]*

*See the general commentary at 35.0.1.1 [36-37] in the White Book 2024.*

*18. The duties of experts are set out in the Ikarian Reefer case, summarised at para 35.3.2 [43-45] of the White Book. In particular, (1) expert evidence should be, and should be seen to be, the independent product of the expert, uninfluenced as to the form or content by the exigencies of litigation. [2] An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within their expertise. An expert witness should never assume the role of an advocate.*

*19. With regard to the Ikarian Reefer principle of independence, further helpful commentary is set out in the case of Imperial Chemical Industries Ltd v Merit Merrell Technology Ltd [2018] EWHC 1577 (TCC), summarised at the bottom of p1118 [44] of the White Book at 35.3.2] where Fraser J stated [point 2] that it is not for an independent expert to indicate which version of facts they prefer.*

*20. It is a basic principle that experts ought not to embark on a fact-finding exercise. Fact-finding is the court's/tribunal's role [see Part 35.3.3]. Experts must ensure that they do not permit their personal feelings to interfere with the carrying out of their duty to give objective evidence [35.3.4] [45-46].*

*21. In the context of criminal trials, strict procedural rules have been formulated in relation to the nature and content of expert reports. The commentary at para 10-4 [at*

*p 1649 of Archbold 2024] [89] is relevant, referring to recent changes in the rules, “The court advised that, following these changes, a more rigorous approach to the handling of expert evidence was required; in particular comment that effectively usurps the task of the jury, is to be avoided; the task of the expert is only to inform a jury of matters of a scientific and medical kind of which they might be unaware, and which they ought to take into account when assessing the evidence in the case.”*

*22. In the context of this case, the above general principles concerning the admissibility of expert evidence fall to be considered having regard to Rule 34 of the General Medical Council (Fitness to Practise) Rules Order of Council 2004 which confers on the tribunal the power to admit evidence it considers “fair and relevant” whether or not such evidence would be admissible in a court of law.*

*23. In the case of R (on the application of El Baroudy) v GMC [2013] EWHC 2894 (Admin) the court held that the evidence adduced in proceedings before the GMC should not fall outside the scope of matters alleged in the allegation set out in the Notice of Hearing.*

### **Conclusion**

*24. The tribunal is invited to accede to this application on behalf of Dr Sim to redact the contents of the expert reports and amend the allegation, as proposed. ”*

12. On behalf of the GMC Mr Hall responded to the defence’s application. His reasons were set out in his written skeleton argument and were as follows:

*‘1. This skeleton argument on behalf of the GMC responds to an application by the Defence relating to the admissibility of expert evidence. The Defence invite the Medical Practitioners Tribunal (‘the Tribunal’) to “redact the contents of the expert reports” and “amend the allegation”. In summary, the GMC’s response is: i. It is not within the power of the Tribunal to “amend an allegation” (interpreted to mean altering the material substance of the GMC’s charges without prior application from the GMC) nor to amend a notice of hearing.*

*ii. The evidence of Dr I (‘the Expert’) is admissible. Under Rule 34(1) of the General Medical Council (Fitness to Practise) Rules Order of Council 2004 (‘FTP Rules 2004’), a Tribunal may admit any evidence they consider fair and relevant to the case before them. His evidence is relevant and fair.*

*iii. The Expert does not opine on matters outside the scope of the allegation, does not lack independence, and does not go beyond the scope of his medical expertise. The Defence appear to rely on their own assessment of his evidence and with no medical expertise to support such assertions.*

*iv. Even if this were the case, the correct approach would be for the Defence to challenge the expert evidence during cross-examination, which will be possible because the Expert will give live evidence during the FTP proceedings.*

### **Background**

*2. As per the charges, Dr Sim ('the Doctor') is alleged to have performed a sterilisation procedure without Patient A's consent. Per the Rule 7 response and the Defence's skeleton at paragraph 5, it appears the Doctor accepts that he performed the procedure without Patient A's consent. It seems that the only issue in dispute between the parties is whether there had been previous discussions between the Doctor and Patient A about sterilisation.*

### **Chronology**

*3. To assist by way of background, the GMC set out the following chronology of this case. The chronology is as follows: i. 15 November 2022: The GMC disclosed Rule 7 allegations and bundle. These included the allegations which are currently being disputed as arising from the allegedly inadmissible Expert's views in his report.*

*ii. 24 January 2023: The Doctor supplied his R7 response. He accepted all of the allegations put forward to him, with the exception of allegation 1b (ii) at Rule 7, namely that Patient A had not expressed any wish to undergo sterilisation. There was no mention or reference to any suggestion that the Expert's conclusions were inadmissible evidence.*

*iii. 17 May 2023: The first listing teleconference occurred with the GMC/Defence/MPTS. The Defence did not raise any concerns regarding the admissibility of parts of the GMC Expert report. Defence also confirmed that they did not anticipate instructing their own Expert.*

*iv. 9 August 2023: GMC disclosed the R15 allegation to Defence. The only amendments made to the allegations were to remove the elements of care that fell below the*

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*standard expected in the GMC Expert's view. No changes were made to the allegations, which are now being disputed.*

*v. 29 August 2023: The supplemental expert report was disclosed to the Defence. No new information was included in this report. Still, it was simply the Expert confirming his views remained the same after reviewing additional material in the case (the R7 response from the Doctor and the witness statements of Patient A and her husband). The Expert's view, therefore, remained the same as set out in his report disclosed in November 2022 at R7 to the Defence.*

*vi. 21 September 2023: A Pre-Hearing Meeting with the GMC/Defence/MPTS was held. The Defence noted they anticipated no issues complying with Defence disclosure by 4 October 2023 and that there may be some preliminary arguments regarding the Expert's report. Nothing further was disclosed at this time. Defence disclosure was not provided on 4 October 2023, and no expert/medical evidence has been supplied by the Defence at any stage.*

*vii. 5 October 2023: An email from the Defence noting Defence disclosure was due on 4 October 2023 stated they would be in touch as soon as possible regarding this.*

*viii. 6 October 2023: GMC disclosed a draft hearing bundle (including Expert evidence, which Defence had already had sight of) with proposed redactions marked up. GMC asked for an update regarding when Defence disclosure was likely to be provided, and Defence noted comments/disclosure would be provided ASAP.*

*ix. 16 October 2023: Final R15 allegations issued by the MPTS.*

*x. 19 October 2023: Defence raised issues with allegations. GMC asked for an update on the Defence disclosure as it was still outstanding. Nothing provided.*

*xi. 20 October 2023: Defence suggested that Defence disclosure depended on GMC comments/amends to the allegations. GMC responded the same day, noting that the final allegations had been served and that the Doctor was aware of GMC's case. GMC stated that if any aspects were disputed, then the Doctor's statement/disclosure could assist.*

*xii. 25 October 2023: Defence acknowledged receipt of GMC correspondence and advised they would provide an update in due course.*

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xiii. 6 November 2023: Defence emailed GMC and MPTS with an update and noted they had requested for GMC to amend the allegations, and their view is that Defence disclosure cannot occur until this is resolved. GMC responded that the final allegations were issued, and the appropriate way was for Defence to respond in defence disclosure. The case Manager at MPTS listed urgent further PHM.

xiv. 8 November 2023: Further pre-hearing meeting with GMC/Defence/MPTS. GMC advised it was not going to amend allegations as it considers allegations supported by GMC Expert evidence. Defence, therefore, noted that a preliminary hearing would likely be required, and MPTS listed a preliminary hearing for 22 November 2023.

xv. 20 November 2023: There has been no Defence disclosure up to this date.

### **The Law**

4. It is unclear on which specific legal basis the Defence skeleton states that the Expert evidence is inadmissible, nor the particular test to be applied. For the avoidance of doubt, the GMC sets out the legal test as follows:

Rule 34(1) of the FTP Rules 2004: “The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.”

### **Submissions**

#### **Relevance**

5. The GMC submit that the evidence of the Expert is relevant to the allegations. It is open to the FTP Tribunal to exercise its judgement on how much weight to place on the evidence. It can discard any evidence, including that of the Expert if it so chooses. The correct forum for arguments of relevance is at the FTP Tribunal. In front of that Tribunal, the relevant evidence can be fully explored, challenged in cross-examination, and submissions can be made by the Defence both at half-time and at the conclusion of the facts stage.

6. The Defence have also stated that the Expert evidence goes beyond the scope of the allegations. The GMC submit that this is not the case. The Expert has given evidence regarding the procedure on 13 September 2021, the preliminaries to that procedure and its aftermath. The Expert is entitled to express an opinion on the documentary evidence before him (which, as above, is open to challenge) and has not exceeded the

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*scope of the instructions from the GMC and his remit. For example, he is more than properly entitled to comment that the conduct was “shockingly bad”.*

*7. The Defence have asserted in their table of objections contained at pages 1-8 of the Defence bundle that matters are in dispute and, therefore, should not be permitted in the Expert’s report. Matters of dispute or challenges to the evidence should take place within the FTP Tribunal. They do not relate to the legal argument of admissibility before this preliminary Tribunal.*

**Fairness**

*8. The Defence appear to be challenging both the expertise and the independence of the Expert. The GMC assumes that the Defence are arguing that it is unfair to admit his evidence. The GMC submit that it is fair to admit the evidence of the Expert. Any challenges or limitations on the Expert’s evidence can be explored before the FTP Tribunal at the FTP stage. The Expert will be in a position to explain, during oral evidence, his qualifications, his expertise, and why he has reached those conclusions, and moreover, why he feels like he is capable of reaching those conclusions. Again, it remains open to the Tribunal to disregard the Expert’s evidence if they think he has acted beyond his expertise.*

*9. The Defence suggest that the Expert has commented beyond the “scope of expert evidence from a Consultant Obstetrician” (he is also a Senior Lecturer in Obstetrics and Gynaecology). However, they have advanced no (expert) evidence suggesting the scope of a Consultant Obstetrician and no evidence supporting their assertion that he has acted beyond it. Such an argument requires expert evidence of their own.*

*10. The GMC submit that the Expert has the relevant expertise to comment as he has done. The Expert comments on recognised medical good practice, medical ethics and principles. For example, he comments on the rights and freedoms of a patient, which includes “her future choice as to whether and when to have more children”, “reproductive rights”, and “autonomy in making decisions about her medical care”. Any Defence asserted uncertainties in the Expert’s Report, such as the meaning of the terms “deliberate harm” and “non-maleficence”, can be explored in front of the Tribunal.*

**Conclusions**

11. *The GMC assert that the evidence relied upon is fair, relevant, and, therefore, admissible. The Preliminary Tribunal should consequently dismiss the Defence application in its entirety. "*

13. In response to the GMC's skeleton argument, Mr Hockton submitted that Rule 34(1) of the Rules requires a consideration of both relevance and fairness. In his submission, given their lack of relevance and the manifest unfairness that would result, the proposed redactions should not be admitted into evidence before the Tribunal's hearing of the substantive case.

### The Tribunal's Approach

14. The Tribunal had regard to the submissions made by both Counsel. The Tribunal was mindful that Rule 34(1) of the Rules gives it a broad discretion to admit evidence if it is fair and relevant to do so. It reminded itself that it must consider fairness from all perspectives and consider the overarching objective.

15. The Tribunal were reminded of the MPTS Expert Witness protocol, which summarizes much of the detail set out in the *White Book* relating to the procedure and civil law proceedings, and *Archbold* relating to the procedure and criminal law proceedings as referred to in Mr Hockton's skeleton argument.

### The Tribunal's Decision

16. The Tribunal carefully considered the submissions by the Parties, and the documentation submitted, including skeleton arguments from both parties. In considering fairness, the Tribunal was conscious that it was important to consider not only any prejudice to Dr Sim by the admission of the evidence but also to balance this with the public interest when reaching its decision.

17. The Tribunal considered the proposed redaction:

*"A surgical safety checklist was not completed prior to the incision. There is a handwritten note on the bottom of the checklist which states: "...Declined as per Mr Sim".*

18. The Tribunal noted that during submissions on behalf of the GMC, Mr Hall had confirmed that the GMC's position in relation to this extract of the expert witness report was to agree to the redaction proposed. Accordingly, the Tribunal determined that it should be redacted as proposed.

19. The Tribunal considered the proposed redaction:



*“...On neither occasion did Patient A indicate her willingness to undergo a sterilisation procedure.”*

The Tribunal considered this extract to be fair and relevant to the proceedings. The expert was answering a specific question as to whether consent had been obtained and it is apparent that the expert was answering the question based upon information, namely medical notes, made available to him. Accordingly, the Tribunal considered that it was appropriate for the Fitness to Practise Tribunal to have sight as to the expert’s full answer in this regard. The Tribunal noted that Dr Sim disputes the evidence referred to. However, it further noted that Dr Sim will have an opportunity at the FTP hearing to present his own evidence in this regard and cross-examine the expert witness on his opinion.

20. The Tribunal considered the proposed redaction:

*“I note that during the Caesarean section procedure, Dr Sim paused the operation in order to discuss a sterilisation procedure, before noting that the decision to proceed was taken by himself. In my opinion, Dr Sim would not have sought the view of Patient A’s husband if he was already certain that she had consented to a sterilisation procedure, and therefore I do not believe that he had obtained her consent prior to the operation.”*

21. The Tribunal considered that although not ideally worded, it was within an expert's expertise to opine on the procedure taken during the operation and the interactions with the next of kin of Patient A. As with the previous paragraph, the Tribunal noted that Dr Sim disputes the evidence referred to, and that Dr Sim will have an opportunity at the FTP hearing to present his own evidence in this regard and cross-examine the expert witness on his opinion. It considered it fair, relevant and reasonable to be admit this paragraph.

22. The Tribunal considered the following proposed redaction by Dr Sim:

*“...and that consequently it was not appropriate to have performed the procedure without her consent.*

23. The Tribunal noted that the expert had been asked to specifically comment whether it was appropriate for Dr Sim to have commenced the procedure without consent. The extract referred to relates directly to that question and would assist the Tribunal in making a decision. Accordingly, it was determined that this extract should remain within the evidence.

24. The Tribunal considered the following proposed redaction by Dr Sim:

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*‘In my opinion, by sterilising Patient A, Dr Sim caused deliberate damage to her Fallopian tubes to permanently impair their normal function. Consequently, in my opinion Dr Sim caused Patient A direct harm in breach of the established ethical principle of ‘non-maleficence’.*”

25. The Tribunal considered this comment to be beyond the scope of the questioning put to the expert. XXX Accordingly, the Tribunal determined that it would not assist the FTP tribunal on matters of consent and it would not be fair or relevant to include the same and the extract should be redacted.

26. The Tribunal considered the following proposed redaction by Dr Sim:

“...XXX.”

27. The Tribunal considered this to be out of the scope of the question specifically asked by the GMC XXX. Accordingly, the Tribunal did not consider that its inclusion would assist the FTP Tribunal and would not be fair or relevant to include it and determined that the paragraph be redacted.

28. The Tribunal considered the proposed redaction in reference to ‘Page 25, Part 3 – Opinion Response to Question 3, paragraph (i)’.

29. The Tribunal considered the opinion of the expert in respect of XXX and XXX went beyond the scope of the question put to the expert by the GMC and would not be of assistance to the FTP Tribunal dealing with the specific facts of this case. Accordingly, the Tribunal determined that it was neither relevant or fair to admit these statements and they should be redacted.

30. The Tribunal considered the proposed redaction in reference to Page 26, Part 3 –Opinion Response to Question 3 paragraph (j). The Tribunal determined that although emotive language is used the expert had been asked to opine on the standard of care and it would therefore be appropriate for him to explain why he had reached that opinion. Accordingly, it was both relevant and fair to include this extract with his rationale for that conclusion. The Tribunal determined that the opinion should remain.

31. The Tribunal considered the proposed redaction in reference to Page 26, Part 3 –Opinion Response to Question 4. The Tribunal determined it was apparent that the expert’s opinion was based on the documents made available to him and it was reasonable to assume that whilst under general anaesthetic the patient did not have capacity. The Tribunal also considered that any FTP Tribunal would have the benefit of hearing all relevant evidence in this regard. There would be no prejudice to Dr Sim in including this evidence as he would be in a position to adduce his own evidence on the facts and also cross examine the GMC witnesses on the same, including the expert witness. The Tribunal determined in relation to Page 26, Part 3 –Opinion Response to Question 4, the proposed redaction is refused.

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32. The Tribunal considered the proposed redaction in reference to Page 26, Part 4 –Conclusion ‘Standard of Care’ Question 5a and 5b Point 5 (below). The Tribunal considered that the GMC have accepted and acknowledged the need for redaction. Therefore, the Tribunal were not required to consider this element.

33. The Tribunal considered the proposed redaction in relation to Pages 26-27, Part 4- Conclusion ‘Standard of Care’ Point 6 (seriously below). The Tribunal considered that it was fair and relevant for the expert to explain why it was his opinion that Dr Sim’s conduct fell seriously below the standard expected. This information would assist the FTP Tribunal and because Dr Sim would be able to cross examine the expert on this point there was no prejudice. Accordingly, the Tribunal determined that the application in relation to this paragraph was refused.

34. The Tribunal considered the proposed redaction in reference to Page 27, Part 7 –Conclusion ‘Standard of Care’ Point 7 (Overall standard). The Tribunal considered that it was fair and relevant for the expert to explain why it was his opinion that the action of Dr Sim fell seriously below the standard expected. Further the Tribunal noted that there would be no prejudice to Dr Sim as he would be in a position to cross-examine the expert in this regard. Accordingly, the Tribunal refused the proposed redaction in regard to this element.

35. The Tribunal considered the proposed redactions referred to in the Supplemental Report.

36. The Tribunal considered the proposed redaction in reference to Page 33, Part 1-Introduction – paragraph 4 ‘Overall standard’. The Tribunal considered it fair and reasonable that the question was put to the expert as stated. The Tribunal considered that the question referred to an earlier statement of the expert and it was correct to test whether the opinion of the expert would have changed based on further information put to him. Therefore, the Tribunal refused the proposed redaction in regard to this element.

37. The Tribunal considered Page 35, Part 3 –Opinion Response to allegation 1(b) ii Point 2, 3, 4 as quoting evidence and determined it fair, proportionate and reasonable that it be admitted. It determined that it was fair and relevant for the GMC to put the patient’s evidence to the expert for comment. It was noted that Dr Sim disputed each of these pieces of evidence. However, the Tribunal was cognisant that Dr Sim would be in a position to challenge this evidence by adducing his own evidence in support of his own case and also cross-examine the expert witness. Accordingly, it was determined that these extracts should be admitted.

38. The Tribunal considered Page 35, Part 3 –Opinion Response to allegation 1(b) ii Point 5 and determined it fair and reasonable that the element be admitted. It was apparent to the Tribunal that the expert was commenting on the content of information made available to him which could be of assistance to the FTP Tribunal and would be fair and relevant to include it.