Conference Report

The Savage case: the wider issues

JANE DAWSON

Whoever cast Mrs Wendy Savage in the role of Lady Macbeth sorely misjudged the audience reaction. Her suspension a year ago after the competence of her management of five obstetric cases had been challenged by colleagues led local mothers, general practitioners, midwives, and a clique of toddlers in pushchairs to call for her reinstatement. When the Medical Defence Union refused to accept Mrs Savage's choice of solicitors an appeal fund was set up to pay for her legal representation. The union has now agreed to meet her costs for the NHS tribunal, estimated at £100 000. The £50 000 currently in the fund will be banked to meet further legal costs if Mrs Savage is not reinstated at The London Hospital.

The case has given the press a name to conjure with and a cause célèbre that has been accorded sympathetic full page spreads in the quality Sunday papers. Reports of the conduct of the recent five week HM(61)112 tribunal have appeared in the *British Medical Journal* and the *Lancet*. Mrs Savage must wait until at least July to learn its decision.

On Saturday 22 March the Forum on Maternity and the Newborn, a multidisciplinary group of the Royal Society of Medicine, met to discuss whether the sad events of the past year, which had occurred in a negative, critical, and destructive atmosphere, could lead to any positive gains and what steps could be taken to ensure that a similar situation would not arise again.

The background

Mrs Savage told an audience in which her support groups were strongly represented that she had learnt a lot from being suspended—not all of it negative. She believes that loyalty to patients takes precedence over loyalty to colleagues and that it is not good for students to be taught that there is only one line of clinical management. The head of an academic department is not necessarily senior in terms of clinical practice.

Mrs Savage itemised the events leading up to her suspension. These included the "hidden agenda" for the HM(61)112 procedure, which resulted in the district medical officer, who was technically in charge of the procedure, first telling her that an inquiry was to take place in a letter that informed her of her immediate suspension. She was concerned about the ethics of the patients' notes being taken by colleagues for review by the regional assessor, Mr Gordon Bourne, without her knowledge and about not being informed of the inquiry until a *prima facie* case had been established.

The view that the whole affair "charged on under its own momentum like a juggernaut" after the initial complaint had been made, thus preventing a settlement, is not one to which Mrs Savage subscribes. She feels "shattered, stunned, and outraged" and is prepared to fight every inch of the way.

Dr Tony Jewell, a general practitioner, TUC member of the Tower Hamlets District Health Authority, and chairman of the

Savage appeal fund, asserted that the size (five consultants) of the division of obstetrics and gynaecology at The London Hospital was crucial to the development of the case. Interpersonal disputes within such a small team could not be resolved internally because there was no one of sufficient stature who was distant from the controversy to arbitrate. The case should have been resolved early on and informally within the medical college. The ordinary system of employment law, in which verbal, written, and final warnings must be worked through, should, said Dr Jewell, apply to NHS consultants. He deplored the fact that in Mrs Savage's case it took six months to establish a *prima facie* case and that her rapid suspension "precipitated consequences that we will live to regret." Members of the Tower Hamlets DHA were informed about the suspension only after it had happened. The case, which was of overriding public interest, had dislocated relationships between local general practitioners and obstetricians and called accepted practices into question.

Establishing criteria for care

Describing the NHS inquiry as hamstrung because it could not be seen as a credible attempt to see whether Mrs Savage was competent, Dr Iain Chalmers, director of the National Perinatal Epidemiology Unit at the Radcliffe Infirmary, Oxford, said that adjudication between alternative medical opinions demanded a formal scientific comparison. The mothers' views had also to be taken into account.

Dr Nick Black, senior lecturer in community medicine at the London School of Hygiene and Tropical Medicine, emphasised the need for systematic objective appraisal of obstetric practice to establish the boundaries of acceptable care. The decision to intervene was not always a clinical one: many of the large differences in obstetric practice between countries and over time do not appear to affect perinatal mortality. He advocated the educational value of peer review and self assessment within hospitals so that experiences could be compared. The spirit of such activities had been damaged by the conduct of the Savage case, in which peer review had been based on the opinions of two or three people, a process that he said was only 60% reliable (reliability of 95% requires 28 peers). Dr Black advocated randomised controlled trials to establish the usefulness of obstetric practices. Where such trials were not practicable the outcomes of naturally occurring experiments could be used to examine the results of different practices.

Professor Margaret Stacey of the department of sociology, University of Warwick, spoke warmly of the knowledge that women as a group had of childbirth and how this had become increasingly discounted with the medicalisation of delivery. The ultimate authority now lay with the doctor, who was usually a man and who concentrated on the baby, ignoring the importance of the experience of childbirth to women, many of whom saw the process as the ultimate sexual experience. She saw Mrs Savage as "struggling to admit the experiential dimension to biomedical knowledge." A mother's refusal to have active management of labour probably exposed her child to fewer risks than a drive down the motorway

with father at the wheel, she said. It was not just mortality and morbidity rates that counted, happiness rates were important too, and many women were becoming increasingly articulate about their dissatisfaction with active management of labour.

In the discussion that followed a visitor from the World Health Organisation was well received when she agreed that the dilemma of establishing appropriate care was not being handled properly but said that there were no clear cut solutions. She saw the Savage case as being symbolic of a growing power shift between a powerful profession and an awakening public. The resolution lay not in legal mechanisms but in social ones.

The process of suspension: a need for reappraisal

Professor B Hepple, a specialist in employment law and industrial relations, speaking as a "complete outsider," contrasted employment practices within the NHS with those of general employment. He could find no clear definition of the grounds for suspension of senior NHS staff members in the terms and conditions of service or the Whitley Council handbook. Thus there seemed to be no express power to suspend, only an implied one that derived from custom and practice.

In the light of the vagueness of the criteria for suspension the procedure leading to suspension must safeguard against abuse—with the doctor being given the opportunity to correct and contradict the evidence. A *prima facie* case of incompetence depended on a continuing state of affairs, not a single act, and the standard was set by what was within the broad limits of acceptable medical practice. This was unlike general employment, where normally the employer's standards were used as a yardstick.

Industrial tribunals normally take 12 weeks to reach a decision. In the NHS suspensions have lasted for four years. Professor Hepple regarded the five week inquiry into the Savage case as being "pretty generous" by the standards of other professions. He recommended that the power to suspend and the grounds for suspension should be spelt out for NHS consultants, that the procedure to be followed should allow the plaintiff to state his or her case, and that there should be a relatively informal, speedy inquiry based on correction rather than punishment.

Dr Rosemary Rue, regional medical officer for the Oxford Health Authority, made the point that for senior medical staff suspension was not a disciplinary measure but rather a device used to remove an individual until a decision was reached. Commonly it was an emergency measure used to prevent harm to patients when doctors had drug or drink problems or an illness.

The outcome might be irrelevant because the process of suspension itself was so damaging to the doctor, and if the disciplinary procedure did not end in dismissal there were great problems of reinstatement and rehabilitation, said Dr Rue. The right of appeal against dismissal to the Secretary of State implied that the original procedure must be thorough and formal. The current HM(61)112 procedure tended to be long, quasilegal, and expensive (each inquiry costs about £¼ million) and was associated with long periods of suspension. It would be more in keeping with modern industrial relations practice for the process of dismissal to be part of an agreement between staff and management that allowed for an "internal" appeal. Employing authorities might be reluctant to resort to the present procedure, which was so cumbersome and expensive. So few medical dismissals occurred that doubt was cast on the validity of the procedure. At present health authorities could not make discretionary severance payments to consultants, but these might enable some consultants to make a fresh start with another NHS authority. At present such a move was extremely difficult.

Professor Stacey agreed with Dr Rue that normal industrial relations practice should apply to health care staff, but this model had its limitations—the patient's view should count too. A midwife from Tower Hamlets warned that "misuse will go on whatever procedures are adopted" and that it was "a question of power," while Beverley Beech of the Association for Improvement in the Maternity Services claimed that doctors usually avoided pursuing allegations of incompetence at all costs.

The moral and ethical dimension

A respect for the patient's autonomy is implicit in any attempts to do her good, and Dr Raanon Gillon, associate director of the Institute of Medical Ethics, saw this concept as being central to the Savage case. Mrs Savage had been trying to increase respect for the patient's autonomy. Dr Gillon saw obstetricians as being "rather ready to override the patient's autonomy." Usually the mother, who held a proxy for the fetus, accepted the advice of her obstetrician, and the only reasons for overriding this proxy were maternal malice or incompetence. Earlier, Mrs Jean Robinson, a lay member of the General Medical Council, had accused some obstetricians of "shroud waving" whenever a proposed intervention was questioned by a mother and had said that ethical management was also the province of lay people.

Dr Gillon also viewed clinical trials as the only way to assess the danger of any practice. This could not be done by selecting a consultant's five worst cases. Self assessment and peer review should be the norm and there was no place for pig headedness and bad temper in medical practice. Dr Gillon seemed to want to knock a few heads together.

Dr Luke Zander, chairman of the forum, expressed grave disquiet about what he saw as the threat to a type of maternity care which he and a growing number of people think is the way forward. Students at The London Hospital had been set a poor example of how to handle professional disagreements.

"The silence of the profession over the Savage case," he said, "has been noteworthy and disturbing." The Royal College of Obstetricians and Gynaecologists seemed more concerned to maintain an appearance of decorum. The Royal Society of Medicine had been ambivalent in its support for this meeting of the forum: it had been thought inappropriate to hold such a gathering before the start of the inquiry. A further attempt to postpone the meeting was withdrawn after "a little discussion." The GMC's contribution had been a comment on the maintenance of confidentiality. Few of the members of the academic board of The London Hospital, members of the Royal College of Obstetricians and Gynaecologists, or district medical officers had attended the forum despite being invited. (A notable exception was the district medical officer for Tower Hamlets Health Authority.)

Dr Zander's views were echoed by others who felt "profound depression about the self satisfied people who have been content to stay in the wings."

MEDICINE AND THE MEDIA

HOW SAD THAT our latest newspaper *Today* should already have resorted to sensationalism in its fight to win readers. On Monday 17 March the paper carried a story on the Bridgwater breathing waistcoat and described it as "a remarkable new development [that] can transform the lives of Down's syndrome children . . . it has helped dozens of children whose parents believed they would never live normal lives." The next day the paper went further and called it a "wonder cure" and boasted that "hundreds of parents reacted with joy yesterday to *Today's* exclusive report . . . and delighted readers called to express their thanks for our heartwarming report."

The Down's Children's Association too was inundated with calls from desperate and confused parents. We had to explain that the treatment may be dangerous for the many children with heart defects and that much of the accelerated development was probably related to the general stimulation that they were receiving concurrently. We were also particularly concerned that the newspaper should suggest that the treatment is desirable as it "disguises" Down's syndrome. We are trying to break down the stigma. We contacted *Today* and asked it to highlight children who had made excellent progress with conventional help. The editors have not responded.—MAGGIE EMSLIE, director, Down's Children's Association, London.