is absent. Another reason given was the technical difficulty of formulating a plan: "the wide ranging nature of our health district prevents any formal written detailed plan"; "a single contingency plan is unhelpful"; "I have personal and professional reservations as to the value of such plans"; "I do not know what you define as a plan"; "we are awaiting further guidance from DHSS"; "we cannot get members of our control of infection committee to agree."

In 1983 laboratories reported 15 168 cases of salmonella and other bacterial food poisoning in England and Wales.² This represents a 20% increase since 1982 and nearly a doubling of the cases reported in 1970. Most of this upward trend is probably real and not just the result of better detection, investigation, and reporting.³ Many of these outbreaks occur in hospitals: of the 191 outbreaks reported in institutions in 1983, 37 (19%) occurred in hospitals.² Hospitals also account for about one third of all reported outbreaks of salmonella poisoning occurring outside the home.⁴ This is important to public health for several reasons—namely, patients, especially the elderly and infants, may suffer considerable morbidity; services may be seriously disrupted; and hospitals may become the focus of infection with strains possessing multiple antibiotic resistance.⁵

Problems in the organisation of the investigation and management of suspected food poisoning in hospitals have been highlighted

previously (Communicable Disease Surveillance Centre, unpublished report) and recently.¹ We therefore reiterate that all health authorities should prepare adequate and up to date plans to ensure that they are capable of dealing with outbreaks of food poisoning effectively and efficiently.

A model outbreak control plan, incorporating the essential components discussed above, is available on request from the authors.

We are grateful to the officers of the health authorities who completed the questionnaire.

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Medicolegal

A "sad and disturbing" case of dismissal of a consultant: DHSS overruled

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A consultant microbiologist removed from his job after a long running dispute over the management of his laboratory broke new ground in the high court last week when he successfully challenged a Department of Health and Social Security decision confirming his dismissal. The case is the first in which judicial review, an increasingly important remedy for challenging official actions, has been used to question the fairness and validity of a decision to dispense with a consultant's services.

Dr Royce Darnell, 56, was dismissed from his post as head of the microbiology laboratory at the Royal Derbyshire Infirmary after a disciplinary inquiry under HM(61)112. After an appeal to a professional committee set up by the DHSS which agreed with the inquiry panel's findings of fault but decided that dismissal was not justified, the Secretary of State for Social Services, Norman Fowler, directed Trent Regional Health Authority to offer Dr Darnell an alternative post without managerial responsibility. When the authority objected that no such post was available the minister confirmed the dismissal. Last week Lord Justice Stephen Brown and Mr Justice McCowan granted Dr Darnell's application for judicial review, declared the Secretary of State's decision invalid and of no effect, and invited him to reconsider it.

Root of dispute in controversy over who runs laboratories

According to the report of the professional committee, the dispute which led to Dr Darnell's suspension in June 1982 had its roots in a nationwide controversy over the management of laboratories and the role of principal medical laboratory scientific officers. When the former Public Health Laboratory Service laboratory was transferred to the area health authority in 1977 Dr Darnell was appointed an NHS consultant microbiologist. As such, he was part of the Derby division of pathology.

Dr Darnell had been told that he would be the nominated budget holder for the laboratory. Later he learnt that the laboratory's budget was to be incorporated into the system of budgeting for the division of pathology, a change which was implemented despite his opposition. Dr Darnell and the principal medical laboratory scientific officer clashed over the procedure for appointing medical laboratory scientific officers. Subsequently the chairman of pathology and administrative staff became involved. In 1980 the area health authority decided to adopt as standard procedure the appointments procedure agreed by the division of pathology. Dr Darnell indicated that he would not be responsible for any appointee selected in this way.

In December 1980 the area health authority forwarded a formal complaint to Trent Regional Health Authority about Dr Darnell's "refusal to comply with the decision of the Derbyshire Area Health Authority concerning appointment procedures for medical laboratory scientific officers." After inquiries by the regional health

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authority's solicitor, the authority suspended Dr Darnell from duty with effect from 25 June 1982 and instituted disciplinary proceedings under HM(61)112.

In a letter dated 30 June 1982 the regional administrator advised Dr Darnell that the principal grounds were his failure to manage the microbiology department; to observe procedures for the appointment of laboratory staff and for budget management including the procurement of equipment and safety in the laboratory; and to cooperate with the division of pathology. Some weeks later Dr Darnell received 12 pages of itemised complaints.

After a six week inquiry in mid-1983 the panel found Dr Darnell at fault in: his relations with the division of pathology; certain aspects of the budget dispute; the dispute over procedures of the appointment of medical laboratory scientific officers; his management of the microbiology department; and two specific matters of complaint relating to safety procedures and practising after the regional health authority had suspended him from duty.

Darnell dismissed

In May 1984 the authority decided to dismiss Dr Darnell with effect from 19 August 1984. He appealed to the Secretary of State under paragraph 190 of the *Terms and Conditions of Service for Hospital Medical and Dental Staff*. The professional committee criticised the authority's handling of the case and expressed concern particularly that the decision to hold an inquiry had been taken without seeking and considering Dr Darnell's comments and that Dr Darnell had not been warned about the possibility of dismissal if he did not mend his ways. It criticised too the long period of suspension and the authority's inaction in the early stages of the dispute over the appointment procedures.

The professional committee decided that in the absence of a warning and an opportunity to correct behaviour the findings of fault made by the panel and the nature of the faults did not justify dismissal. The authority, said the committee, should explore a possible third solution—other than dismissal or reinstatement—agreeable to both parties. This might be to employ Dr Darnell in a non-managerial role as a microbiologist elsewhere in the region.

In October 1985 the Secretary of State directed Trent Regional Health Authority to offer Dr Darnell a consultant microbiologist post without managerial responsibilities elsewhere in the region. The letter added: "If Dr Darnell fails to agree to such an offer, the decision to dismiss is upheld."

The health authority took counsel's advice. (The Department conceded during the high court hearing that the minister had in fact no power to direct the authority to offer Dr Darnell another post). Trent drew up a list of consultant microbiologist posts that showed no likely vacancies before 1996, and representatives of the authority met officials from the Department at the end of January, when they made it clear that there would be no post for Dr Darnell.

Dr Darnell wrote to the DHSS on 7 January 1986 pointing out that he had still not been offered another post. An official replied that information received from the health authority indicated that the third solution might not be a practical proposition. On 14 February the professional committee's report was sent to the health authority. In a letter to the DHSS dated 21 February the regional general manager, Mr Brian Edwards, strongly criticised the professional committee's report as "totally inadequate to the circumstances of this case" and "quite insufficient to reach a proper conclusion on." The letter referred to a telephone conversation earlier that week between Mr Edwards' deputy and the addressee, Mr J A Parker, and concluded: "I can only stress again the points of

concern voiced by Mr Kenny in his recent telephone conversation and look forward to an early resolution to all our problems." In a letter dated the same day Dr Darnell was told that the Secretary of State had decided to confirm the termination of his services by the health authority. An attachment to the letter stated that "the Secretary of State is not bound by the professional committee's advice, and he does not agree with the professional committee's view that the findings do not justify dismissal."

Judgment of the high court

Giving judgment for Dr Darnell, Lord Justice Stephen Brown said that in accepting the role laid down in paragraph 190 the Secretary of State accepted a quasijudicial function. It was vital that there should be confidence in his independence and impartiality, particularly where he was dealing with representations made in the context of a hard fought controversy. It was plain that the health authority was asserting that the Secretary of State's decision was invalid on legal as well as practical grounds and was making serious representations. But Dr Darnell was never made aware of these moves. He was left with the clear impression that the Secretary of State was directing the authority to offer him another post and that this was under consideration. There was no indication in October 1985 or further until the letter of 21 February that the Secretary of State considered that the professional committee was wrong in believing that dismissal was not justified.

Dr Darnell alleged that the alteration might well have been brought about by pressure by the regional health authority. His lordship said that he was given the clear impression that Dr Darnell's view might well be justified. He found the case to be a sad and disturbing one. This was a highly qualified and experienced consultant who was clinically and medically competent and who faced professional ruin. It was vital that the procedures designed to protect him should be manifestly fair. In this instance the circumstances surrounding the Secretary of State's change of mind fell short of that requirement.

Mr Justice McCowan said that the wise course would have been for the Secretary of State to write a letter saying that he proposed to examine the possibility of another post and inviting the parties to enter into negotiations. The letters which were sent purported to direct the authority to offer Dr Darnell a particular type of post within the region, when plainly the Secretary of State had no such power, as was conceded on his behalf. They also plainly indicated to the health authority that if no such post was found the Secretary of State would confirm his dismissal. This was hardly an incentive to find him another post. Thirdly, they had the unfortunate consequence of lulling Dr Darnell into thinking the Secretary of State had told the health authority to offer him another post. Otherwise, he would have seen that it was in his interests to put forward further proposals. It was wrong for the Secretary of State to permit one side to have the ear of his officials.

The Secretary of State was ordered to pay the costs of the application, estimated at £4000-£5000. Dr Darnell was backed by the Medical Protection Society, which, unusually, allowed him to choose his own solicitor—Stephen Grosz—a partner of Wendy Savage's solicitor, Brian Raymond, in the firm of Bindman and Partners. The DHSS will now have to decide whether to put the case back before the professional committee, possibly with different members, or to propose negotiations towards a possible compromise solution. The Secretary of State is not bound to adopt the recommendations of the professional committee, but he must act fairly.