

A tissue of error, illogicality and apparent bias

A forensic analysis of the determination of facts of the Medical Practitioners Tribunal against Doctor Waney Squier

Executive Summary

In my 43 years of practice at the Bar I have rarely read a judgment of an English Court or Tribunal so deeply flawed and unfair as this.

The Tribunal had to consider charges that Dr Squier had misled courts by expressing views on matters beyond her expertise as a neuropathologist and by “cherry-picking” literature and evidence in order to support those views. It found her guilty on all but a small minority of the charges. It made numerous findings that she had been dishonest. It had heard over 50 days of very detailed evidence and submissions on both sides of a very complex case. Yet its “Determination on Facts” is little more than a detailed recital of the main points of the prosecution case against Dr Squier, punctuated by only very occasional references to her own evidence, the arguments of her counsel and the huge array of character witnesses who supported her.

The Tribunal appeared to be strongly biased against Dr Squier, not only because it omitted most of the defence case, but because of its outrageous treatment of the five expert witnesses who gave evidence on her behalf. It dismissed their evidence in a few sentences as outdated in one case and, in the other four, as lacking impartiality and / or credibility. Thereafter it completely ignored their opinions save in a few cases where it thought that they supported the prosecution argument. So the Tribunal itself “picked cherries” by the kilo.

Even worse the four defence experts who were criticised do not know why the Tribunal dismissed their evidence in support of Dr Squier. Therefore they cannot effectively defend themselves against the Tribunal’s trashing of their evidence and their reputations, because they do not know what they need to refute in order to do so.

The Tribunal’s reasoning was largely formulaic and frequently illogical. I say this for two reasons. First, although there were over 150 charges relating to six cases, the Tribunal did not relate its findings to the specific circumstances of each case. Instead it used a very limited repertoire of stock arguments to find that she had acted irresponsibly and then to

escalate that finding to one of dishonesty. The most startling example is the Tribunal's view that for a doctor to give evidence outside his or her field of expertise was dishonest. This of course meant that, once the Tribunal found that Dr Squier had gone beyond her expertise (which it defined very narrowly), she had no defence to the charge that she had been dishonest in so doing. The prosecution had never put the case in this way. The Tribunal blundered into treating an offence of dishonesty as if it was one of "strict liability" not requiring any culpable intention. Moreover it apparently ignored decisions of the Court of Appeal Criminal Division admitting her evidence on such matters as low level falls and lucid intervals, about which – according to the Tribunal – she could not honestly testify at all.

Secondly the Tribunal repeatedly confused mere error, misunderstanding or disagreement with dishonesty. This led to a series of illogical howlers, such as deciding on the one hand that Dr Squier had "misinterpreted" an article and on the other that she had "understood" it and confusing doing something deliberately with doing it deliberately to mislead. The Tribunal did not even consider what motive she could have had to be dishonest.

And even though the Tribunal disclaimed any intention to make judgments about the reliability of the NAHI hypothesis, it appeared to take sides on that scientific controversy, because it viewed the expression of doubts about NAHI by a defence expert as evidence of his bias.

Given this bizarre combination of the apparently one-sided and the obviously inept, I cannot make up my mind whether the Tribunal was actually biased in the sense of being actively prejudiced against Dr Squier or whether it was just not up to its task and was ultimately defeated by the complexity of the case. Whatever view one takes of its impartiality, the Tribunal's presentation of the evidence is so inadequate and its conclusions so poorly reasoned that its determination lacks all credibility.

Introduction

1. Over a number of years controversy has raged over what came to be known as Shaken Baby Syndrome (SBS), now more commonly referred to as abusive head trauma (AHT) or non accidental head injury (NAHI). Many pediatric physicians believe that a particular combination of symptoms known as the "Triad" provides strong evidence that a baby was severely shaken. Various definitions of the Triad have been given over a number of years; but in essence it comprises subdural hemorrhage ("sdh") (bleeding under one of the membranes that cover the brain), retinal hemorrhage (bleeding in the back of the eye), and encephalopathy (a term used to describe any functional abnormality of the brain). Courts in different jurisdictions have varied in their attitude to the Triad hypothesis. For example: the English Court of Appeal regards it as "a strong pointer to NAHI", whereas the Swedish Supreme Court

has recently held that the “scientific basis for the diagnosis of violent shaking has turned out to be uncertain”¹

2. Dr Waney Squier is a neuropathologist of world renown. For over two decades, she has been a consultant neuropathologist at Radcliffe Infirmary in Oxford, and a clinical lecturer at the University of Oxford. She has authored or co-authored over 150 medical and scientific papers and book chapters. She has done important work on the developing brain of the neonate, muscle biopsy, epilepsy and cerebral palsy.
3. Before 2003 Dr Squier had given evidence for the prosecution in a number of cases relying on the NAHI theory. However in 2003, having read research published by a fellow neuropathologist, Dr Jennian Geddes, she began to have doubts as to its reliability. From that time onwards she ceased to give evidence for the prosecution and began to appear as a witness for the defence in both family and criminal proceedings where NAHI was alleged. Indeed, in the case of Lorraine Harris, where she had originally provided a report concluding that the baby had injuries which were non accidental and consistent with shaking, she later changed her mind and gave evidence in support of Lorraine’s appeal (which was allowed)².
4. She has published widely on the topic of NAHI, suggesting alternative explanations for the Triad and advancing the view that it alone does not afford evidence of abusive injury and that other non traumatic or accidental pathologies could account for it, including birth trauma, short falls and other household accidents, childhood stroke, external hydrocephalus, aneurysms, and choking³.
5. Further detail about this controversy as it relates to Dr. Squier’s case can be found in the article by Nicholas Binney and the letter from US Attorney Randy Papetti published on the Inside Justice website.
6. Although Dr. Squier’s expertise had been acknowledged and her views accepted in many courts, four judges giving judgment in different cases commented adversely on her evidence. The thrust of the criticisms was that she had not been objective in her analysis and presentation of the evidence. There was no suggestion that she had been dishonest. Moreover, as far as I am aware, none of those judges made any formal complaint against her. In 2010 the National

¹ Compare *Harris and others* [2005] EWCA Crim 1980 at paragraph 70 and the Swedish case *Prosecutor General v MM* Case no 3638 - 12

² *Harris and others* (supra)

³ E.g. Ruttly, Squier et al *Epidural Hemorrhage of the Cervical Spinal Cord: A Post-Mortem Artefact?*, 13 *Neuropathol. and Applied Neurobiol.* 247 (2005); Squier *Shaken Baby Syndrome: The Quest for Evidence*, 50 *Developmental Med. & Child Neurol.* 10 (2008); Squier *The Triad of Retinal Haemorrhage, Subdural Haemorrhage and Encephalopathy in an Infant Unassociated with Evidence of Physical Injury is Not the Result of Shaking, but Is Most Likely to Have Been Caused by a Natural Disease: YES*, 3 *J. Primary Health Care* 159 (2011); Findley, Barnes, Moran, and Squier *Shaken Baby Syndrome, Abusive Head Trauma, and Actual Innocence: Getting it Right*, 12 *Hous. J. Health L. & Policy* 209 (2012); Goriely, Squier et al *Mechanics of the Brain: Perspectives, Challenges and Opportunities*, 14 *Biomech. Model Mechanobiol.* 931 (2015).

Policing Improvement Agency made a complaint against her to The General Medical Council (GMC). The GMC brought disciplinary charges against her. They were amended on various occasions.

7. Ultimately there were over 150 charges. The large majority related to six cases of alleged NAHI in which she had given evidence between 2007 and 2010. In each case a baby or very young child was alleged to have been shaken, causing death or serious brain damage. In each case Dr Squier had given evidence that the injuries were not consistent with shaking and/or could have been caused by some other means. In a seventh case, that of “G”, the allegation was that in April 2014 she had failed to inform solicitors who had instructed her to prepare a report that there were pending disciplinary proceedings against her.
8. In October 2015 the hearing commenced before a Medical Practitioners’ Tribunal⁴. Its members were a retired RAF wing commander in the chair, a retired senior policeman and a retired geriatric psychiatrist. The Tribunal members were advised as to procedure and law by a Legal Assessor⁵. They heard evidence over many days ending in February 2016. The Tribunal followed an adversarial procedure. Both sides were represented by a Queen’s Counsel assisted by a junior. The prosecution (the GMC) opened the case and called evidence. The defence had the opportunity to make submissions as to the sufficiency of the evidence at the close of the prosecution case. The defence then called their evidence. There was extensive cross examination of the witnesses on both sides. Counsel for the GMC made his closing submissions followed by counsel for the defence. The Tribunal then adjourned to consider its findings.
9. In considering its findings the Tribunal had a wealth of documentary material. It had transcripts of the evidence and statements of all the witnesses including a very long one by Dr Squier. It was greatly assisted by counsel on both sides who at the close of the evidence gave the Tribunal very detailed written submissions running to hundreds of pages. Those submissions included many long quotations from the evidence both of Dr Squier herself and her expert witnesses. Even the GMC submissions very properly included long extracts from the defence evidence and of course those of defence counsel included many more.
10. The Tribunal issued its “Determination on the facts” (DOS) on 11 March. As to the six cases where complaint was made about her evidence, the Tribunal found all but 26 of the charges proved. The Tribunal made numerous findings that she had acted dishonestly in preparing reports and / or in giving evidence. However in the case of G the Tribunal found that her failure to give full information to the solicitors was irresponsible but that she had not been dishonest.

⁴ The Medical Practitioners Tribunal Service (MPTS) is described on its website as established in June 2012 with the declared aim of providing a clear separation between the GMC’s investigation function and the adjudication of hearings. It is funded by but works independently of the GMC. It holds hearings for doctors whose fitness to practice is called into question where in effect the GMC acts as prosecutor. See www.mpts-uk.org

⁵ They take legal advice from the assessor but they are not bound to follow it. The assessor is not a judge. His advice must be made available to the parties for their comments *Gopamumar v GMC* [2008] EWCA Civ 309.

11. On 17 March 2016 the Tribunal found that her fitness to practice was currently impaired. It summarised its findings against her:

“The tribunal has found proved that in the cases of O&F, F&L, F,G&H, S, S,C and Others, and the appeal of R v Henderson, Butler & Oyediran, you deliberately and dishonestly misled the courts by putting forward theories insufficiently founded upon the evidence, by giving evidence outside your own field of expertise, and by misquoting research and literature so that it appeared to support your opinion when it did not. In the case of Re G (A child) the tribunal found proved that your actions had been misleading and irresponsible.”

12. On 21 March it ordered her erasure from the medical register.
13. These findings and the order for erasure have generated great controversy, both here and internationally. On 22 March a number of eminent lawyers and doctors wrote to the Guardian protesting that the proceedings were a “21st Century inquisition” denying a doctor the freedom to question mainstream beliefs. The next day an American writer, Susan Goldsmith, wrote that the decision “fits with a well established theme here in the US of attempting to silence critics of shaken baby syndrome through prosecutions, censures, professional ridicule and threats”. Many others have expressed grave concerns, albeit sometimes in less emotive language.
14. In response the Guardian published two letters. Mr Dickson, Chief Executive of the General Medical Council (GMC) insisted that the GMC “is not and has no intention of being the arbiter of scientific opinion”. According to Mr Dickson, the allegations the GMC brought against Dr Squier did not rest on the validity of her scientific theory, but upon her competence and conduct in presenting her evidence to the courts. No fewer than four senior judges had expressed strong criticisms of the way she had presented her evidence in court. The GMC had a legal duty to investigate serious allegations of this nature and, if there was sufficient evidence to substantiate them, to present them before the autonomous Medical Practitioners Tribunal Service. He continued:

“The tribunal in this case found proved more than 130 allegations about Dr Squier’s conduct, determining that she misled courts and acted dishonestly and irresponsibly by “cherry-picking research and evidence” (emphasis supplied).

15. He concluded:

“Far from wishing to suppress different views, we recognise that scientific advance is achieved by challenging as well as developing existing theories, and importantly in this context we are absolutely clear that neither the GMC nor the courts are the place where such scientific disputes can be resolved. To be clear, it is possible that a doctor who ultimately was proved to have the correct theory could present their evidence in such a way as to mislead, just as it is possible for a doctor advocating a theory ultimately proved to be flawed to present their case in context and with integrity.”

16. The other letter was from His Honour David Pearl, a retired judge and now national chair of the Medical Practitioners Tribunal Service (MPTS). He wrote:

“Such tribunals are not set up or designed to make decisions on the science or on clinical matters – this is perfectly clear – but they are judging whether an individual doctor’s actions fell short of the professional standards that would be expected of any competent doctor.

“The presence of medical members on a tribunal is to make sure that a medical perspective is reflected, not to mirror the particular specialism of the doctor appearing before it. The tribunal does not and should not bring specialist clinical expertise; in the same way as the judiciary operates, its role is to make judgments based on evidence, including evidence from experts.

“The law requires that all cases are heard by a mix of lay and medical tribunal members, which I believe is right to retain the confidence of both the medical profession and the public.

“During the course of a hearing both the GMC and the doctor can call evidence from expert medical witnesses to assist the tribunal in understanding issues relevant to a case. All such evidence is taken into account and thoroughly considered by tribunals when making a decision.

“It is crucial that decisions made by MPTS tribunals are independent. Our tribunal members go through a rigorous appointment process and are selected for their ability to consider evidence and make fair, consistent and robust decisions which stand up to scrutiny.” (emphasis supplied)

17. The requirement that there must be a mix of lay and medical practitioners is understandable. But, given the (perhaps unique) complexity of the medical and scientific issues in this case and of the evidence called on both sides it is very unfortunate that there was only one medically qualified member and that her discipline had nothing to do with the treatment or diagnosis of physical disease or trauma.
18. Whilst much has already been written on these proceedings, nobody to my knowledge has yet attempted a detailed analysis of the Tribunal’s judgment, technically known as the determination on the facts (“DOF”). This article is my attempt to present such an analysis in a way that can be readily understood by those who are not legally or medically qualified.
19. I believe that I am well qualified to write such an article. Although I have never practised in the field of medical discipline, I am a Queen’s Counsel with long experience of both prosecuting and defending serious criminal cases, including many involving expert medical evidence and a number relating to alleged baby shaking. I have relied on expert reports by Dr Squier in two cases. I gave evidence on her behalf at the disciplinary hearing regarding those cases; her professionalism and integrity and my astonishment that she was charged with dishonesty. I explained to the Tribunal the great difficulties confronting defence experts in criminal cases

alleging NAHI where – at least in the UK – one expert may be asked to respond to evidence given by numerous experts on the prosecution side.

20. I should, however, declare my own interest. I am not by any means impartial for two reasons. Firstly I am a strong supporter of Dr Squier. Whilst I lack the medical knowledge to take a position in the debate of NAHI, I admire the professionalism, courage and integrity with which Dr Squier presents her views. Secondly my own evidence was criticised by the Tribunal. At paragraphs 41 – 45 of its judgment the Tribunal referred to six defence character witnesses. Of me the Tribunal said:

“The tribunal considered that at times Mr Birnbaum appeared somewhat vague. It believed that he lacked some credibility.”

21. The suggestion of occasional vagueness was perhaps understandable (I had difficulty when testifying in remembering some dates). However the implication that I gave evidence that was dishonest is outrageous, given that neither the Tribunal or counsel for the GMC challenged a word of my evidence at the hearing. It has caused me and those who know me great concern.

Why publish this Article now?

22. The insult to me is a pinprick of no significance in the real world and is certainly not a reason for my taking the time and trouble to write this article. But the judgment is potentially of huge significance to many others. A neuropathologist of international reputation, who challenged a controversial hypothesis used to convict individuals of serious offences including murder and to separate children from their families, has been “struck off”. The Tribunal has (as I demonstrate below) accused most of the experts called on her behalf of not being impartial, but without giving any proper reasons. Many who are sceptical of the theory Dr Squier challenges are concerned that the DOF will be taken as an endorsement of it. They fear that it will have a chilling effect on the willingness of experts to challenge a diagnosis of NAHI.
23. Dr Squier has now appealed against the findings; but the appeal cannot be determined for some time. Meanwhile her reputation and that of the experts who gave evidence for her will be gravely damaged, and the DOF may well be cited in other proceedings both in the UK and abroad as a reliable judgment by an expert tribunal. But because it is, on a fair and proper analysis, nothing of the kind, the sooner its flaws are publicly exposed the better.
24. I have of course considered whether to publish now might prejudice the appeal. I do not believe that it could, given that the appeal will be heard by a High Court Judge with a possible further appeal to the Court of Appeal or to the Supreme Court. I cannot imagine that any judge hearing an appeal at any stage would be influenced by the expression of my views.

Sources of Information and Consultation

25. I make it clear that, whilst I have notified Dr Squier’s defence lawyers of my intention to write this article and have disclosed to them a draft of it, I am not collaborating with them in the preparation of Dr Squier’s appeal. I have reached my views independently. They have not

expressed any opinion about whether or not I should publish them, nor sought to influence or correct my draft in any way. They are of course free to use my arguments if they so wish.

26. I have discussed some of the issues with Dr Squier herself and have asked her to clarify for me a few points of fact (such as the extent to which she prepared reports and gave evidence *pro bono*). I have also been in contact with some of the expert witnesses called for the defence and have discussed with a number of them their concerns.
27. I have read and analysed the DOF and the closing submissions of the parties, who very helpfully made them available to me so that I might understand the way the case was put on both sides. I do not have the transcript of the hearing. Therefore the quotations in this article of the words of any witness are taken from counsel's written closing submissions.

Summary of my views

28. I note that at paragraph 47 of the DOF the Tribunal stated that it “has given careful consideration to all the oral and documentary evidence adduced in this case and has taken account of the submissions made by Mr Kark, on behalf of the GMC, and those made by Sir Robert ⁶ on your behalf.”
29. In spite of this claim I have found no evidence in the DOF of anything more than a very cursory consideration of the defence.
30. In my view the findings of the Tribunal are fundamentally flawed because
 - a. its analysis of the expert evidence was unbalanced. Having dismissed the evidence of the five expert witnesses called by Dr Squier as outdated and / or biased in a few brief paragraphs, it then appears to have ignored the evidence each of them had given in her support (see 81 – 94 below and Schedule One);
 - b. this was grossly unfair not only to Dr Squier but also to five expert witnesses, whose evidence has been publicly traduced by the Tribunal but without any detailed explanation which they could understand or to which they could respond;
 - c. although the Tribunal disclaimed any intention to make judgments about the reliability of the NAHI hypothesis, it appeared to take sides on that scientific controversy, because it viewed the expression of doubts about NAHI as evidence of bias (see 96 – 98 below);
 - d. it referred to specific points made by defence expert witnesses only where they supported the GMC case; thereby indulging in just the sort of “cherry-picking” ⁷ for which it condemned Dr Squier (see 99 – 107 below);
 - e. although Dr Squier had given evidence for eight days, the Tribunal's reference to what she had said in her own defence and the arguments on her behalf was derisory, giving

⁶ Tom Kark QC and Sir Robert Francis QC

⁷ The Tribunal accused her of “cherry-picking” with regard to the use of medical literature in five passages. See DOF at paras.31, 114, 184, 239 and 491.

rise to the most serious concerns as to whether it had properly considered her defence (see 108 – 112 below and Schedule Two);

- f. the Tribunal paid scant regard to the extraordinarily impressive character evidence called on her behalf (see 113 – 120 below);
 - g. it approached complex and difficult scientific and factual issues in a simplistic and formulaic manner (see 121 – 127 and 185 – 196 below);
 - h. in its consideration of the crucial issue of dishonesty the tribunal confused error, misinterpretation and a failure to defer to others whose views one does not accept, with dishonesty (see 128 – 158 below);
 - i. it decided that for a doctor to give evidence outside his / her field of expertise was dishonest. This was contrary to the way the GMC had argued the case (see 159 – 167 below);
 - j. in so deciding the Tribunal made an elementary blunder, in that it approached a disciplinary offence of dishonesty as if it were one of strict liability. It thereby rendered good character irrelevant and substituted speculation for evidence (see 168 – 172 below);
 - k. in so deciding the Tribunal appeared to ignore both evidence favourable to Dr Squier given by a GMC witness and a number of cases decided by the Court of Appeal Criminal Division (see 173 – 184 below);
 - l. it failed even to consider what possible motive Dr Squier could have had for dishonesty (see 197 – 201 below).
31. As to the conduct of the GMC: I believe that its decision to charge Dr Squier with multiple offences of dishonesty was irresponsible and oppressive. Its protests that it did not intend to influence the debate on NAHI have, to my ear, a very hollow ring (see 202 – 209 below).
32. A word about bias: in regard to the decisions and reasoning of courts and tribunals lawyers use this term in two senses: actual bias and apparent bias. It is not always necessary to demonstrate actual bias (such as clearly expressed prejudice or self interest) in order to succeed in an appeal against a judgment: apparent bias is enough. The test for apparent bias is “whether a fair minded and informed observer having considered the facts would conclude that there was a real possibility that the tribunal was biased.”⁸ In this case there is, in my view, ample evidence of at least apparent bias.
33. A copy of the Tribunal’s DOF is attached. I will give paragraph references in my more detailed argument below, so that those who wish to do so can judge for themselves whether my criticisms are justified or whether they reflect some bias (even if unconscious) of my own.

⁸ *Porter and Magill* 2002 AC 357 at para. 103)

The Six Cases in which Dr Squier gave evidence ⁹

The Case of O&F. Baby A ¹⁰

34. A was eight months old at the time of his death. At midnight on 29 May 2007 A arrived at hospital by ambulance. He was not breathing spontaneously and his pupils were fixed and dilated. He was resuscitated but died twelve hours later following two cardiac arrests. The post mortem examination revealed acute bilateral subdural hemorrhage, extensive bilateral retinal and optic nerve hemorrhages, more severe in the left side, encephalopathy and focal axonal injury at the cervical-medullary junction. There was no scalp bruising, skull fracture or other external injury. The infant was with his mother when he received the fatal injury. She said that the child had fallen a short distance (from standing) onto a carpeted floor. He was said to have gone pale, vomited and started crying before later collapsing.
35. The case of O and F was heard in the High Court Family Division in June 2008 before Mrs Justice Pauffley. Criminal proceedings followed at the Old Bailey in July 2009. Dr Squier provided reports and evidence for both. She suggested that the baby might have suffered a low level fall also that a lucid interval was a possibility ¹¹.

The Case of F&L. Baby Y

36. Y suffered brain injury at the age of eight weeks in 1999 and was found by a family court to have suffered non-accidental head injury, probably as a result of shaking. Y did not die, but suffered thereafter from cerebral palsy.
37. The case concerned the custody of a child known as A who was the child of Y's father by another partner. In 2006 the local authority obtained a placement order for A. Judge Horowitz in the Family Court concluded in October 2006 that the father posed a risk to A's safety and that the mother would be unable to oppose or defy him. The parents of A consulted Dr Squier about Y's brain injury. Relying on her evidence the parents sought a stay of an adoption order made in respect of child Y. She provided reports and on 14 January 2009 gave evidence in the High Court Family Division before Mr Justice Hedley ¹². She first suggested that the baby might have suffered venous sinus thrombosis, but then abandoned that theory because she could find nothing to substantiate it. She then suggested that A might have suffered a rebleed of birth related sdh.

⁹ This summary is based on the very limited details the Tribunal gave about each case in the DOF.

¹⁰ In each case the names of parties and children were anonymised. In some cases different children were given the same letter reference in different proceedings. Hence in the DOF three different children in three different cases are referred to as "A"

¹¹ Simply put a lucid interval is a temporary or intermittent period after a traumatic brain injury where a patient (here, a baby) may appear reasonably well or display only non-specific symptoms, such as lethargy, vomiting or crying.

¹² His judgment is at [2009] EWHC 140 (Fam)

The Case of: F, G & H. Baby A

38. A lived with his mother B. When the baby was about two months old, B arranged for him to be looked after by C, an unregistered child minder. A had been in C's care prior to his admission to hospital. A was admitted to hospital on 11 April 2007 in a state of cardiac arrest. Investigations revealed severe hypoxic-ischaemic brain injury. Acute subdural bleeding was seen on CT as well as MRI scans and he was found to have bilateral retinal hemorrhages. The baby died in hospital on 2 June 2007. Dr Squier provided a report and gave evidence to the High Court Family Division before Mrs Justice Pauffley. She suggested that A might have choked causing a rebleed of a chronic birth related sdh.

The Case of S. Baby Z

39. Baby Z was rushed to hospital following what was said to be a sudden collapse on 29 October 2007 while in the sole care of his mother N, and died three days later in hospital on 1 November 2007. Z was found to have encephalopathy, an old sdh, as well as fresh subdural hemorrhaging and extensive bilateral multilayer retinal hemorrhages which were most numerous in the posterior pole of each retina; however, there were no external injuries such as grip marks or skeletal injuries.
40. The Family Court proceedings before Mrs Justice King¹³ related to the application by the local authority for a care order for the sibling S, but required the court to decide what had caused Z's collapse and whether it was a shaking / shaking-impact injury inflicted by Z's mother. The mother was accused of murder in criminal proceedings. Dr Squier suggested that Z might have choked causing hypoxia (diminished supply of oxygen in the blood) leading to sdh.

The Case of S, C and Others. Baby AC

41. CK (her stepfather) was in sole charge of AC, a girl who was 19 months old, when on 6 December 2005 she suffered cardiac arrest at about 7pm and was taken to hospital. She died early the following morning.
42. AC was found to have suffered encephalopathy, a thin layer of fresh blood over the right cerebral hemisphere and bilateral retinal hemorrhages with fresh bleeding around the optic nerves. There was acute axonal damage in the cervical and lumbar spinal cord. She was also found to have rib fractures, external bruising to her face, arms and back, and internal injuries.
43. A criminal trial took place before HH Judge Clegg and a jury in January 2008. SC was a linked case (relating to AC's sibling) heard in the High Court Family Division by Mrs Justice King in January and February 2010. Dr Squier gave evidence in both sets of proceedings. She suggested that the child might have been injured as the result of falls reported by the carers and that there was a lucid interval prior to collapse.

¹³ Her judgment is at [2009] EWHC 2115 (Fam)

Appeal of Oyediran. Baby F

44. Baby F was born on 8 August 2005. He was the son of O, who was later convicted of his murder, and his mother S who suffered from multiple sclerosis (MS) and a learning disability. S had been diagnosed with MS in 1994 and was disabled by her illness. On the morning of 18 October 2005 O took Baby F to the GP practice in a car seat. When the doctor saw the child she realised he was dead and had been for some time.
45. Post mortem findings were a small bruise on the inner surface of Baby F's scalp over the right parietal region; a degree of swelling to the brain; a thin layer of fresh subdural hemorrhage mainly over the right side of the brain; and fresh hemorrhage around both optic nerves. There were no retinal hemorrhages. The child had also suffered a broken arm two to four weeks previously. O was convicted of the baby's murder. He appealed against his conviction seeking to rely on fresh evidence from Dr Squier and Dr Jones (a biomechanical engineer). Dr Squier suggested that paediatric HIV encephalitis might have caused baby F's brain damage¹⁴.

Summary of the charges

46. The charges were complex and in this section I seek to convey their scope rather than to identify each one. For the six cases in which Dr Squier had given evidence the offences charged fall under four main heads. First it was said that she had provided expert opinion evidence outside her field of expertise in regard to one or more of the following disciplines: biomechanics¹⁵, ophthalmic pathology, ophthalmology, paediatric neurosurgery, paediatric medicine, neuroradiology, forensic medicine and post mortem pathology. The topics on which it was said she had gone beyond her expertise were:
- the likelihood that low level falls could cause brain injury (in O & F);
 - the likelihood of lucid intervals (in O & F and S, C & others);
 - the possible causes of sdh and the rate of brain swelling (in S, C & others).
47. Secondly it was said that she had made assertions in her opinions which were insufficiently founded upon the evidence available to her. In effect this meant that she had ignored or discounted clear evidence from other experts. It was alleged that
- in O and F she asserted that the sdh was on one side only whereas the evidence made it clear that it was bilateral;

¹⁴ The judgment of the Court of Appeal is at [2010] EWCA Crim 1269

¹⁵ The study of the mechanics of a living body, especially of the forces exerted by muscles and gravity on the skeletal structure. In the context of NAHI experts in this field conduct experiments on dummies in an effort to calculate the forces and mechanisms required to produce the symptoms of the Triad.

- in F, G and H she suggested that baby A had choked thereby suffering a rebleed of a chronic birth related sdh;
- in S she suggested that baby Z had choked causing hypoxia leading to sdh and had relied on an error by a Dr Richards as to a head circumference measurement;
- in Oyediran she suggested that paediatric HIV encephalitis might have caused baby F's brain damage in spite of the opinion of a noted expert in that field, Professor Bell, and had refused to change her view even though Professor Bell had concluded that there was no evidence of HIV.

48. Thirdly it was said that she purported to rely on research papers whereas in fact that research did not support her opinion in the way in which she had suggested:

- in O and F she had relied on six papers to support the theory of a low level fall (by *Vinchon; Hoskote; Greenes and Schutzman; Christian; Duhaime and Cory and Jones*) and on one (by *Arbogast*) to support the theory of a lucid interval;
- in F and L she had relied on a paper by *Rooks* to support the theory of a rebleeding of a birth related subdural bleed;
- in S she had relied on a paper by *Cushing* to suggest a link between hypoxia and sdh and papers by *Hylton and Goldberg* and by *Martinez – Lage* to support the theory of an association between retinal and sdh;
- in S, C and others she had relied on the *Arbogast* paper to support the theory of a lucid interval and on a paper by *Friede* in relation to interflaccine bleeding and asphyxia.

49. Fourthly it was said that she had failed to report and research material she relied on in a way which would allow others to check her sources. This allegation was made in relation to F, G and H and S.

50. In regard to each of the six cases it was said that the acts and omissions relied on involved a failure to discharge her duties as an expert in that she

- failed to work within the limits of her competence
- failed to be objective and unbiased
- failed to pay due respect to the views of other experts

51. Then it was said in regard to each of the six cases that her acts and omissions

- were misleading
- were irresponsible

- c. were deliberately misleading
 - d. were dishonest
 - e. were likely to bring the reputation of the medical profession into disrepute
52. The case of Re G was different to all the others in that she had never prepared a report or given evidence. There the failure to inform the solicitors of the pending investigation of her conduct was said to have been
- a. misleading
 - b. irresponsible
 - c. deliberately misleading
 - d. dishonest
 - e. likely to bring the reputation of the medical profession into disrepute
53. The overall allegation was that, given the offences she had committed, her fitness to practise was impaired because of her misconduct.

Summary of the Defence

54. Dr Squier testified that she believed that her neuropathological training, her long experience and her study of the literature gave her the right to testify as she had. She had always made clear that she was not an expert in any field outside her own. The forthright expression of her views was necessary in the interests of justice. She asserted that there was always an evidential basis for her views as to possible causation of injuries, for example in a report from a witness and / or a scan or clinical notes of those who had examined the baby or child.
55. In citing a particular paper she was not seeking to argue that the paper as a whole supported the whole of her opinion. She was merely using a finding by the author(s) to support a step in her argument. She accepted that on occasion she should put her view of the relevance of the paper more clearly (for example when citing *Friede* on asphyxia in SC).
56. Where judges had criticised her, the criticism was often unjustified and based on a misunderstanding of the relevant evidence and arguments. Other judges had found her opinions and testimony credible and helpful.
57. She called five experts in support of various aspects of her defence notably as to her experience, knowledge and entitlement to express the views she had and to support specific aspects of her evidence. She called six character witnesses live and relied on numerous very impressive testimonials to her character, ability, and achievements.

The Decision

58. The Tribunal found that Dr Squier had no expertise beyond that of a neuropathologist. In regard to the six cases where she had given evidence it found every charge proved with the exception of the following 26.
- Twelve charges of failing to work within her competence. In each the charge was not proved because she was entitled as a neuropathologist to offer an opinion on sdh or pathology as the case might be (paras. 155, 157, 216, 281, 440, 443, 543, 556, 610, 613, 625, 666);
 - Four charges of failing to pay due regard to the views of other experts (paras 293, 465, 468 and 470). There was no evidence in three cases that there was any other view for her to disagree with and in the third she had simply said she was “upset” when told of another expert’s criticism of her opinion;
 - One charge of failing to present her research in a way that other experts could check (paragraph. 332);
 - Three charges were dismissed because it was not misleading, deliberately misleading or dishonest to rely on papers not made available (paras. 479 and 496 and 505);
 - On a similar basis three charges were dismissed because she could not have realised that Mr Richards (an expert witness) had made an error re baby Z (paras. 484 and 494 503);
59. As regards reliance on literature which did not support her opinion in the way she suggested, the Tribunal had already found two charges not proved at the end of the prosecution case and in another case the GMC had confirmed that it no longer wished to proceed (paras. 411, 537 and 599).
55. I have not counted how many charges the Tribunal found proved, but I would accept Mr Dickson’s suggestion that it was about 130. The dismissals were all on the basis that the GMC had not proved the misconduct alleged. Therefore they do not affect the essential thrust of the findings, which was that, whenever misconduct was proved in regard to any of these six cases, she had been not merely unprofessional or irresponsible, but dishonest.
56. On the charges relating to Child G the Tribunal found that it was irresponsible not to tell the solicitors of the pending GMC proceedings, but that the failure was not deliberate so it could not be deliberately misleading or dishonest (paragraphs 704 – 9).
57. The Tribunal found that her conduct overall brought the reputation of the profession into disrepute.

Some Obvious Issues

58. A “fair minded and informed observer” who has read thus far might think that the Tribunal would have to grapple with a number of questions including
- a. Given that Dr Squier thought - and often said - that the NAHI theory was unscientific and unproven how could she avoid failing to pay “due regard” to the majority view? And how could such failure be dishonest?
 - b. Did she not have a duty to express a dissenting view given the importance of the issues? Or - if not - might she not reasonably have thought that she did?
 - c. Suppose that in a given case she misconstrued the evidence and / or reports of other experts and / or the expert literature: how could that be any more than irresponsible, absent proof that she intended to deceive?
 - d. Giving evidence which she knew was outside her field of expertise might well have been irresponsible. But what if she or other experts called by the defence disagreed with the GMC about the scope of her expertise? What weight should be given to their views? Was it irresponsible for her to have made a mistake on this point?
 - e. If (as she claimed) she always made it clear that she was not an expert in other fields how could she have been dishonest when she offered an opinion outside her own?
 - f. What motive could she have had to be dishonest in writing reports or giving evidence, especially given that she sometimes acted pro bono?
 - g. Given that HH David Pearl the head of the MPTS says that a tribunal “does not and should not bring specialist expertise” how could this one make any informed decision about the scope of Dr Squier’s expertise, the true implications of the literature and / or what deference she owed to experts with whom she disagreed?
59. Yet there is nothing in the DOF to suggest that the members of the Tribunal ever tried to confront any of these problems.

Duties of Experts when preparing reports and giving evidence

60. The tribunal at DOF paragraph. 60 quoted the comments of Mr Justice Cazalet in *Re J (Child Abuse: Expert Evidence)* [1991] FCR 192 about the role of an expert:

‘Expert witnesses are in a privileged position; indeed, only experts are permitted to give an opinion in evidence. Outside the legal field the court itself has no expertise and for that reason frequently has to rely on the evidence of experts. Such experts must express only opinions which they genuinely hold and which are not biased in favour of one particular party. Opinions can, of course, differ and indeed quite frequently experts who have expressed their objective and honest opinions will differ, but such differences are usually within a legitimate area of disagreement. On occasions, and because they are acting on

opposing sides, each may give his opinion from different basic facts. This of itself is likely to produce a divergence.

‘The expert should not mislead by omissions. He should consider all the material facts in reaching his conclusions and must not omit to consider the material facts which could detract from his concluded opinion. If experts look for and report on factors which tend to support a particular proposition or case, their reports should still:

- a. provide a straightforward, not a misleading opinion;
- b. be objective and not omit factors which do not support their opinion; and
- c. be properly researched. If the expert’s opinion is not properly researched because he considers that insufficient data is available, then he must say so and indicate that his opinion is no more than a provisional one.

..... ‘It should be borne in mind that a misleading opinion from an expert may well inhibit a proper assessment of a particular case by the non-medical professional advisers and may also lead parties, and in particular parents, to false views and hopes.’

61. The Tribunal noted at paragraph. 61 that medical experts are bound by the GMC Publication “Acting as an Expert Witness” dated July 2008 which states at paragraph 7:

“When giving evidence or writing reports, you must restrict your statements to areas in which you have relevant knowledge or direct experience. You should be aware of the standards and nature of practice at the time of the incident under proceedings.” (emphasis supplied)

62. The Tribunal accepted the evidence of Ms Julia Cheetham QC ¹⁶ during which she made reference to the Particular Duties of an Expert (a Practice Direction of the High Court) which include

“...to confine the opinion to matters material to the issues between the parties and in relation only to questions that are within the expert’s expertise (skill and experience);

“where a question has been put which falls outside the expert’s expertise, to state this at the earliest opportunity and to volunteer an opinion as to whether another expert is required to bring expertise not possessed by those already involved or, in the rare case, as to whether a second opinion is required on a key issue and, if possible, what questions should be asked of the second expert...”

63. The Tribunal accepted Ms Cheetham’s evidence that:

¹⁶ A very experienced practitioner in the Family Courts called by the GMC

“... if there is a clearly defined medical issue, which is the province of a particularly instructed expert, I would expect the expert who it is not their specialist field to defer to the expert where it is their specialist field. There is nothing wrong with raising questions. There is nothing wrong with saying, “Well, do you think it could be this?” or “I have read a research paper which suggests that this, this and this might be happening”, but, ultimately, if there is another expert there and it is their specialist field I would expect them to defer.”

and that

“.....it is not acceptable to selectively provide a few references that bolster the point of view that one wishes to advance, while ignoring all material that points in other directions...the court needs a balanced assessment of the possibilities.”

64. As far as I can judge these principles were accepted by both parties at the hearing. However the defence in their final submissions added some important riders

“This cannot be a "numbers game". An expert may be in a minority of one (which Dr Squier is not), but if she honestly holds a view on a relevant issue, she must not be deterred from expressing it however strong the opposing view. It is not for her to decide which is to be preferred by, in this case, the court. The court will not be assisted by being left in ignorance that there are views opposing a majority.

“The overriding duty to the court is to avoid injustice but ensuring that it is aware of issues and opinions which may be relevant to its decision.”

65. This consideration, I would submit, is especially powerful in criminal cases where the burden is on the Crown to prove a case so that a jury is sure and to exclude all reasonable possibilities consistent with innocence. Of course if an expert calls attention to a possible explanation and (s)he is not an expert in the relevant medical specialty then (s)he must make that clear. I made these points, without challenge, in my evidence to the Tribunal.

What is Dr Squier’s Expertise on the issue of NAHI?

66. In many cases it will be clear that Dr X is (say) an obstetrician and is therefore not qualified to express an expert opinion on whether Y has heart disease. The latter question involves a question of diagnosis which would require the opinion of a cardiologist. But the expression of expert opinions about whether a baby has been assaulted or shaken or may have suffered an accidental fall is much more complex and not altogether medical. The first stage is diagnosis. What injuries or abnormalities does the child have? The medical diagnosis may require examinations and tests to detect external injuries. A paediatric radiologist, a paediatric neurologist, an ophthalmologist and a paediatrician may be asked to determine whether the infant has subdural hemorrhage, brain swelling, retinal hemorrhage, or any bruises or fractures. Specialists in other disciplines may carry out or supervise tests to check for disease and bleeding disorders. If the child is alive a paediatric neurosurgeon may be asked to determine treatment to relieve any intracranial pressure and manage and prevent any ongoing hemorrhage. If the baby dies a pathologist will perform a post mortem,

whose findings may assist diagnosis of any relevant injury and / or disorder. For example, sometimes a fracture first discovered after death or dissection may provide further information about the extent and nature of bleeding.

67. However - unless it is clear that the injuries or disorder had some natural cause such as a congenital disorder - none of these specialised disciplines of diagnosis and treatment will determine the cause of the injuries which is the question that most concerns the Courts and which is not a purely medical determination. Suppose the issue is whether the child's injuries were caused by severe shaking (as a medical expert may suspect) or a fall (as reported by a carer or parent). Arguably there are no medical experts qualified to express a view on this question of causation, since there is no recognised course of study leading to a qualification in the identification of NAHL. Indeed a dispute about whether findings in a child were caused by an assault or a fall might require an expert to consider paediatric, pathological, neurological, ophthalmic and biomechanical issues. It is a "multidisciplinary" issue, and medicine and science may not provide a reliable answer

It would be absurd if the Courts did not allow any expression of expert opinion on such issues. In practice they do. I can only speak from experience of criminal cases, but it is well accepted the Prosecution may call an expert to explain to the jury that the most likely cause of the constellation of symptoms they have heard about is shaking and / or an assault as the case may be. Similarly the defence must be entitled to call expert evidence to controvert the prosecution theory.

68. The GMC alleged that Dr Squier was simply an expert in paediatric neuropathology. Neuropathologists are physicians who help diagnose disease of the central nervous system, including the spine and brain. Their work includes examining tissue, fluid or tumours from the spine or brain to assist a diagnosis. They are not clinicians and rarely see patients. The GMC argued that many of the issues on which Dr Squier had expressed opinions in reports and had given evidence were outwith her expertise because, for example
- a. the causes of retinal bleeding were the province of an ophthalmologist,
 - b. issues of biomechanics were for an expert in that field,
 - c. whether a child had sustained a lucid interval was a matter for clinicians such as emergency room doctors and paediatric neurosurgeons,
 - d. the evolution of brain swelling in a living child (which Dr Squier raised in the case of S,C and others) was a matter for a paediatric neuroradiologist who would review scans of living children or for neurosurgeons rather than a pathologist who would only see a brain after death or a specimen of a living brain down a microscope,
 - e. similar considerations would apply to issues about the movement of blood within the brain and whether a child had choked
69. The GMC went so far as to argue that in one case Dr Squier should not have given evidence at all because the child had not died (the case of F & L). They advanced this argument, even though she had been appointed as an expert with the authority of the court (which is required in family, as distinct from criminal, cases).

70. The GMC did not deny that Dr Squier had the right to make limited comments on these matters making it clear that she was not an expert in any field other than neuropathy and always deferring to the views of those who were. They said that Dr Squier as a neuropathologist was not in as good a position to comment on (for example) issues of biomechanics as Professor Risdon who, being a forensic pathologist, was entitled to provide an overarching view bringing together the views of a variety of other experts. She had gone further in commenting on matters outside her field than she was entitled to, for example, by seeking to undermine the views of those who were qualified in other specialties.
71. The defence argued that expertise was not just about formal qualifications but experience, which included case work, observation, research and reading. For example Biomechanics was an interdisciplinary science, which is contributed to by doctors and engineers working together. It was appropriate for a neuropathologist to refer to biomechanical matters in assisting the court on whether or not a particular mechanism of injury was a likely cause of the brain injury. They drew attention to the number of biomechanical studies which had been authored by experts from different disciplines, medical, engineering and even in some cases legal, including one co authored by Professor Smith, a GMC witness. Dr Squier, too, had collaborated with biomechanical experts in the past.
72. There was considerable evidence supporting Dr Squier's general expertise in the field of NAHI. I quote four of the more striking ones. Dr Bonshek, who was called for the GMC, testified:

Q. "Would you accept, whether you agree with her all the time or none of the time, that Dr Squier is an expert in shaking baby syndrome or whatever you would like to describe it as?"

A. "In that Dr Squier has produced a considerable volume of literature on the topic and has, obviously, spent a lot of time thinking about it, considering it and studying it, then, yes."

73. In similar vein Dr Geddes, a defence witness, said:

"I think Dr Squier has acquired extraordinary skill in particular paediatric neuropathology and a number of other areas and she does have the added advantage, which I do not, of considerable clinical expertise in the field."

74. Professor Guthkeltch wrote in a testimonial for Dr Squier:

"I am surprised and puzzled by the allegation that Dr. Squier transgressed the boundaries of her area of expertise, if transgression of these boundaries is a punishable offence then these should be clearly defined. The boundaries are a matter of individual opinion and they will change with the continuing advance of relevant knowledge. Yesterday's abstruse deduction is tomorrow's obvious consequence. These boundaries are artificial and

subjective. The field of knowledge of an expert, whether in art or science, is not bounded by a rigid fence. Personal experience has taught me that an active doctor who takes a scholarly approach to his or her specialty finds that sphere of knowledge changes literally from day to day. This applies to Dr Squier too.”

75. Professor Thiblin, in answer to a suggestion that she should not have given evidence in F & L because there was no pathological material for her to assess said:

Q. “Is your view that in this case, whilst she may not have been entitled to give evidence as a Neuropathologist, because there was no neuropathology to speak about, she was entitled to give evidence as an abusive head trauma expert?”

A. “Yes, that is my point of view.”

76. I attach as Schedule One a summary of some of the evidence of the defence experts on the issue of Dr Squier’s expertise. Clearly it was substantial, but none of it was ever mentioned in the DOF.

The Tribunal’s decision on expertise

77. The Tribunal concluded that Dr Squier was not qualified in any field other than neuropathology. This is made clear at paragraphs 63 – 72.

“It is not disputed that your expertise is in the field of neuropathology and was acquired by qualification, study and experience.

The tribunal has been informed of your clinical background. In his closing submissions Sir Robert argued that there was overlap between the fields of expertise; in particular, that other experts had referred to biomechanical concepts.

The tribunal accepted Ms Cheetham’s opinion that expert evidence should not be given outside the field of expertise. The tribunal concluded that, whilst some overlap of expertise might occur, it was essential if that occurred that a doctor deferred to the expert into whose field of expertise he/she had strayed. In terms of biomechanics the tribunal was of the view that other experts’ comments were general enough that they were not purporting to be experts in biomechanics.

Biomechanics

The tribunal noted that you asserted in giving evidence to criminal and family courts that you were not an expert in biomechanics. Whilst Dr Van Ee said that you were entitled to give opinion evidence in his area of expertise, the tribunal disagreed. Although you had published one peer reviewed paper in which you discussed biomechanics, you had sought Dr Van Ee’s opinion on its content. You have had no training in biomechanics; you have not been active in the area of biomechanics; you have not been required to undertake CPD in biomechanics; nor have you been registered by anybody as qualified in biomechanics. Biomechanics is not

part of your daily practice. The tribunal therefore concluded that you are not an expert in biomechanics.

Paediatric Neurosurgery

The tribunal has noted that your CV does not contain a qualification in relation to paediatric neurosurgery. Whilst you worked in paediatrics in 1974/75, you cannot be said to be an expert in paediatric neurosurgery. You have had no training in paediatric neurosurgery; you have not been active in the area of paediatric neurosurgery; you have not been required to undertake CPD in paediatric neurosurgery; nor have you been registered by anybody as qualified in paediatric neurosurgery. Paediatric neurosurgery is not part of your daily practice. The tribunal therefore concluded that you are not an expert in paediatric neurosurgery.

Paediatric Medicine

The tribunal noted that your CV contains a qualification in relation to paediatric medicine. It is aware that you worked in paediatrics in 1974/75 and that you have attended multi-disciplinary team meetings in which paediatric medicine was discussed. However, your experience was over 40 years ago and simply attending meetings cannot confer expertise. You have not been active in the area of paediatric medicine; you have not been required to undertake CPD in paediatric medicine; nor have you been registered by anybody as qualified in paediatric medicine. Paediatric medicine is not part of your daily practice. The tribunal therefore concluded that you are not an expert in paediatric medicine.

Neuroradiology

The tribunal has noted that your CV does not contain a qualification in relation to neuroradiology. You have had no training in neuroradiology; you have not been active in the area of neuroradiology; you have not been required to undertake CPD in neuroradiology, nor have you been registered by anybody as qualified in neuroradiology. Neuroradiology is not part of your daily practice. The tribunal therefore concluded that you are not an expert in neuroradiology.

Ophthalmic pathology and/or ophthalmology

The tribunal has noted that your CV does not contain a qualification in relation to ophthalmic pathology and/or ophthalmology. You have had no training in ophthalmic pathology and/or ophthalmology; you have not been active in the area of ophthalmic pathology and/or ophthalmology; you have not been required to undertake CPD in ophthalmic pathology and/or ophthalmology, nor have you been registered by anybody as qualified in ophthalmic pathology and/or ophthalmology. Ophthalmic pathology and/or ophthalmology is not part of your daily practice. The tribunal therefore concluded that you are not an expert in ophthalmic pathology and/or ophthalmology.

Forensic Medicine

The tribunal has noted that you are not a forensic pathologist. Whilst you have carried out some post mortems, you have not carried out any post mortems on children for over thirty years. You do not have Home Office accreditation although the tribunal understands that this is required for this field of expertise. The tribunal therefore concluded that you are not an expert in forensic medicine.

Post mortem pathology

The tribunal has noted that you have carried out post-mortems on adults but not on children for over thirty years. The tribunal therefore concluded that you cannot be judged to be an expert in post mortem pathology.”

78. In coming to these conclusions the Tribunal made no attempt to marshal the evidence and arguments on both sides. It simply accepted without any explanation the arguments of the prosecution, ignoring those of the defendant and all the expert evidence mustered by the defence as to the scope of her expertise (see Schedule One). The Tribunal did not even mention Dr Squier’s many publications relating to NAHI and the wide range of commentators and judges who have found them credible.
79. Anybody reading the DOF in ignorance of the evidence the Tribunal had heard would probably not realise that there was even a dispute about Dr Squier’s expertise, save in the case of biomechanics.
80. I commend to the reader the excellent articles by Michael Powers QC and Nicholas Binney demonstrating that the Tribunal simply ignored the long-established legal rules empowering courts to determine who is properly qualified to give expert evidence (Mr Powers) and that some of its findings on the extent of Dr Squier’s expertise are palpably absurd and self-contradictory (Mr Binney at pages 16 - 18 of his article).

Dismissing all the expert evidence called by the defence as partial or outdated

81. The GMC called four experts and the defence five. At paragraph. 19 – 24 the Tribunal had this to say about the GMC experts.

“Dr Richard Bonshek (Consultant Ophthalmic Pathologist, Manchester Royal Eye Hospital and Manchester Royal Infirmary, Manchester University Hospital NHS Foundation Trust)

Dr Bonshek trained in histopathology and neuropathology before becoming a consultant ophthalmic pathologist in Manchester in 1992.

“Sir Robert submitted that Dr Bonshek could be biased because he was an adherent to the majority opinion in terms of abusive head trauma (AHT). However, the tribunal considered that Dr Bonshek was very experienced in his field. His evidence was considered, and at times cautious. He was very measured in his approach when criticising you. He understood the duties of an expert and the appropriate use of literature. The tribunal was of the view that his evidence was consistent, independent and credible.

Professor Rupert Anthony Risdon (Emeritus Professor, Consultant Paediatric and Home Office accredited Forensic Pathologist)

The tribunal noted that Professor Risdon's role included working as a Home Office pathologist, and he had undergone Home Office accreditation. In this role he was responsible for taking an overarching view of all the experts' evidence. The tribunal was of the view that Professor Risdon could at times come across as forthright, giving the impression that he may be dismissive of ideas that are not the mainstream opinion of AHT. However, the tribunal considered that Professor Risdon gave clear explanations and strived for objectivity in his evidence. In the round, the tribunal considered that Professor Risdon was credible, and gave an unbiased account to the tribunal.

Dr Neil Stoodley (Consultant Neuroradiologist, Southmead Hospital, North Bristol NHS Trust)

Sir Robert submitted that Dr Stoodley had been biased against you as he held the majority view. However, the tribunal noted that in cross-examination Dr Stoodley made appropriate concessions. The tribunal considered Dr Stoodley to be an honest witness.

The tribunal was of the opinion that Dr Stoodley understood the duties of an expert and the appropriate use of literature. The tribunal considered that Dr Stoodley was credible and gave clear and informative evidence.

Professor Colin Smith (Professor of Neuropathology, University of Edinburgh)

Sir Robert submitted that Professor Smith had shown bias because his opinions were opposed to yours. However, the tribunal considered that Professor Smith had been scrupulously objective in his report and evidence. He had expressed doubts to the GMC about the suitability of his appointment as an expert Neuropathologist in this hearing, and had declined to give evidence about Oyediran because he had had some peripheral knowledge of the case. The tribunal considered that these factors demonstrated his lack of bias and that all his evidence was credible.”

82. Thus all the GMC experts were treated as reliable, impartial and as having given evidence helpful to the Tribunal. Not so the defence experts of whom the Tribunal said this at paragraphs 34 – 39

“Dr Jennian Geddes (Former Reader in Clinical Neuropathology at Queen Mary, University of London, now retired)

The tribunal considered that Dr Geddes was open and honest and attempted to assist it by answering questions as fairly as possible. The tribunal found Dr Geddes a credible witness in her area of practice, particularly her published research and it was assisted by her dispassionate view of her own research. However, the tribunal noted that she retired in 2003 and had not kept up to date with the literature in her field of expertise; therefore, it was not able to attach much weight to evidence beyond her own research.

Dr Julie Mack, (Assistant Professor of Radiology, Hershey Medical Centre, Pennsylvania)

The tribunal was of the view that much of Dr Mack's report focussed on discrediting Dr Stoodley's reports rather than giving an expert opinion. The tribunal considered that Dr Mack's evidence to it was, at times, evasive, giving long complex answers which lacked objectivity, particularly in relation to research. Indeed, she appeared to be attempting to guess what you were thinking at the time rather than give her own response. The tribunal was of the view that Dr Mack was not an impartial expert, as she showed distinct partisanship towards you. As such, the tribunal did not attach much weight to her evidence.

Professor Bo Erik Ingemar Thiblin, (Professor at the Department of Surgical Sciences, section for Forensic Medicine, Uppsala University, Senior Forensic Pathologist at the Department of Forensic Medicine, Uppsala)

Professor Thiblin has very limited experience of non-accidental head injury in his work as a forensic medical examiner in Sweden, and no experience in the UK courts. It was clear that Professor Thiblin did not believe in the concept of shaken baby syndrome, and his view of the literature was coloured by that. He was critical of the methodology of all the research literature in relation to the subject because of its perceived circularity bias. The tribunal considered that his expert opinion on non-accidental head injury lacked credibility; therefore the tribunal attached limited weight to his evidence.

Professor Philip Luthert, (Professor of Pathology at University College, London)

Professor Luthert had been a neuropathologist prior to training as an ophthalmic pathologist in the mid-nineties. He had given evidence as an expert for some years. In response to questions he gave inconsistent answers which appeared to depend on who asked the questions. This did not assist the tribunal in its deliberations on the facts and it attached limited weight to his evidence.

Dr Chris A. Van Ee, (Principal Engineer: Biomedical and Mechanical Engineering, Design Research Engineering, Novi, Michigan)

Dr Van Ee was very knowledgeable and enthusiastic about biomechanics, his field of expertise. He gave consistent answers with regard to his interpretation of the biomechanical literature. Having described the extensive education and experience that qualified him as an expert in the field, the tribunal was surprised that he appeared to believe that any competent person who read the biomechanical literature could give expert evidence about it in court. This paradox led the tribunal to doubt the credibility of some of his evidence."

83. In a fair and balanced judgment one would expect to find a full explanation as to why (for example) Dr Mack was considered "evasive" and was "not an impartial expert, as she showed distinct partisanship towards you"; why the Tribunal thought that the expert opinion of Professor Thiblin "lacked credibility"; and details of the answers Professor Luthert gave which were inconsistent. This was, I submit, vital for at least three different reasons.

- a. because, without such an explanation, it would not be clear that the Tribunal had properly understood the expert evidence for the defence and had given it the weight that it deserved;

- b. in fairness to the experts. The Tribunal has traduced a number of them by accusing them of partiality and / or unreliability without any proper explanation. Their reputations may be badly affected, but they do not know why. They cannot refute criticisms which are so vague and unsupported by any analysis or example;
- c. so as to avoid either being - or appearing to be - biased

84. Next the allegation of partiality is surely most unfair. It is well known that opinions in this area of medical science are often very polarised. It was inherently likely that the GMC would call witness who favoured the NAHI hypothesis and that the defence would call those who did not or who had doubts about it. But that does not mean that the evidence of anyone on either side should be wholly rejected as biased. It is possible for an expert to hold strong views and still be able to answer questions fairly and impartially. Indeed one of the qualifications to be an expert witness is surely the ability to do just that. So, if Dr Ridson deserved to be considered “objective” even though he “could at times come across as forthright, giving the impression that he may be dismissive of ideas that are not the mainstream opinion of AHT”, why should the Tribunal regard it as a criticism of Professor Thiblin that he “did not believe in the concept of shaken baby syndrome, and his view of the literature was coloured by that”?

85. It is instructive to note the concerns of Professor Smith on the issue of bias or perceived bias. It was in evidence that on 13 June 2012 he had written to the GMC about Dr Squier when approached to be a witness

"Unfortunately even with the little outline you have provided I know who this individual is. As I have publicly spoken on issues related to this doctor's views in this field, I feel I could not approach this in an unbiased way. I'm also sure that any defence the doctor may offer would not accept my assessment as unbiased. We are a very small community and I feel it will be very difficult to find a neuropathologist with expertise in paediatric neurotrauma who can give an unbiased view within the UK." ¹⁷

86. Again, in an e mail to the GMC of 22 September 2015, he said of Professor Risdon "he is firmly of the view that everything is abusive". He was concerned that "the claims made against Dr Squier could equally be made against Prof Risdon (and I'm sure will be)."

87. Dr Mack expressed similar reservations about being called when asked by Mr Kark QC for the GMC whether, as a personal friend of Dr Squier and long standing colleague, she felt that there was a danger of bias. She replied

“This was obviously a discussion I had with Counsel and I thought hard about appearing. Certainly it would have been better for me if I had not appeared at allwe had this conversation multiple times. ...I would have preferred with no insult to the Panel if they could

¹⁷ Cited in the defence general submissions

have gotten a radiologist....The best I can do it to use my experience. It is uncomfortable. I know, and the Tribunal needs to know that I am her friend. I do not hide that. I respect Waney. I am her colleague. I am her friend”.¹⁸

88. So here are two experts, Professor Smith and Dr Mack each of whom frankly acknowledge their discomfort about being witnesses and the possibility of their own bias. Yet one is now publicly accused by the Tribunal of partiality and the other absolved.
89. As to the Tribunal’s suggestion that “much of Dr Mack’s report focussed (*sic*) on discrediting Dr Stoodley’s reports rather than giving an expert opinion” I make it clear that I have not seen the reports of any of the experts in this case. But, as I understand it, Dr Stoodley had been asked by the GMC to report on aspects of Dr. Squier’s conduct: for example on whether she had made proper use of research or had gone beyond her field of expertise. He submitted a report which formed the basis of his evidence and which was in certain respects critical of her. Dr Mack was asked by the defence to comment upon that report. She in turn submitted a report in which she was critical of some of Dr Stoodley’s findings. Given this rather unusual state of affairs, the Tribunal’s apparent view that Dr Stoodley was impartial when he found fault with Dr Squier, but Dr Mack was not impartial when she found fault with him, surely has no weight at all without citation of evidence for that view.
90. The highly pejorative suggestion that Professor Luthert “gave inconsistent answers which appeared to depend on who asked the questions” could well cut both ways. For example, an impartial expert might, when cross examined, abandon or qualify a point he had earlier made because the cross examiner demonstrated that he had made an error or drew attention to some feature of the evidence which the witness had missed or did not know.
91. One might have thought that the Professor’s views would have been of particular interest to the Tribunal, given that he was qualified both as a neuropathologist and an ophthalmic pathologist and had been called in a number of cases for the prosecution. Indeed, as the defence noted in their final submissions, he had first been approached to be a witness by the GMC who had abandoned the idea of calling him, perhaps because he had expressed views favourable in some respects to Dr Squier.
92. Again it is hard to understand the Tribunal’s doubts about the credibility of Dr van Ee. They seem to be based on the “paradox” that, although he himself had undergone long training, he appeared to believe that one did not need training in biomechanics in order to be able to express an opinion about its literature. But, as Mr Binney trenchantly argues (at page 4 of his article)
- “Why did the panel find that this expert’s opinion was paradoxical, as opposed to being (for instance) indicative of a view that although his research requires considerable expertise to carry out, it produces results that are much simpler to understand?”
93. Moreover the Tribunal had not heard from any biomechanical expert on behalf of the GMC. For all one knows such an expert might have agreed with Dr van Ee on this point. Their view only makes

¹⁸ Cited in the GMC submissions Schedule of Extracts

sense if one assumes that a biomechanical expert called for the GMC would have disagreed with Dr van Ee and that (s)he would have been indisputably right so to do. No unbiased person could make such an assumption.

94. What perturbs me most about the DOF on this aspect is the Tribunal's willingness publicly to criticise well known experts without any analysis – or even presentation – of the evidence which led it to do so. Take, for example, the suggestion that Dr Mack was “lacking in objectivity in regards to research”. Dr Mack herself has researched and published extensively on NAHI related issues. The Tribunal's attack on her attitude to research may seriously damage her credibility and that of papers she has written or co authored, which the Tribunal cannot possibly have read and probably does not even know about. Her CV shows that she has written or collaborated in the writing of 21 papers. They include six papers relating to the pathology of the dura and the meninges. Her collaborators for those six were Dr Squier in five and various combinations of other authors. For all the Tribunal knows those publications are immaculately researched and objectively presented.
95. In my view to treat expert witnesses in this way is a disgrace.

The Tribunal taking sides in the medical controversy

96. The Tribunal states at paragraph 54 that it is “fully aware that it is not empanelled to determine either the relevance of the triad to AHT or who was right in the cases before it”. Yet some of its criticisms of defence experts imply that it does accept the Triad hypothesis. The defence evidence was discounted because (inter alia) in the case of Thiblin he “did not believe in the concept of shaken baby syndrome, and his view of the literature was coloured by that” and in the case of Mack because she strongly disagreed with Dr Stoodley and attacked his views.
97. The Tribunal's apparent view that experts who doubt the Triad theory are less credible than those who support it must imply that the Tribunal supports that theory. After all, the Tribunal did not dismiss the evidence of Dr Risdon as biased because he strongly supports it.
98. If one follows through the logic of the criticism there could never be any worthwhile debate on NAHI because those who doubted it could always be dismissed as not impartial.

Omitting all reference to the defence expert evidence save where it favoured the GMC case

99. The reader will recall that HH David Pearl wrote to the *Guardian*
- “During the course of a hearing both the GMC and the doctor can call evidence from expert medical witnesses to assist the tribunal in understanding issues relevant to a case. All such evidence is taken into account and thoroughly considered by tribunals when making a decision.”
100. I submit that it is clear that the Tribunal failed miserably to “thoroughly consider” or even to “take into account” the evidence of the defence medical witnesses.

101. First, even if the Tribunal was right to say that a number of the defence experts were not impartial, their evidence might still be of great importance. Insofar as they agreed with the views of Dr Squier, their evidence went to the question whether those views were responsible and – even if they were not – whether Dr Squier was honest in professing them. Yet the Tribunal never referred to their evidence on that point.
102. Secondly Dr Geddes was the one defence expert whom the Tribunal was prepared to regard as impartial. Her evidence, for example, on the scope of Dr Squier’s expertise and her integrity, should surely have been regarded as important even though she had retired over ten years ago. Yet the Tribunal never mentioned her evidence on those points.
103. Thirdly in order to present salient points from the defence expert evidence the Tribunal had only to “cut and paste” the submissions of the parties. Throughout the DOF the Tribunal summarised or quoted the expert evidence called by the GMC. Yet that called by Dr Squier is barely mentioned. It has been almost entirely omitted.
104. But not quite wholly omitted: the evidence of defence experts is mentioned where the Tribunal believed that it favoured the GMC case. I have done a very simple test. I have searched in “Word” for the name of each defence expert witness in order to see whether (s)he receives a mention in the DOF after the general comments on his / her evidence at paragraphs 34 – 39. Three are not mentioned at all: Dr Geddes, Dr Mack and Professor Luthert. The Tribunal mentions the evidence of Dr Van Ee five times as reinforcing the GMC case on the interpretation of certain papers (paragraph. 79, 136 – 37, 141 – 42, 199, 216) and that of Professor Thiblin is mentioned once, again where arguably it supported the GMC case, in this instance on whether Dr Squier was entitled to comment on choking (at paragraph. 330).
105. Of course if the Tribunal was correct in its view that those two experts had given evidence which in part contradicted Dr Squier’s case, then surely that very fact was surely powerful evidence that they were not biased. When these experts supported Dr Squier, their testimony received not a word.
106. To any lawyer and (I would suggest) to anyone with a sense of justice this approach to expert evidence is simply unfair and wrong in principle. It demonstrates a woeful failure to weigh the evidence on both sides. It means that wherever a defence expert testified favourably to Dr Squier that evidence has been discounted, but without any analysis and virtually without mention. The experts who have been publicly criticised as being biased are left high and dry – they do not know the specific points on which their testimony has been rejected. The impact upon their reputations and careers could be very serious.
107. Finally the Tribunal has “cherry-picked” those parts of the evidence of two experts which it believed supported the GMC case.

Omitting almost all the evidence of and arguments on behalf of Dr Squier

108. This brings us to the Tribunal’s treatment of Dr Squier’s own evidence. I have compiled a schedule (Schedule Two) which sets out all references made by the Tribunal to the evidence which Dr Squier

actually gave. At paragraph 30 it summarised matters on which it believed she had lied or been evasive (see schedule p1). It is not clear why the Tribunal found that she had lied about an incident in the operation theatre. Again the Tribunal said that it was “unable to accept large tracts of your evidence” but without giving any indication as to what they were. Three examples were given of evasiveness although the description the Tribunal gave might easily have been found consistent with temporary forgetfulness or confusion.

109. Pages 2 – 5 of my schedule demonstrate at a glance the minimal reference to her evidence seeking to refute specific charges. I have put into brackets passages where the Tribunal notes that she made a formal admission of the obvious (e.g. that she had in fact made reports and given evidence) or where it notes that she conceded that she understood the relevant literature. These cannot realistically be considered part of her defence. If one excludes those bracketed passages then one can readily calculate the number of references to her evidence refuting each set of charges as follows.

Case	Dr Squier’s evidence refuting the charges	Pages of closing submissions
Case of O and F	eight references	144
Case of F & L	one reference	49
Case of F G and H	no reference at all	55
Case of S	four references	?
Case of S, C and ors	two references	51
Case of Oyediran	two references	14
Re G	two references	13

110. So in all but two cases the number of references to her case in the DOF is within the range of nought – two. The highest number is eight. There is not even a general summary of her defence. Given that she was in the witness box for eight days, this is simply derisory.
111. Column three shows further evidence of an apparent failure to consider the defence. It shows the number of pages of the defence closing submissions made in each case, save for that of S where I have not seen them. Those submissions were not skeletal. They were fully argued out in writing. They contained copious quotations from the transcript of Dr Squier’s evidence and that of her witnesses. Dr Squier had also made a very lengthy written statement in answer to the charges.
112. I do not suggest that the Tribunal should laboriously have set out every piece of evidence or argument supporting the defence. Summarising the main points and giving details of the features of

the defence case which it considered important with appropriate citations from the transcript would have been enough. Here the minimal reference to the defence case and the evidence given to support it give rise to concern that it was almost completely disregarded.

Paying scant regard to exceptional evidence of good character

113. The Tribunal summarised character evidence as follows:

“The tribunal heard from several character witnesses as well as being provided with a bundle of testimonials.

Ms Anne Winyard, (Solicitor, Leigh Day & Co of Priory House)

The tribunal considered Ms Winyard to be an honest witness; however, it was of the view that her evidence appeared to be a little rehearsed, particularly in relation to her words about the “*gold standard*” of neuropathology versus neuroradiology. This phrase was one the tribunal heard you using on several occasions.

Mr Michael Birnbaum, QC (Barrister, 9-11 Bell Yard Chambers, London)

The tribunal considered that at times Mr Birnbaum appeared somewhat vague. It believed that he lacked some credibility.

Dr Richard Newton, (Consultant in Child and Adolescent Neurology, Royal Manchester Children’s Hospital)

Dr Newton gave testimonial evidence in support of you and appeared to be an honest and credible witness.

Lord Walton, (Former Warden of Green College Oxford, Professor of Neurology)

The tribunal considered that Lord Walton was an honest witness, and his evidence, which was historical, was limited to probity.

Mr Philip Havers, QC (Barrister, One Crown Office, London)

Mr Havers gave testimonial evidence in support of you and appeared to be an honest and credible witness.

Ms Louise Shorter, (Journalist, Inside Justice)

The tribunal considered Ms Shorter to be an honest and credible witness, who stated that in her personal experience of you, she considered you to be honest, conscientious and professional in your work.”

114. The Tribunal sought to denigrate or downplay some of the live character evidence. I say no more about the apparent slur on my reputation. There is another example. Ms Ann Winyard is a distinguished solicitor specialising in clinical negligence claims involving serious disability or death. The Tribunal accepted her honesty but took a swipe at her, the implication perhaps being

that because she and Dr Squier had used the same phrase there had been some collusion between them (“a little rehearsed”).

115. The Tribunal gave no detail or even hint about what might be contained in the “bundle of testimonials”. The defence submissions cited testimonials of 41 character witnesses, including a former President of the International Society of Neuropathology, a former President of the GMC, other senior colleagues in neuropathology, neurology and pathology working in leading hospitals and universities in the UK, USA, Canada, Sweden, Holland, Belgium, Switzerland and Australia, senior members of the Bar and other lawyers and coroners. On that basis, the defence submitted that the scope of her achievements, and the breadth of national and international support and respect she enjoyed were exceptional. There was overwhelming evidence that she enjoyed a national and international reputation for scientific rigour, objectivity, probity and dedication to establishing the truth, based on the evidence. Her work went far beyond working as an expert witness and extended to an active and highly respected clinical and academic research practice. She was widely respected for being a thought leader in the field of AHT from a neuropathological perspective. Her views were respected even by those who did not agree with her on every point. Her copious published research was widely recognised and accepted.
116. It is hard to imagine that any doctor could muster a more powerful collection of character and competence references.
117. One would expect a Tribunal whose members wished to be fair to a defendant to give a proper and fair summary of the character evidence as a whole. This Tribunal did not do so. Instead the Tribunal’s technique was to resort to the mantra “The tribunal has considered the positive testimonial evidence provided on your behalf” whenever it made a finding of dishonesty against Dr Squier (paragraphs. 187, 242, 309, 396, 498, 570, 639 and 686). It remains quite unclear how the Tribunal “considered” the character evidence and what weight it gave to that evidence, but for the reasons set forth herein the mantra appears empty.
118. Moreover the Tribunal grossly understated the effect of the overwhelming good character evidence. At paragraph. 28 it stated:

“The tribunal is in no doubt that you have been a person of good character and have not acted dishonestly in the past. This is confirmed by a large number of witnesses.”

119. The implication is that before Dr Squier changed her views on NAHI she was honest and that defence evidence had confirmed this. Indeed the reference to Lord Walton’s evidence as probity being “historical” gives the same impression: in other words “here is someone who used to be honest”. However this is plainly not the case, as is confirmed by the Tribunal’s decision on sanction where at paragraph 19 they said:

“The tribunal has taken account of the fact that it has no evidence that you have been dishonest in your work as a neuropathologist outside the court environment. Indeed it has many testimonials from practitioners who testify that you have been scrupulously

honest in such work. The tribunal has also taken into account that the last instance of dishonesty in the courts was over six years ago. However, set against this you gave dishonest evidence in the course of this hearing.”

120. It is very hard to fathom the Tribunal’s view of Dr Squier’s honesty. Did they conclude that she was scrupulously honest when writing reports of her findings in the laboratory, but dishonest when writing them for the courts? Did they imagine her as a forensic Dr Jekyll who, when she took off her white coat, magically morphed into Ms. Hyde?

A formulaic approach. Confusing error and dishonesty.

121. At paragraph 51 the Tribunal wrote

“Cross Admissibility. The Legal Assessor advised that if the tribunal was to find that you have been misleading, irresponsible, deliberately misleading or dishonest in relation to one paragraph the tribunal could take this into account when deciding other similar paragraphs. The tribunal accepted the Legal Assessor’s advice; however, it did not adopt this approach when reaching its decisions and considered each paragraph on its merits.” (emphasis supplied).

122. This is a key passage in the judgment for two reasons. First of all it means that the Tribunal was disclaiming reliance on “similar fact reasoning”. This is the sort of reasoning we invoke when we say for example “it’s all too much of a coincidence. If the bookkeeper failed to record the petty cash once or even twice I could make allowances. But eight times in only twelve weeks is too much to swallow. He was dishonest”. Secondly a moment’s reflection shows that what the Tribunal claimed to have done would have been a massive exercise, assuming that it meant by “the merits” a meticulous analysis of the facts of each case. This would have involved, where the allegation was irresponsible behaviour, a careful analysis for each allegation of (for example)

- how far Dr Squier had strayed beyond her expertise;
- whether she had done so only briefly or repeatedly or materially;
- where she was said to have “cherry-picked” literature a comparison of the different interpretations of that literature, advanced by the parties including all experts called for the defence;
- her explanation for acting as she did.

123. Where the allegation was one of being deliberately misleading or dishonest the Tribunal would have had to consider issues of the kind identified in paragraph 58 above including of course Dr Squier’s own state of mind in respect of each charge.

124. But, since the Tribunal cited so little of the defence case it could not possibly have approached the case in this way, unless one imagines that its members spent long days poring over the transcripts and arguments, but without recording in the DOF more than the extreme tip of an iceberg of study and analysis.
125. I describe the reasoning in the DOF as “formulaic” because the Tribunal repeatedly invoked a very limited repertoire of stock arguments in order to support its findings against her. These arguments were of two kinds:
- a. those that were used to make findings of acting irresponsibly and
 - b. those that were used to explain why the conduct judged to be irresponsible must also have been deliberately misleading and dishonest.
126. As to acting irresponsibly the Tribunal’s approach was this. First having defined her field of expertise narrowly it ruled that whenever she had given an opinion outside that field she had been irresponsible. Secondly on the allegations of misusing evidence or literature it always accepted the views of the GMC experts as to how that evidence or literature should be interpreted and its significance to the case it was considering. It then found her use of the evidence or literature to have been irresponsible, without any apparent regard to the principle it acknowledged at paragraph. 600 that “it is perfectly reasonable for two experts to have a difference of opinion”.
127. Of course there is a chasm between being irresponsible and being deliberately misleading or dishonest. The Tribunal bridged the chasm with leaps of logic demonstrating confusion between mere mistake, misinterpretation or obstinacy by Dr Squier on the one hand and dishonesty on the other.

The case of O & F. The Family Proceedings

128. I will illustrate this pattern of formulaic and faulty reasoning in relation to the family proceedings in O & F. This was a complex case in which there were allegations of going outside expertise in respect of three disciplines; making assertions insufficiently founded on the evidence in relation to unilateral bleeding of the brain and the misuse of seven papers.
129. Nicholas Binney in his article at pages 8 - 13 demonstrates that it is not even possible for the informed reader who reads the DOF attentively to work out what argument Dr Squier had advanced. He argues cogently that on the Tribunal’s presentation of the facts and issues it may even be that her arguments in respect of a number of the scientific papers were perfectly correct.
130. In this section I address a different point, namely the pattern and consistency of the reasoning. My quotations from the DOF are set out with emphasis supplied. The reader may find it helpful to look at the DOF the better to follow the Tribunal’s reasoning and my criticisms. For the

purposes of my argument it is not necessary to understand the detail of the facts or anything about the content of any of the papers.

131. At paras. 78 – 83; 84 – 88 and 90 - 95 the Tribunal considered whether the opinion she provided was “based in the field” of biomechanics, ophthalmic pathology or ophthalmology and paediatric neurosurgery and found that, in each case, it was. It accepted the evidence of the GMC experts and (in the case of biomechanics) Dr Van Ee.

132. Then at paras 96 – 107 it considered whether her opinion that the sdh was unilateral was sufficiently based on the evidence. Here I accept that the Tribunal made some attempt to analyse the GMC’s evidence, but with only very limited reference to the defence case. It found the allegation proved. However the terms in which it did so suggest that it treated an arguably obstinate failure to change her mind rather than dishonesty when advancing her theory – see paragraph 107:

“The tribunal has determined that, based on the reports available to you, there was insufficient evidence to assert that there was a left sided unilateral subdural hemorrhage in support of your opinion that the brain injuries caused to this child could have resulted from a low fall. You made reference in your report to scans showing unilateral subdural hemorrhage when in fact only one scan might possibly have shown a unilateral bleed, and you continued with this assertion a number of times when giving evidence in court. You told this tribunal that “scans” in your report was merely a typographical error which it finds hard to believe.”

133. The Tribunal then considered the allegations relating to each of seven papers. As to the paper by *Vinchon* it concluded at paragraph. 112 – 114:

“The tribunal has noted that Vinchon recognises the possibility of circularity bias. You have used this possibility as a reason to ignore the authors’ conclusions.

The tribunal has determined that even if the injuries are looked at individually as you suggested was intended, Vinchon does not support your contention that the brain injury or the retinal hemorrhages in this case could have been caused by a low fall as you described.

The tribunal has determined that you have cherry-picked the literature. Professor Smith, Dr Bonshek and Dr Stoodley consider that you misrepresented the findings of Vinchon albeit they recognised there was a circularity bias. The research paper did not support your opinion in the way you wished it to. The tribunal has accepted the evidence of Professor Smith, Dr Bonshek and Dr Stoodley in relation to this matter.”

134. There are two obvious points here. First the tribunal yokes together two very different concepts. If the literature “did not support” her view then Dr Squier was at worst irresponsible in relying on it and may have indulged in wishful thinking. But to say that she “ignored” and

“cherry-picked” and “misrepresented” may suggest dishonesty. Secondly if parts of the article were circular as the GMC apparently accepted then might this not be very good reason for “ignoring” those parts? Mr Binney addresses this problem more fully at pages 13 –14 of his article.

135. As to the paper by *Hoskote* the Tribunal stated at paragraph. 120:

“The tribunal was told that in relation to Hoskote there had been no fatal outcomes or retinal hemorrhages. In your report you concluded that this literature supported your contention that this child suffered its injuries as a result of a low fall. This is not the case according to Professor Smith and Dr Stoodley. The tribunal has accepted their evidence.

136. As to the paper by *Greenes and Schutzman* the Tribunal stated at paragraph. 126:

“The tribunal is aware that the cases in this paper were occult cases with no visible signs of injury; they were not serious intracranial injuries and were not fatal. Your report suggested that this literature supported your contention that this child suffered its fatal injuries as a result of a low fall. This is not the case according to Professor Smith and Dr Stoodley. The tribunal has accepted their evidence.”

137. As to the paper by *Christian* the Tribunal stated at paragraph. 132:

“The tribunal has accepted Dr Bonshek’s opinion of this paper. Your report suggests that this literature supported your contention that this child suffered its fatal injuries as a result of a low fall. This is not the case according to Professor Smith and Dr Bonshek. The tribunal has accepted their evidence.”

138. As to the paper by *Duhaime* the Tribunal stated at paras. 136 – 7:

“ The tribunal concluded that you had completely misinterpreted what Duhaime had actually said and that your view and analysis of this paper was incorrect according to the biomechanical expert Dr Van Ee.

From your report it appears that this literature supported your contention that this child suffered its injuries as a result of a low fall rather than inflicted injury. This is not the case according to Dr Van Ee. The tribunal has accepted his evidence.”

139. As to the paper by *Cory and Jones* the Tribunal stated at paras 141 – 2:

“The tribunal concluded that your view and analysis of this paper was not correct according to the biomechanical expert Dr Van Ee. “

“From your report it appears that this literature supported your contention that this child suffered its injuries as a result of a low fall rather than inflicted injury. This is not the case.”

140. As to the paper by *Arbogast KB et al* the Tribunal stated at paragraph. 149:

“The tribunal has determined that you misrepresented the authors’ conclusion by using extracts from the paper to support your opinion. Whilst the paper does describe lucid intervals in children it does not support your opinion that the injuries in this case were caused accidentally.”

141. So the Tribunal’s view of these seven papers is that in five of them Dr Squier’s view of what the paper meant was “not the case” or “incorrect”. Indeed in one case (*Duhaime*) they said in terms that she had “completely misinterpreted” the paper, which is the antithesis of dishonesty. In regard to the *Vinchon* paper, where there was in any case a circularity bias, the Tribunal’s view as to her honesty was rather ambiguous. The one case where there was arguably an unambiguous suggestion of dishonesty was *Arbogast* (“misrepresented”).

142. The Tribunal then considered whether she had failed to work within the limits of her competence. It found that she had so failed by providing evidence with regard to biomechanics, ophthalmic pathology or ophthalmology and paediatric neurosurgery and lucid intervals (paras 152 and 161), but not when she had expressed views about sdh. (paras. 155 and 157). At paragraph. 157 it stated:

“The Tribunal has determined that it was within your level of competence as a neuropathologist to provide evidence in relation to subdural hemorrhages. Whilst you misused the papers outlined at paragraphs 2c (i - iv), it was within your level of competence to provide an opinion on these papers.”

143. The papers referred to in this finding are the six on low level falls. I suggest that in this paragraph the “misused” cannot have carried any implication of dishonesty. I say that because it surely cannot be within the “level of competence” of any doctor to be dishonest in the use and citation of literature.

144. There is of course another view to be taken of paragraph 157 – that the Tribunal was simply getting itself into a muddle. On this view the Tribunal failed to think carefully enough about whether a finding that she had acted “within her level of competence” in regard to the use of particular literature would be consistent with a finding that she used it dishonestly.

145. The Tribunal then turned to charges of failing to be objective and failing to pay due regard to the views of Mr Richards and Dr Bonshek, both of whom she had “challenged” and found those charges proved (see paragraph 169).

146. So one might think that, with the possible exception of the papers by *Vinchon* and *Arbogast* the Tribunal was going to find that her conduct was no more than irresponsible, because they were the only two cases in which it had used language suggestive of possible dishonesty.

Leaping the chasm

147. It is important to note that, with only two exceptions, the Tribunal had now found all the charges of failing to discharge her duties as an expert proved. Any of the acts and omissions the Tribunal had found proved might be said to be “irresponsible” depending on the circumstances. But how did the Tribunal leap from findings that she had failed in her duties as an expert to findings that those failures were all “misleading”, “deliberately misleading” and “dishonest”?
148. One should remind oneself that the Tribunal then had to consider whether any of these failures was (to quote the wording of the charges)
- a. misleading
 - b. irresponsible
 - c. deliberately misleading
 - d. dishonest
 - e. likely to bring the reputation of the medical profession into disrepute
149. One might think that these qualities are listed in the wrong order. Surely “irresponsible” should come before “misleading” and “deliberately misleading”. Nonetheless the Tribunal considered “misleading” first at paragraph 172 – 174:

“172. Anybody who gives expert evidence outside their field of expertise is bound to be misleading because the recipient of such information will take it to be within their expertise.

173. The tribunal has already noted that you appeared to ignore the conclusion made by Dr Saunders in her reports dated 8 November 2007 and 1 February 2008 that the CT scan had shown a bilateral subdural hemorrhage. Despite this conclusion you asserted in your report dated 9 June 2008 and in your evidence on 24 June 2008 that a low level fall had caused the injuries to Baby ‘A’ and that there was a left sided unilateral subdural hemorrhage. You made firm statements with regard to this matter.

174. The tribunal noted that the assertions you made in relation to lucid intervals were contrary to the opinion of Dr Richards and were outside your field of expertise they were therefore misleading.

175. The tribunal noted that your use of literature research papers did not support your clinical opinion in the manner which you suggested in your report or in your oral evidence to the court. Such misuse of literature is by definition misleading.”

150. Much of this makes little sense. As to paragraph 172: if a doctor pretends to be a brain surgeon when in fact he is just a GP, an innocent “recipient” will take it that when he talks about brain surgery he is within his field of expertise. The recipient is “misled”. But there was no evidence that Dr Squier had ever pretended to be an expert in fields other than that of neuropathology¹⁹. If, having made it clear that she was not (for example) a biomechanical expert, she had strayed into giving evidence which only such an expert could properly give, she might at worst have behaved irresponsibly and therefore unprofessionally. But to say that such evidence “is bound to be misleading” begs the question “misleading about what?”
151. Para 174 is incoherent: for Dr Squier to disagree with Dr Richards (who rejected the theory that baby A had sustained a lucid interval) may or may not have been irresponsible; but how can it have been misleading? The Tribunal leaps this small chasm by asserting that it was “outside your field of expertise and therefore misleading” but that of course brings us straight back to its confused argument at paragraph. 172.
152. As to paragraph. 175: in relation to literature the Tribunal moves from the neutral word “use” to the more pejorative ”misuse”. It then says that such misuse is “by definition misleading”. But is it? If in this opinion I have cited a case for a legal proposition which it does not support, I have made an error. My “use” of that authority was wrong. Some might say that I “misused” it. But would anyone say that I had been “misleading”?
153. The Tribunal then found at paragraphs 177 – 180 that giving evidence and using literature outside her field of expertise was irresponsible. Whether one agrees with it or not, this is at least a coherent argument. That is more than can be said for paragraphs 182 – 184, where the Tribunal purported to address the crucial question whether what Dr Squier did was “deliberately misleading”.

“182. Whilst you stated several times in court that you were not, for example, a biomechanics expert, you persisted in giving evidence in this and other fields outside your field of expertise in order to support your opinion. Such actions must have been deliberate.

1.The tribunal has already concluded that you had the evidence of Dr Saunders that a bilateral subdural hemorrhage was shown on the CT scan. You deliberately chose to assert otherwise and adopted Dr Jeans’ report that it was a left-sided unilateral subdural hemorrhage.

¹⁹ The Tribunal had of course already stated at para. 66 “that you asserted in giving evidence to criminal and family courts that you were not an expert in biomechanics.”

182. You told the tribunal that you understood the research literature. Your misuse of the literature by cherry-picking elements to support your opinion and choosing to use literature outside your field of expertise can only have been deliberately misleading.”

154. First the Tribunal, by accepting at paragraph 182 that Dr Squier had stated several times in court that she was not “for example a biomechanics expert”, undermined its paragraph 172 argument that to give evidence outside one’s expertise is misleading because the “recipient of such information will take it to be within their expertise”.
155. Secondly these three paragraphs betray an elementary confusion of thought between that which is deliberate and that which is “deliberately misleading”. Of course Dr Squier decided (or “chose”) to give certain evidence and to cite certain literature. Her actions were deliberate. But, if anything she said or wrote was wrong to the point of being misleading, then it could only have been “deliberately misleading” if she intended to mislead. So the allegations in paragraphs 182 and 184 that she “persisted in giving evidence in this and other fields outside your field of expertise” and of “choosing to use literature outside your field of expertise” are beside the point. They do not advance the case that she did anything that was deliberately misleading.
156. Thirdly the phrase “you told the tribunal that you understood the research literature” is one which the Tribunal uses repeatedly to explain its reasoning²⁰. But it is a barren point, since it is clear at every turn in this case that Dr Squier and the GMC witnesses differed in their interpretation of much of the literature. Both Dr Squier and her critics on the GMC side “understood the research literature” but they disagreed as to its implications. The Tribunal’s argument only makes sense if rephrased as follows:

“you said in your opinion and evidence to the courts that the literature meant “X” but the GMC witness say that it meant “Y”. You knew that they were right. Therefore you understood the literature, but you deliberately misrepresented it”.

But the Tribunal’s findings come nowhere near meeting this exacting test for being “deliberately misleading”.

157. Paragraph 183 moves into a different territory. The argument seems to be that she knew perfectly well that the bleeding was bilateral, but chose to assert otherwise. If this is what she did, then her actions would have been deliberately misleading in the sense that she was trying to hide the truth. However if this was what the Tribunal meant then it was going further than the views expressed at paragraph. 107.
158. Again part of paragraph 184 appears to make a similar finding: the Tribunal says that she “cherry-picked” literature. This appears to mean that she selected the excerpts from publications appearing to support her views, but omitted others that she knew would not. But if so, then, as I have demonstrated, the Tribunal did not seem to think that she had done that, save

²⁰ See also the example at paragraphs 195 – 196 below.

(perhaps) in regard to the articles by *Vinchon* and *Arbogast*. The Tribunal's confusion of thought appears very clearly in the last sentence of paragraph 184:

“.....cherry-picking elements to support your opinion and choosing to use literature outside your field of expertise can only have been deliberately misleading.”

“Cherry-picking” may be deliberately misleading. Merely “choosing” to use literature outside one's field of expertise is not.

Dishonesty. Disregarding the way the GMC had put the case.

159. One should note what the Tribunal meant by “dishonest”. At DOF paragraph 50 the Tribunal wrote

“In considering the issue of dishonesty the tribunal accepted the advice of the Legal Assessor who stated:

“In relation to dishonesty I remind you that the GMC submitted that you should only consider dishonesty if you have found anything to be deliberately misleading. In order to decide whether the GMC has proved that Dr Squier was acting dishonestly you should apply the following test:

You must first of all decide whether, on the balance of probabilities, what Dr Squier did was dishonest by the ordinary standards of reasonable and honest doctors. If it was not dishonest by those standards, that is the end of the matter and the GMC has failed to prove dishonesty.

If you conclude that it was dishonest by those standards you can only find that Dr Squier was dishonest if you decide that it was more likely than not that she realised at the time that what he was doing was, by those standards, dishonest whether she personally regarded it as dishonest or not.”

160. There has been some controversy about what the word “dishonest” means in disciplinary proceedings²¹. I will assume that the Tribunal's definition was correct. But it is plainly a definition which the Tribunal was obliged to apply carefully to the facts of each charge.

161. The Tribunal purported to apply this test to the facts of O & F at paras 186 – 190.

“186. In considering the issue of dishonesty the tribunal accepted the advice of the Legal Assessor.

187. The tribunal has considered the positive testimonial evidence provided on your behalf.

²¹ See *Kirschner v General Dental Council* [2015] EWHC 1377

188. Deliberately giving expert evidence outside your field of expertise would be considered dishonest by honest and reasonable doctors. As an experienced expert witness, you knew the standards required of you, and you must also have realised that you were being dishonest.

189. It was submitted on your behalf that you pore over clinical records in your preparation of reports and that you are “punctilious” in this regard. Nevertheless you deliberately concluded that there was a left-sided unilateral subdural hemorrhage, contradicting the expert reports of Dr Saunders. Ignoring evidence in this way would be considered dishonest by reasonable and honest doctors. You must also have realised that you were being dishonest.

190. The tribunal has previously determined that you understood the research literature. Being deliberately misleading in your use of this literature would have been viewed as being dishonest by reasonable and honest doctors. You must also have known that your use of literature was dishonest.”

162. The words I have underlined demonstrate that the Tribunal’s approach was again by rote and formulaic, rather than based on careful study of evidence. The GMC had to prove that Dr Squier’s conduct was dishonest by the standards of reasonable and honest doctors and that she knew that it was dishonest by those standards. The repetition of the mantra “you must have known that (what you did) was dishonest” cannot be a substitute for an analysis of evidence which demonstrates such knowledge on the balance of probabilities in regard to each offence.

163. In the words of Mr Justice Foskett

“At the end of the day, no one should be found to have been dishonest on a side wind or by some kind of default setting in the mechanism of the inquiry. It is an issue that must be articulated, addressed and adjudged head-on”²².

164. This was not even how Mr Kark QC put the allegation. In his closing address he suggested that Dr Squier had tried to appear to possess a skill and knowledge that she did not have when she must have known that, had she stayed within her own expertise, her conclusions were not supported and so would be unpersuasive. This, if it could be proved, might be a basis for dishonesty, since it involves a pretence. However, although logical, the argument was very weak evidentially, because there was no evidence that Dr Squier ever pretended to be an expert in a field other than neuropathology and frequently she had said that she was not.

165. Early on in the DOF the Tribunal seemed to have had such a test in mind. At paragraph 65 it dealt with a defence argument as to biomechanics that other experts not qualified in that field had given evidence about it by saying “In terms of biomechanics the tribunal was of the view that other experts’ comments were general enough that they were not purporting to be experts in biomechanics.” (emphasis supplied). Had the Tribunal continued to apply this test then it would

²² In *Fish v GMC* [2012] EWCA 1269 (Admin)

surely have had to acquit Dr Squier of dishonesty in regard to going outside her field of expertise, since she had never “purported” to be an expert in a field outside her own.

166. However, it found against her by applying the quite different test in DOF paragraph 188. That test contains no element of pretence at all. Rather it renders her guilty of dishonesty merely for having strayed outside her own field.
167. It is a serious legal error for a court or tribunal to apply a test of guilt other than that advanced by the prosecution. In the field of criminal law there is ample authority for the proposition that a Judge who contemplates leaving the case to a jury on a basis other than that advanced by the prosecution should alert those representing the parties and seek their views before doing so²³. I submit that a disciplinary tribunal considering multiple allegations of dishonesty must be under the same obligation. I assume that the Tribunal did not do this, since otherwise counsel would surely have sought to dissuade them from adopting what was in effect a strict liability test.

Strict Liability for straying beyond expertise. Rendering good character irrelevant and speculative reasoning

168. This is no lawyer’s quibble. By ignoring the way the GMC put the case the Tribunal has blundered into treating an offence of dishonesty as if it were one of strict liability. Strict liability means that the prosecution do not need to prove a guilty mind in order to prove guilt. So an offence of failing to submit a tax return by a particular date is an offence of strict liability, if there is no legal requirement to prove an intention to default. On the other hand an offence of falsifying a tax return, by definition, requires proof of a guilty mind.

The notion of strict liability for an offence of dishonesty is obviously a contradiction in terms. But, once the Tribunal made a finding of going beyond expertise, there was effectively no defence at all since (in its view) all reasonable and honest doctors would regard such conduct as dishonest and Dr Squier “must have known” that that was the case. That is strict liability.

169. Next the contention that to stray beyond medical expertise when giving evidence is per se dishonest reinforces the point that good character has been discounted. If that contention is correct, then no evidence of good character could defeat it. Good character becomes irrelevant if the straying medical expert is by definition dishonest.
170. Again the Tribunal’s formula is speculative and unsupported by any evidence. Surely no honest and reasonable doctor would say that to give any evidence beyond one’s field of expertise was necessarily dishonest. S(he) would surely want to know “how much evidence?” – “what exactly did the doctor say and what was being asked?” – “did anybody protest at what the doctor did and if so did the doctor persist?” etc. etc.
171. Then the Tribunal’s argument assumes that a field of expertise can be precisely defined and assumes that all doctors would define the field of (say) neuropathology in exactly the same way. It ignores the fact that Dr Squier did not agree with the GMC case or the Tribunal’s findings as

²³ See for example *Falconner – Atlee* 58 Cr. App. R 348

to what her expertise was. She claimed that at all times she thought she was entitled to give evidence in the way that she did as an expert. Nobody seems to have suggested that she did not honestly hold this belief.

172. Finally the Tribunal's argument ignored the evidence of the defence experts, insofar as they considered that she was entitled to give evidence outside her own field. Were they not among the "honest and reasonable doctors" whose views as to what was honest the Tribunal claimed to understand and apply?

Going beyond expertise and dishonesty: apparently ignoring prosecution evidence

173. One might have expected the Tribunal at least to recognize that there was some GMC evidence in favour of Dr Squier on this issue. The defence relied on evidence that Dr Bonshek had supported Dr Squier's right to express her views, even where he thought that she was going outside her expertise in so doing. He said this in regard to use of literature generally:

Q. "We will look up some of this literature, but when you say "your analysis reveals a slightly different picture", are you saying more than that you and Dr Squier appear to have a professional disagreement in terms of the judgment as to the value of this literature and the meaning of it?"

A. "I think it is fair to say that there is a difference in opinion in terms of the interpretation of that literature."

Q. "Would you accept that in so far as Dr Squier holds a different opinion to you, she is entitled to it? It is a legitimate opinion even if you disagree with it. Do you see the point I am making?"

A. "Yes. People are entitled to have different opinions and minority views are a good thing in a sense in that they challenge one to consider one's own view and that is only a good thing."

Q. "That is particularly so, is it not, in a field like this where there are very few people who are sufficiently informed about it to have an opinion?"

A. "Yes."

174. Dr Bonshek said in regard to her use of the *Vinchon* paper in O & F:

Q. "In your report which we looked at you raised certain issues which you said were not mentioned by Dr Squier. You put those forward as, as it were, contrary arguments, I suppose, to what she said. I am sorry, what she said the significance of the article was."

A. "There were additional features within the articles not highlighted by Dr Squier in her report at that time."

Q. "But were they matters which all those familiar with this literature would have been aware of?"

A. "I do not know. Basically I was thinking of eye pathology, eye findings and the reports which she had cited, which included eye findings, so it was a matter of amplifying for information purposes."

Q. "Thank you. In terms of the proposition which she put in her report which was that low level falls can cause serious intracranial injury, you agree it was legitimate to refer to this article for that purpose."

A. "Yes."

175. Dr Bonshek accepted that Dr Squier was entitled to point to the *Christian* paper for support for the statement she was making even if he disagreed with it. His criticism of the use of that paper was that the "the outcomes for the children involved were benign basically and in terms of the retinal hemorrhages which they suffered, they were not of a serious or extensive nature." He was asked

Q. "I understand with respect your disagreement, but she is entitled, is she not, to point to this article for support for the statement she makes even if you disagree with it?"

A. "Yes."

Going beyond expertise and dishonesty: apparently ignoring Court of Appeal decisions

176. At DOF paragraph. 56 the Tribunal quite properly quoted a passage from paragraph. 70 of *Harris and others* to the effect that the Triad hypothesis was a "strong pointer" to NAHI. The Tribunal had only to read on 13 paragraphs more and it would have found that in *Harris* five doctors gave evidence about biomechanics even though they were not trained in the discipline:

83. Dr Squier referred to the "huge amount of evidence about the biomechanics" of shaking which had caused her to revise her views on the diagnosis of shaking.

84. Dr Geddes stated that belief that thin film subdural hemorrhages were caused by the rupture of bridging veins was "biomechanically exceptionally unlikely". She relied upon biomechanical research to support the view that shaking on its own cannot cause subdural hemorrhages and retinal hemorrhages without also significant structural damage to the neck and probably also a degree of axonal injury.

85. Dr Plunkett stressed the importance of understanding the mechanics of injury.

86. Dr Adams, referring to biomechanical research hemorrhage considered that shaking was an improbable direct cause of retinal hemorrhage.

87. Mr Richards warned that, however good the biomechanical calculations may be, they do not always appear to give an answer that is common sense. He went on to stress that limits of current knowledge and understanding:

"Nobody really knows whether, when you shake a child, it is just back and forth or there is rotation as well. What does the head do? Does it decelerate against the back? Does it decelerate against the chin? When you put the child down, there must be an element of deceleration. It is a complex problem."

88. Of course none of the witnesses who gave evidence in the appeal was themselves an expert in biomechanics. Such were the number of references to biomechanics during the early days of the hearing that it became inevitable that some direct expert evidence on the subject was required. To that end the appellants filed a report by Dr Thibault and the Crown filed a report by Dr Gina Bertocci..." (emphasis supplied)

177. As I understand it, Dr Richards is a neurosurgeon with a speciality in paediatrics, Dr Plunkett is a forensic pathologist and Dr Rorke Adams is a neuropathologist. The Court did not criticise any of the five experts for giving evidence relating to biomechanics.

178. In particular Dr Geddes, whom the Tribunal described as honest, gave evidence in *Harris and others* of just the kind which the Tribunal condemned as dishonest when given by Dr Squier.

179. In my statement to the Tribunal I referred to two cases in which I had relied on the evidence of Dr Squier. One of them was *Paul Gallagher* and the other *JHB*²⁴. In my statement I said of the *Gallagher* case that at the trial:

"All the experts for the prosecution opined (in accordance with generally accepted medical theory) that the baby had been shaken and that G's account of a low level fall whilst he tried to feed was most unlikely to explain the fatal injuries. The defence expert instructed for the trial ultimately concurred in this view. Some years after G's conviction, three experts - two for the defence and one for the Crown - agreed that his explanation was viable. One of them was Dr Squier. The Crown agreed with my submission that the conviction should be quashed. A retrial was ordered at which they accepted a plea of guilty to manslaughter by gross negligence. Had Dr Squier been consulted by the defence at the trial, an unjust conviction for murder might have been averted."

180. I referred to *Gallagher* in some detail during my oral evidence. As to *JHB*, I had said this in my statement:

"In *JHB* I and those instructing me were acting pro bono on appeal for a young man who had been convicted of attempting to murder his seven-week-old child. Again it was a case where the trial lawyers had not been able to call expert evidence to controvert that called by the Crown. Dr Squier prepared a report which summarised

²⁴ See *Paul Gallagher* [2008] EWCA Crim 1941 and *JHB* [2014] EWCA Crim 2529

recent literature on lucid intervals following severe injury, a topic which we believed had been overlooked at the trial. She agreed to do this pro bono and generously gave us a great deal of her time, even though she was by then heavily engaged in preparing her defence to the disciplinary charges.”

181. By the time I gave evidence in January 2015 the Court had dismissed JHB’s application for permission to appeal on the basis that, even if Dr Squier was right, it would not have made a difference to the jury’s verdict. In my oral evidence I made this clear and also referred albeit only very briefly to another case where she had given evidence about lucid intervals, that of *Lee Carter*²⁵.
182. The latter case is striking because five experts gave evidence about lucid intervals – two pathologists, one neurosurgeon and two neuropathologists of whom Dr Squier was one. The Court said of the five experts:
- “Discussion between these experts prior to the hearing of the appeal on the direction of the court had significantly narrowed the issues. We would wish to observe that in respect of the evidence of each, it was given with very considerable professionalism and in a completely impartial and detached manner.”
183. In the light of these authorities I am simply baffled that the Court found that Dr Squier must have known that she was being dishonest when she gave evidence in respect of biomechanics, low level falls and lucid intervals. Had the Tribunal failed to notice that in *Harris* five experts not qualified in biomechanics had given evidence about it? Had it forgotten *Gallagher*?
184. Ironically Dr Squier gave evidence about lucid intervals in *S, C & ors* on 3 February 2010 after she had given evidence on that topic in *Lee Carter* and had been commended by the Court of Appeal for the professionalism with which she had done so.

Dishonesty by numbers.

185. One can readily discern the Tribunal applying its formulaic approach in the rest of the DOF. Perhaps the most striking example is their application to the criminal trial relating to O & F. The charges against Dr Squier were far fewer than those for the family proceedings. Charge 5 (a) related to her giving expert opinion on low level falls in the field of biomechanics. Charge 5 (b) alleged that she purported to rely on the papers of *Christian, Duhaime* and *Cory and Jones*.
186. Readers may recall that the Tribunal had said of Dr Squier’s interpretation of these papers that it was not the case and / or incorrect and that she had “completely misinterpreted” *Duhaime*. How, they may wonder, did the Tribunal find dishonesty in regard to the criminal case? The answer is apparent from a few moments’ study of paragraphs 194 – 247. The Tribunal concluded that:

²⁵ [2009] EWCA Crim 1739

- as to expertise: she had admitted that her evidence related to biomechanics and the Tribunal had already found that this was outwith her expertise (at paragraph 197);
- *Christian* “did not support your opinion in the way that you wished it to”. The Tribunal had accepted the evidence of Smith and Bonshek on that point (at paragraph 203);
- Van Ee did not agree that *Duhaime* supported her contention of a low level fall. It had accepted his evidence on that point (at paragraph 206);
- the Tribunal had accepted the evidence of Van Ee and Smith that *Cory and Jones* “did not support your proposition in the way you suggested (at paragraph 210);
- as to level of competence she was within it when she gave evidence about sdh but not when she gave evidence “on the subject of biomechanics” (at paragraphs 216 – 17);
- she was not objective and unbiased (at paragraphs 222 and 225).

187. At paragraph 227 the Tribunal stated that, as she was not an expert in biomechanics she should not have given evidence in that field. At paragraphs 228 – 229 it effectively repeated paragraph 172 and added a finding which again muddled “misinterpreting” and “misleading” and introduced the allegation that she had “ignored” *Cory and Jones*:

“It has also previously determined that anybody who gives expert evidence outside their field of expertise is bound to be misleading because the recipient of such information will take it to be within their expertise.

The tribunal has determined that you misinterpreted the findings of Duhaime and ignored the conclusions of Cory and Jones and also went on to provide an opinion on biomechanics which was outside your field of expertise and was therefore misleading.”

188. Then at paragraph 231 the Tribunal noted that the three cases described in *Christian* were not comparable to that of baby A and found that she “misquoted” from the other two papers. That was “by definition misleading”. At paragraph 234 – 5 it found that her evidence in the field of biomechanics was irresponsible.

189. At paragraph 238 – 239 it once again confused the deliberate and the deliberately misleading and introduced the suggestion of “cherry-picking”:

“Whilst you knew that you were not a biomechanics expert you persisted in giving evidence in this field in order to support your opinion by citing Duhaime and Cory and Jones. This action must have been deliberate.

You told the tribunal that you understood the research literature. Your misuse of the literature by cherry-picking elements to support your opinion and choosing to use literature outside your field of expertise can only have been deliberately misleading.”

190. With that suggestion the Tribunal was close to a finding of dishonesty which it reached by the simple method of repeating paragraphs 186 – 188 and 190 at paragraphs 241 – 244 with a few changes of wording.
191. In this way activities which the Tribunal first described without any hint that they were dishonest (giving evidence in the field of biomechanics and citing three articles for the propositions they did not support) were characterised as dishonest, but without any evidence to show that they were.
192. One can find similar examples throughout the DOF. A very striking example is the repetition of the same formulae to establish “deliberately misleading” and dishonesty in regard to straying outside her expertise. First expressed at paragraphs 172 and 191 they are then repeated throughout the judgment. For ease of reference I will quote them again

172 “Anybody who gives expert evidence outside their field of expertise is bound to be misleading because the recipient of such information will take it to be within their expertise.”

.....

191 “Deliberately giving expert evidence outside your field of expertise would be considered dishonest by honest and reasonable doctors. As an experienced expert witness, you knew the standards required of you, and you must also have realised that you were being dishonest.”

193. Paragraph 172 is repeated in 6 further passages (at paragraphs 228, 295, 364, 471, 557 and 626). Likewise paragraph 191 is repeated in 6 further passages (at paragraphs 188, 243, 316, 377, 491, 571 and 640).
194. Thus the approach to the issue of dishonesty in each of these seven instances is entirely formulaic. No attempt is made to consider whether the circumstances of each case justify a finding of dishonesty because the Tribunal assumes that any expert who deliberately strayed beyond his / her field of expertise must have intended to mislead and must have been dishonest.
195. Finally I draw attention to what was perhaps the high point of absurdity in the DOF. This relates to the case of S, C and ors. At paragraph. 636 the Tribunal stated:
- “You told the tribunal that you understood the research literature. You misused Friede and misinterpreted Arbogast and Oemichen. Your misuse of the literature can only have been deliberately misleading.”
196. Once again the Tribunal did not explain how misinterpreting two articles could be deliberately misleading. In any case, if she “misinterpreted” those two articles then she plainly did not “understand the research literature”. This should have led the Tribunal to consider whether her misunderstanding could possibly have been dishonest. They had only

to ask themselves if it would make sense to accuse someone of “dishonestly misunderstanding” something. But instead the Tribunal ploughed its familiar furrow and at paragraph 642 felt able to conclude:

“The tribunal has previously determined that you understood the research literature. Using Friede, Arbogast and Oehmichen in the way you did was dishonest. Being deliberately misleading in your use of this literature would have been viewed as dishonest by reasonable and honest doctors. You must also have known that your use of literature was dishonest.”

Ignoring lack of motive

197. One of the most astonishing aspects of this case is that the GMC conceded that they could not think of a motive for Dr Squier to act dishonestly. In closing Mr Kark put it in this way. Dr Squier’s motives might never be clear; but that should not trouble the Tribunal. She clearly changed her attitude after 2003 since when, by her own account, she had not written a report attributing injuries to an assault by shaking either with or without impact. It was possible that she became persuaded that the triad of injuries had an alternative explanation by reason of reading Dr Geddes’s hypothesis in relation to hypoxia and brain bleeding²⁶. But that would not explain her evidence in the low fall cases. Perhaps she was persuaded by what must have been a misreading of the biomechanical literature. However, whether her professed beliefs were genuine was all irrelevant to the Tribunal’s determination. Even if they were in each of these specific cases she put forward evidence in a deliberately misleading and dishonest way. At the very least she acted irresponsibly in each case but the Tribunal would also be entitled to find on the evidence that she had also acted in a deliberately misleading way which would amount to acting dishonestly.

198. Of course there are motiveless crimes. Again sometimes there is overwhelming evidence that X committed a crime for which he must have had a motive of some sort but nobody can identify it. However in this case the suggestion that it did not matter that a motive could not be proved strikes me as absurd. If this world-renowned expert had no motive for dishonesty then that was surely a strong indication that she had not been dishonest. She had after all at one stage been a strong proponent of what was then called “SBS”. She had changed her mind and had professed concern that parents and carers were being convicted and orders made in family courts on the basis of what she thought was unsound scientific theory. She had even acted in a number of cases *pro bono*.

199. These were powerful arguments. Yet there is no indication that the Tribunal even considered the question of motive. It is not mentioned in the DOF and seems to have been dismissed as irrelevant.

²⁶ The hypothesis that as a consequence of trauma the brain is starved of oxygen, which causes it to swell, thereby increasing pressure inside the skull and the leaking of blood into the back of the eye and over the brain

200. The Tribunal made only the briefest of reference to her change of view: “The tribunal notes that your opinion on the mechanisms of AHT changed after the publication of Dr Geddes’s hypotheses” (at paragraph 30). If they were right then she was probably dishonest every time she gave evidence about NAHI – even in the case of *Harris* where she was apparently motivated by a concern that a defendant had been unjustly convicted.
201. There is also this intriguing question: if Dr Squier was acting unprofessionally and dishonestly when she gave evidence controverting the NAHI theory because it was outwith her expertise to do so, then, what of the cases where - years ago - she gave evidence in support of it? On the Tribunal’s ruling, if in any such cases she opined about – for example – a biomechanical issue of a low level fall and went beyond her expertise as strictly defined by the Tribunal – then she must have been dishonest.

The role of the GMC

202. It may be understandable that the GMC decided to refer some aspects of Dr Squier’s conduct to a Tribunal given that four judges had made complaints against her. But none of them had alleged dishonesty. The very fact that the GMC could not think of a motive for dishonesty was surely a very strong reason not to prosecute for offences involving that allegation or of deliberately misleading behaviour. If it was decided to prosecute, then the most appropriate charges given the nature of the allegations were that she had misused literature and / or had made assertions insufficiently founded on the evidence. I do not say that this is what the GMC should have done. But, if she was to be charged here at all, then I cannot understand why more was needed. In my view the GMC went badly wrong in two ways:
203. Firstly, by charging her with going outside her field of expertise in no less than eight disciplines, the GMC put the Tribunal which would have to try the case in the almost impossible position of having to decide how to draw the line between each of those eight and the discipline of neuropathology.
204. Secondly, the allegations of deliberately misleading behaviour and dishonesty were made in a totally indiscriminating way. An allegation of “cherry-picking” may of itself carry some connotation of dishonesty. So, if their case was that she deliberately and systematically misrepresented literature, then to allege dishonesty after careful reflection on the strength of the evidence might have been appropriate. But I do not understand how the GMC and those representing them thought it fair – or even sensible – to allege dishonesty in respect of matters such as failing to defer to other experts or giving evidence beyond her own field of expertise. The fact that allegations of behaviour that was deliberately misleading and dishonest were applied to the whole gamut of failings alleged in this case strongly suggests a failure properly to analyse the evidence.
205. The defence in their final submissions noted that the allegation of dishonesty was a relatively recent one. They pointed out that the GMC had been investigating the matter since April 2010 and yet it first alleged dishonesty in June 2014, over four years later.

206. A possible explanation for the late bringing of charges imputing deliberate misleading and dishonesty across the board would be a desire to bring pressure on Dr Squier to plead guilty to lesser charges. If that was the GMC's motive then, given the number of such charges, the weakness of the evidence and the eminence of Dr Squier, their conduct would have been shameful.
207. In any event, I believe that to bring late allegations of dishonesty on so large a scale with so little support was oppressive.
208. The GMC claims that it does not seek to play any part in the scientific controversy over NAHI and indeed that it wishes to encourage debate. The kindest comment I can make on this claim is that it is naïve and ill considered. Dr Squier is probably the best known expert arguing against NAHI in the world. It would be one thing to prosecute her for errors of judgement in the presentation of her evidence motivated by a desire to avoid injustice. It is quite another to prosecute her for wholesale dishonesty and then to press for her to be struck off.
209. The GMC was running in blinkers if it did not consider how encouraging debate was compatible with requiring an expert in one field to censor the expression of his or her own views in order to avoid a finding of dishonesty for
- a. "straying" into another field and / or
 - b. failing to defer to another expert.

Conclusions on the Conduct of the Tribunal

210. Critical though I have been of the members of the Tribunal, I have considerable sympathy for them in that they had to deal with the problem of the defining of boundaries between numerous disciplines for which they were entirely unequipped.
211. Having said that, I regret to say that the members of the Tribunal seem to have had little or no conception of the need to consider the evidence and contentions of both sides and to explain their reasoning and their decision on each issue in a clear, logical and orderly way. Nor, it seems to me, did they understand what dealing with each charge on its merits entailed.
212. It may be that they were defeated by the detail and complexity of the case. Whether or not that is so they sought to resolve its many problems with simple formulae. They came to a series of decisions, none of which can be regarded as reliable because it is impossible to know whether they paid due regard to the defence and also because their reasoning was often incoherent.
213. Applying the test: "would a fair minded and informed observer having considered the facts conclude that there was a real possibility that the tribunal was biased?" there is ample evidence of apparent bias in the Tribunal's apparent
- favouring of the NAHI theory

- ignoring of defence expert evidence favourable to Dr Squier
- ignoring of most of the defence case.

214. Whether one concludes that the Tribunal was in fact biased seems to me to depend on the extent to which one concludes that its failings were due to prejudice against Dr Squier or rather to ineptitude and / or being overwhelmed by complexity and detail. Having reflected on the DOF for many hours, this is not a matter on which I feel I can fairly express a view.

215. Finally, this is a cold and heartless judgment. There is not a hint of any understanding of the dilemma of a doctor who, believing that a widely held view is unscientific and that it leads to unjust convictions and the destruction of family life, may feel obliged to speak out, whilst seeking to honour the obligations of an expert witness.

Michael Birnbaum QC

Schedule One. A Selection of Defence Experts testimony on Dr Squier's expertise and her competence to address issues outside the field of neuropathology

The boundaries of expertise

Professor Luthert commented on this

Q. "To what extent is that sort of distinction between what you would be, as you put it, comfortable to speak on and what you would not be, a matter of some objective standards or your own opinion?"

A. "It is my own opinion. I think there is an issue - I do not think I did articulate this in my report - in which it is an issue, it is sometimes an issue for an individual expert to come to an opinion as to where the boundary of their expertise rests. So I do not recognise a clear cut objective boundary could be applied to a group of experts."

Dr Geddes said

"I always felt comfortable commenting on clinical features, radiology and treatment of brain tumours and head injury because that is what the neuro science unit at the Royal London did, and I attended all the multidisciplinary meetings; as I knew what I was talking about. But I would not dream of talking about the radiology or the clinical features of children or degenerative brain diseases. The areas on which an expert is qualified to express an opinion vary widely from individual to individual within a speciality. It depends on your career trajectory what skills you acquire - When you get an expert you get the whole expert and you get their experience and they give an opinion."

In cross examination she said

"... expertise is not necessarily just what one learnt in order to become a neuropathologist. All the skills one has acquired along the way through one's practice and from one's colleagues."

Professor Guthkelch said in a written testimonial

"I am surprised and puzzled by the allegation that Dr. Squier transgressed the boundaries of her area of expertise, if transgression of these boundaries is a punishable offence then these should be clearly defined. The boundaries are a matter of individual opinion and they will change with the continuing advance of relevant knowledge. Yesterday's abstruse deduction is tomorrow's obvious consequence. These boundaries are artificial and subjective. The field of knowledge of an expert, whether in art or science, is not bounded by a rigid fence. Personal experience has taught me that an active doctor who takes a scholarly approach to his or her speciality finds that sphere of knowledge changes literally from day to day. This applies to Dr Squier too."

Professor Luthert addressed the multidisciplinary nature of the issues in NAHI cases

Q. "What is it in that context that is unusual about the triad, if I can use the short form?"

A. "I think that it firstly involves predominantly infants, so we are immediately into the paediatric domain, whether it is paediatric neurology or paediatric surgery and so on. It involves the eyes. It involves the brain. It involves the covering of the brain. In many of these instances it involves evidence of trauma elsewhere in the body which may be fractures or bruising and so there may be bone pathologists involved as well as the forensic pathologists who have particular expertise around the interpretation of bruises. So it does seem to me,

although there may well be other instances, a particularly multidisciplinary area of endeavour.”

On the distinction between description and identification of pathology through examination of a patient, a scan, or tissue, and interpretation of such findings with regard to the cause of the pathology, Professor Luthert said

A. "If it helps, there is almost a sense in which one could be an expert in dealing with the tissue and examining the changes and one could be an expert in then the field of alleged abusive head trauma and how retinal haemorrhages might fit into that story.”

Q. “I will come back to the training scheme that you mentioned in a moment. Before we get there, you were asked about whether you would ever challenge or have ever challenged a neuroradiologist's findings and you said you did not think you had. In that answer what did you mean by "findings"?”

A. “The interpretation of abnormalities seen on a scan. For instance, even though I am aware that there can be some difficulties interpreting what may be a high or low signal on an MRI scan, I would not seek to challenge the neuroradiologist what had suggested that a particular abnormality was, let us say, blood or fluid. I would not challenge on that.”

Q. “If a neuroradiologist went on to say that the blood that he interpreted as being on the image had been caused by some particular mechanism, would you feel able to comment on that?”

A. “If I was operating in my erstwhile neuropathology mode, then yes, on the basis that disease and disease mechanism is the province of a pathologist as much as it is clinicians in other specialties.”

Professor Thiblin gave similar evidence

Q. “If a neuroradiologist went on to say that the blood that he interpreted as being on the image had been caused by some particular mechanism, would you feel able to comment on that?”

A. “If I was operating in my erstwhile neuropathology mode, then yes, on the basis that disease and disease mechanism is the province of a pathologist as much as it is clinicians in other specialties.”

He also said

"The neuropathologist is, I would say, the expert's expert. If you call a forensic pathology expert and he or she needs other experts, you call them. If it is about abusive head trauma, then the neuropathologist I would say is the relevant expert. If there are extra cranial injuries, I believe the neuropathologist has to take those into account as well, also the clinical history. Actually you cannot, as I understand, make o

neuropathology diagnosis without taking the total into consideration so I do not know if it is a good answer, but I would say that neuropathology is in my view a relevant area of expertise. In these cases, especially if it is an area of your research; if it is your research area if you are an expert and have a special interest in the matter."³¹

He went on to distinguish between "descriptive diagnosis" and "interpreting":

"It would be very strange if a neuropathologist said, "I do not agree. There are no retinal haemorrhages" or if the radiologist says there is acute subdural right side haematoma in the scan and the neuropathologist said, "Na, it is not. You are wrong". That would be really strange, but I do not think that is the issue. The issue is, you have to rely on the other experts or specialists' descriptive diagnosis. They describe something they see and to see these findings it requires specialist skill and this skill you get from working hands on work in these fields.

The next step, when you go on from describing what you see, that is to interpreting. Interpreting is about aetiology, the cause of the findings. If you have the very same findings at autopsy, you see hundreds of times you have been thinking about considering what is the possible explanation for this subdural bleeding that is exactly the same kind of considerations that you do from the scan. It is the subdural bleeding. It is shown by different techniques but the reasoning about the cause, the aetiology is the same, so that is perfectly fine for anyone who has knowledge in this particular field to base concerns, conclusions on a particular finding, on findings done by others that requires another kind of skill."

Dr Van Ee on biomechanics

"What she writes makes sense to me and I am not sure — I do not see anything wrong with that. I think that that kind of knowledge of biomechanics shows that she has some knowledge of the science and its applicability so I do not see she is stepping outside what she knows. There is no apparent contradictions in what she is writing and in contrast to what Mr Richards writes, that seems like a very naive position on what we know, because if you have to have a living human to inflict an injury upon to understand anything about injury then we would know nothing about injury for anybody today unless we routinely abused people for science' sake, which we do not. It is a very naive position that was taken by Mr Richards. I think Dr Squier comes back and writes in a logical manner, explaining the limitations of why that statement is maybe off."

Dr Van ee was asked about whether neuropathologists "talk about" biomechanics in their expert evidence. He said

"In my experience that is something that a pathologist, neuropathologist, paediatricians, emergency room physicians, biomechanical engineers, even mechanical engineers, I have heard them all discuss things that relate to that topic. That is the point. The science of biomechanics is discussed by many different disciplines but it is also performed by many different disciplines. Not only is it talked about by other groups but it is actually produced by people who are not just engineers; it is produced by clinicians as well. Just because those

areas are delineated as biomechanical topics it does not mean that they are specific to biomechanical engineers. It just means it is biomechanics – that is it; but that is performed by all these different MDs and you can see that by the authors of these papers who actually did these studies, and it is a combination of engineers and physicians.”

A number of witnesses addressed Dr Squier’s right to comment on retinal haemorrhages

Professor Tiblin said

“If a neuropathologist refers to retinal haemorrhages, I assume that these retinal haemorrhages have been described by an ophthalmologist, and then the next step is to interpret what is the cause of these retinal haemorrhages and that cause may well be explained by things that are happening in the skull, in the brain, or in the brain vessels. So the aetiological mechanism or pathophysiology or genesis of these findings, I would say that knowledge in neuropathology is quite relevant because at least a much discussed mechanism is increase in intracranial pressure as a mechanism, and of course knowledge of what happens, what causes intracranial pressures, increased intracranial pressure and the consequences of intracranial pressure, that is really something that is in the area of neuropathology and that goes to retinal haemorrhages. And lucid interval, well, it is the same, lucid interval it has to do with brain pathology and brain pathophysiology, so it seems I have no problems with a neuropathologist discussing these matters.”

Dr Geddes was asked

Q. “You have mentioned several times in that answer the issue around retinal bleeding. To what extent were you as a neuropathologist in a position to comment on that?”

A. “I am entirely competent to comment. What a lot of people do not seem to realise is that certainly the retina develops — it is part of the nervous system and during development it becomes highly specialised so that the study of the retina and the visual apparatus is, of course, a highly specialised field which the ophthalmologists and the ophthalmic pathologists deal with. I certainly would not comment on mechanisms of most pathology in the eye; however, the retinal blood supply is a different matter because the circulation of blood to and from the retina is anatomically and physiologically part of the brain's circulation. So that once an ophthalmologist or an ophthalmic pathologist told me there were retinal haemorrhages it would be entirely within my field of expertise to comment, and I think it is perfectly proper for a neuropathologist to comment on retinal bleeding.”

In cross examination she added

Q. “At page 532 you say that other areas of ocular pathology are within the province of the ophthalmologist and ophthalmic pathologist and it is perfectly reasonable for a neuropathologist to comment on mechanisms of retinal bleeding. In relation to, say, the presence or otherwise of a retinal haemorrhage and its significance, where would you want to leave the matter to the ophthalmic specialist?”

A. “If it was just retinal haemorrhages I would not particularly, but other things affecting the eye I would not dream of commenting on.”

Q. “Would you comment on whether a retinal haemorrhage was present or absent?”

A. “No, of course not because I could not examine the eye. I did say I would need somebody to tell me that one was present – either an ophthalmic pathologist who had examined the retina or an ophthalmologist; but once being told it was present I would feel I was able to comment on it.”

Professor Luthert said

“She has declared that she is not an expert in retinal haemorrhages, but the issue for me – I do not think there is any great mystery or complexity about retinal haemorrhages and the skills, as I tried to articulate, that an ophthalmic pathologist brings is in regard to examining and defining the retinal haemorrhages, but once there is an acceptance that a retinal haemorrhage is present I think it is reasonable for other experts to then comment on retinal haemorrhages in the context of what they are seeing in a similar way to the way in which I would, whilst not being a neuropathologist and would defer to a neuropathologist about the presence or absence of a subdural haemorrhage in a given case, if the court finds that there is a subdural haemorrhage there, then I think for me to comment on the meaning of that in my interpretation of what I see in the eye is appropriate and I do not see that Dr Squier has done anything that is fundamentally different from that in the passage that you have drawn my attention to.”

As to choking **Professor Luthert** said

Q. “You were asked about what you said at page 15 of your report. This is about hypoxia and retinal haemorrhages and so on. This was, in part at least, in the context of a suggestion of choking. My learned friend asked you this, “Choking you said was not something that a neuropathologist dealt with in practice”. You agreed that it was dealt with in clinical practice. Does it follow from that that a neuropathologist cannot comment on choking as a potential cause of brain injury?”

A. “No, it does not, not to my way of thinking.”

Q. “As we, I think saw in the next case, which is Re S, you wrote a report where you yourself discussed choking in that case.”

A. “I did, yes.”

Q. “Where is, if any, the dividing line between a clinician and say a paediatrician and a pathologist in discussing choking as a potential cause of brain injury or something associated with a brain injury?”

A. “I suppose a clinician may be able to provide assistance in terms of what might cause choking, what a choking episode looked like and what the definition of choking might be. I agreed a comment made somewhere in the papers, that perhaps choking is not a helpful word. This is another area where the experts in these cases have succeeded in confusing themselves in the distinction between choking and vomiting and coughing. I think those are the areas

where a clinician who deals with the airway and the things that go wrong with it would be able to offer something that a pathologist could not, but when we come to, as has been said, how these events may then relate, or not, to death or specific pathology in certain organ systems then I think the pathologist's role is central."

Dr Mack addressed Dr Squier's right to address a number of issues. As to deferring she said

Q. "In a case where there was an expert neuroradiological opinion that ought to be deferred to, ought it not, by a non-neuroradiologist?"

A. "In principle, yes. It would very much depend on the case because as I have tried to explain MRI images particularly are essentially photographs of what one sees when one cuts the brain. It is often easier for a neuropathologist to explain to the neuroradiologist what they are seeing, what is going on in that picture that they are looking at. So, on the whole of course I would accept that a neuroradiologist is the expert in their field, but there are times when a neuropathologist can have very helpful input to the neuroradiologist diagnostic process."

With specific regard to the issue of cerebral palsy in A and L she said

"Dr Squier has seen a huge number of cases, I imagine, of brains that have been damaged; children who have survived with cerebral palsy and she would be very aware of the mechanisms of the damage."

And in relation to bleeding

Q. "If it is or was relevant to consider the nature or age of fluids around or in the brain, can a neuropathologist help about that?"

A. "I suppose if it was a question of a chronic subdural or an acute one, a bleed of some sort. I find this extremely difficult to answer not knowing anything about the case and not having read the reports to be honest."

Q. "I understand, but as a matter of general principle, which is obviously, I understand, all that you can deal with."

A. "In principle, given the right sort of case then I cannot see why one should not get involved and indeed assist but it has not happened to me because I have not been involved in those sorts of cases."

Schedule Two. References to the Evidence of Dr Squier in the Determination on the Facts

Re finding of lying / evasiveness at Para. 30

“The tribunal notes that your opinion on the mechanisms of AHT changed after the publication of Dr Geddes’s hypotheses. It found that in your written and oral evidence you were dogmatic, inflexible and unreceptive to any other view. Your determination to pursue your own opinion was such that it led you to make what the tribunal considers to be an outrageous and untruthful assertion before it that you had gone to the operating theatre and, “*asked the surgeon to try and damage the arachnoid; it is extremely difficult*”. The furthest you were prepared to accept any criticism was to state either that you had made a typing error or that you could have been clearer in what you had said in your reports or evidence. The tribunal was not able to accept large tracts of your evidence. Further examples of your evasiveness included:

- In your written statement you said that you did not understand where paragraph 2d of the Allegation came from, but during the course of your oral evidence you admitted that you understood it was Arbogast;

- In oral evidence you stated: “I do not see any mention of a lucid interval” in the case of O & F. On further cross-examination you stated that you were confused, which the tribunal concluded was “incredible”;
- The tribunal noted that, despite the Practice Direction Expert in Family Proceedings relating to children you stated that you were unsure whether you had received feedback following the cases for which you gave expert opinion. The tribunal found this difficult to believe.”

Re Case of O & F Baby A

80	You told the tribunal that other experts had given opinions dependent on biomechanics. You agreed that when you gave such evidence you thought it would be helpful and that you had set out the reasons why with statements and papers.	
92	You told the tribunal a lucid interval is a clinical manifestation of the brain not functioning completely normally, so during a lucid interval the child may appear to be behaving normally but there may be very minor abnormalities of function, vomiting or irritability or something that is rather subtle. You said that because it is encephalopathy of brain malfunction it is within the province of a neuropathologist to want to understand the pathological basis is for this clinical manifestation.	
106	You told this tribunal that scans in your report was merely a	

	typographical error which it finds hard to believe.	
113	The tribunal has determined that even if the injuries are looked at individually <u>as you suggested was intended</u> , Vinchon does not support your contention that the brain injury or the retinal haemorrhages in this case could have been caused by a low fall as you described	Underlined words refer to her evidence
118	You defended your use of Hoskote by saying that the paper was used to support your initial analysis of the potential of a low fall to have caused subdural haemorrhage in this case.	
123	In evidence to the tribunal you said that that Greenes and Schutzman was used to show that a low level fall could cause subdural haemorrhage in the case of O & F. The child in O&F had injury on admission and a complex series of secondary changes following that. In trying to come to an opinion in this case, you said you were trying to analyse the potential for a low-level fall to cause intracranial injury in a baby of this age.	
129	In your evidence to the tribunal you said that at the time of admission the child in O&F had asymmetrical retinal and subdural haemorrhages, and had also undergone a period of thirty minutes of cardiac arrest. You had quoted Christian because the Shaken Baby Syndrome hypothesis was based on bilateral symmetry of the subdural haemorrhages, so it was unusual that in this case both were on the same side. You maintained that you had simply said that ipsilateral subdural haemorrhage and retinal haemorrhage had been described in accidental household falls.	
146	In your report and in evidence you stated that a study done in 2005 showed that infants under the age of two were far more likely to express a lucid interval than older children and if you look at the structure of the infant brain and skull it makes perfect sense because the infant brain is in a soft skull.	
(148)	(You admitted that the study you had referred (to) was Arbrogast).	In her report Dr Squier had not identified the study
(184) and (239)	(You told the Tribunal that you understood the research literature)	

Case of O & F. Eight references to Dr Squier's evidence refuting the relevant charges.

Re Case of F & L. Baby Y

(253)	(You admitted this paragraph and accordingly the tribunal found it proved.)	That she gave evidence and adopted her reports
255	In your evidence to the tribunal you agreed that brain swelling does not happen after death. Professor Smith opined that the process of brain swelling was not neuropathology.	
(306)	(You told the Tribunal that you understood the research literature)	

Case of F & L. One reference to Dr Squier's evidence refuting the relevant charges.

Re Case of F G & H. Baby A

(319)	(You admitted this paragraph and accordingly the tribunal found it proved).	That she gave evidence and adopted her reports
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Case of F G and H. No reference to Dr Squier’s evidence refuting the relevant charges

Re Case of S. Baby Z

(386)	(You admitted this paragraph and accordingly the tribunal found it proved.)	That she had acted as expert witness
388	You stated to the tribunal that the identification and description of retinal haemorrhages is an ophthalmic or ophthalmic pathology area of expertise. However, you went on to say that the interpretation had to be something which “ <i>all the people from all views</i> ” needed to look at.	Cushing was a paper dealing with 4 cases of birth related sub durals
405 – 6	You were of the opinion that a choking event could have led to hypoxia which could account for the subdural haemorrhage in ‘Z’ and said that this phenomenon had been recognised by	

	<p>Cushing in the early part of the twentieth Century.</p> <p>You stated:</p> <p><i>“I did not intend for this comment here to say that Cushing had discussed the difference between intradural and subdural bleeding because he did not. He did not even use the term subdural bleeding. I was suggesting that the association between hypoxia and subdural bleeding had been pointed out by Cushing.</i></p> <p><i>Q - Cushing in his study, can we just agree on this, was referring only to the bridging veins, was he not?</i></p> <p><i>A -He was referring to the bridging veins as a source of bleeding. That is absolutely right.</i></p> <p><i>Q -That is not what you are talking about here in fact.</i></p> <p><i>A -I am because Cushing said that subdural bleeding could result from asphyxia. He has cited several examples.”</i></p>	
409	<p>According to Professor Smith, Cushing was talking about bleeding from the bridging veins which may itself have the consequence of asphyxia and death, not asphyxia leading to bleeding. You stated that you were not referring to bleeding of the bridging veins because you were referring to bleeding into the dura and from the dura into the subdural compartment.</p>	
426	<p>You provided conflicting evidence on this matter as you stated that you would have provided a pdf version of the research material but on the other hand your paper had not been written up. Additional confusion will have arisen because the paper you described as referring to six cases in fact only covered five.</p>	<p>The charge alleged failure to annex a copy of research material</p>
491	<p>(You told the Tribunal that you understood the research literature)</p>	

Case of S. Four references to Dr Squier’s evidence refuting the relevant charges

Re Case of S, C and Others. Baby AC

(515)	<p>(You admitted this paragraph and accordingly the tribunal found it proved.)</p>	<p>That she had acted as expert witness</p>
533	<p>Your opinion was that there was no cut-off date in the neuropathology when a baby is no longer a new born. You stated: “... <i>I think there is justification for trying to understand the anatomy and physiology of the young infant and apply it to cases of this sort</i>”.</p>	
555	<p>You were entitled to have a different view to that of Dr Harding although you did concede that it was “<i>careless</i>”</p>	<p>This related to a charge which the Tribunal found not proved</p>

	to use Friede in the way you did.	
(567)	(You told the Tribunal that you understood the research literature)	
589	Your opinion was that there was no cut-off date on the neuropathology when a baby is no longer a new born. You stated: “... <i>I think there is justification for trying to understand the anatomy and physiology of the young infant and apply it to cases of this sort</i> ”.	This is the same as the quote at para. 533
(636)	(You told the Tribunal that you understood the research literature)	

S, C and others. Two references to Dr Squier’s evidence refuting the relevant charges because 533 = 589

Re Oyediran. Baby F

651	(You admitted this paragraph and accordingly the tribunal found it proved.)	
656	Neither Professor Bell’s report, nor any of the evidence, provided positive support for your proposition that Baby F may have had HIV encephalitis. It appeared from the evidence (although it was subsequently denied by you) that this suggestion was based on the fact that Baby F’s father was of Nigerian origin.	
662	You told the tribunal that as a scientist you could not exclude a diagnosis that had not been categorically eliminated.	That she had acted as expert witness

Oyediran. Two references to Dr Squier’s evidence refuting the relevant charges.

Re G.

(693)	(You admitted this paragraph and accordingly the tribunal found it proved.)	That she had received a letter from the GMC on 2/12/13 that the allegations had been referred to a Tribunal
696	<p><i>“Q Do you agree that if the Panel were to find that you failed to disclose these proceedings to your solicitor or clients that that would be a dereliction of your responsibility? A Yes, I do.</i></p> <p><i>Q The consequences of failing to disclose your problems might be many and variable, might they not? A That is correct.</i></p>	

	<p><i>Q The first thing might have been if you did disclose your problems, certainly at such an early stage as we have seen, the clients might well have decided that they did not want to use you as an expert?</i></p> <p><i>A That is correct.”</i></p>	
698	<p>In your oral evidence during these proceedings you stated that you were unable to recall whether you told Ms Lauren Sadler, Solicitor, that you were facing disciplinary proceedings before the GMC. You told the tribunal that you “<i>would have said</i>” to Ms Sadler that you had been criticised in the family court and that you would have gone on to say that the GMC were involved. Ms Sadler’s attendance note records ‘<i>problems in the family court</i>’ but no mention is made of the GMC.</p>	

Re G. Two references to Dr Squier’s evidence refuting the relevant charges.