Cause No. D-1-GN-12-000003

Dr Andrew J. Wakefield, MB., BS.	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**TRAVIS COUNTY, TEXAS**
The British Medical Journal, a d/b/a of BMJ Publishing Group Ltd., also d/b/a BMJ Group, and BMJ, Brian Deer, Individually, and Dr Fiona Godlee, Individually,	§	
	§	
Defendants.	§	**250th JUDICIAL DISTRICT**

SUPPLEMENT TO THE AMENDED DECLARATION OF BRIAN DEER, REPLYING TO PLAINTIFF'S RESPONSE TO DEFENDANTS' ANTI-SLAPP MOTION TO DISMISS

"THE STATEMENTS AT ISSUE"

Reply to pages 32 – 40 of the Plaintiff's Response

Introduction: "An Elaborate Fraud"

1. My name is Brian Deer. *[personal information redacted]* I make this supplement to my amended declaration in support of the defendants' amended anti-Slapp motion to dismiss dated 9 July 2012, based on personal knowledge of the facts stated herein.

2. In his response to our amended motion to dismiss, plaintiff Andrew Wakefield produces as the template for his critique a Xeroxed bullet-point panel from the first article in our January 2011 *BMJ* series: "Secrets of the MMR scare". This single-column panel represents only some 200 words of an article totaling almost 9,500 words of text, footnotes

and references, which is itself only one of three lengthy reports in the series, and which is supported by a 12 page online data supplement.

3. The Xeroxed panel does not set out what I explained in my original declaration (filed on 9 March 2012) and in my amended declaration (filed on 9 July 2012) to be what I called in the latter the "fraudulent enterprise" behind Wakefield's five-page paper[1], published on 28 February 1998 in the UK medical journal the *Lancet*. This enterprise was to place contrived and often bogus "findings" into the medical literature as purportedly objective research, with the intent to implicate the three-in-one measles, mumps and rubella vaccine as a putative cause of autism. The plaintiff's activity, in cahoots with a UK lawyer, *[see special note 1 at the end of this supplement]* litigation campaign groups and individuals enrolled in a taxpayer-funded class action product liability lawsuit, aimed to create the appearance of a "temporal link" and "new syndrome" so as to associate the vaccine in the public mind with autism. In response to my investigation, it subsequently involved dishonest denials by Wakefield that he had irredeemable conflicts of interest, and other misleading statements, by which he sought to cover up his misconduct. This enterprise was at the heart of secret business schemes intended to make his fortune, even in the event of failure.

4. Although my findings went much wider, the plaintiff's production of the bullet-point panel provides a basis to consider in detail a number, but not all, of the issues which contributed to our judgment that his (now-retracted) *Lancet* paper was "an elaborate fraud". As I explained at paragraph 120 of my amended declaration, despite Wakefield's extensive covert activity, neither the families who provided him with access to 12 developmentally-challenged children, reported upon in the paper, nor his colleagues at the Royal Free hospital and medical school, London, delivered him data that, in the event, made any case against

[1] Wakefield AJ, Murch SH, Anthony A, *et al*. Ileal-lymphoid-nodular hyperplasia, non-specific colitis, and pervasive developmental disorder in children. The *Lancet*, 28 February 1998. (Retracted)

MMR. Therefore, to create that case, his fraudulent enterprise went deeper: misreporting precisely what he needed to misreport to obtain the results he wanted.

5. I will address his points according to the format in which he sets them out, and will show each to be irrelevant, baseless, false, disingenuous and/or plainly dishonest.

Wakefield Claims He Did Not Say Children Had "Regressive Autism"

6. **Plaintiff states:** "To begin with, the Lancet Paper, never stated that the children had 'regressive autism'. This was pointed out to the BMJ by Dr. Markovitch in the course of his alleged 'peer review' of a draft of the First Article but the BMJ preferred Deer's position over that of its medical reviewer and kept that statement in the article anyway."

7. **Reply:** The *Lancet* paper's first sentence says (my emphasis):

> We investigated a consecutive series of children with chronic enterocolitis and ***regressive developmental disorder***.

8. The paper's "Methods" statement, on the first page, describes *"loss of acquired skills"* for 12 children. Table 2 ("Neuropsychiatric diagnosis") tabulates the *"Behavioural diagnosis"* for all 12. Eight of these diagnoses are tabulated as "Autism", one as "Autism? Disintegrative disorder?" One as "Autistic spectrum disorder", and two as "encephalitis?"

9. Thus, all 12 children were claimed to have regressive developmental disorder, and in three quarters of them this disorder was said to be autism. Hence "regressive autism". The vexatious quality of the plaintiff's taking issue with this can be evidenced through countless statements by him claiming that he had found "regressive autism" in these children. For examples: (a) a February 1997 Wakefield "rationale" document, explaining his project to doctors (Ex. 55; also disclosed as BMJ 6121)[2]; (b) a May 1997 letter from him to Royal Free

[2] Wakefield, "Rationale for our investigation of children with regressive autism and bowel symptoms", February 1997. "Finally we hope that the possible role of MMR will be elucidated and that further insights into the pathogenesis of regressive autism will be provided."

management describing the "cohort of children with regressive autism" (Ex. 11; also disclosed as BMJ 6156)[3]; (c) a December 1999 public speech of his referring to the paper and its finding of "regressive autism" (Ex. 56, also disclosed as BMJ 6128)[4]; (d) a letter to my lawyers in a libel lawsuit he brought in 2005 against me and the UK's Channel 4 television network (hereinafter *Channel 4*[5]) (Ex. 95;[6] BMJ 6139)[7]; (e) a 2003 expert report by him in the product liability suit (Ex. 96; BMJ 6163)[8]; and (f) a February 1997 letter to his *Lancet* co-author and former Royal Free colleague, Professor John Walker-Smith, headed *"re: Enterocolitis and regressive autism"* (Ex. 97; BMJ 6570)[9]. This letter was (g) reprinted in a chapter titled "Deer" in book by Wakefield about these matters, published in 2010, which describes "regressive autism" as an affliction of "hopeless individuals**"** (Ex. 42; BMJ 438, see 451).

10. In April 2001, Wakefield gave evidence under oath before the US House of Representatives committee on government reform (Ex. 98; also disclosed in full transcript as BMJ 2216, see 2311). He told lawmakers:

> Bear in mind that we are dealing with regressive autism in these children, not of classical autism where the child is not right from the beginning.

The Brighton Area Children

[3] Wakefield: "My group, The Inflammatory Bowel Disease Study Group, is currently involved in the investigation of a cohort of children with regressive autism and inflammatory bowel disease."
[4] Wakefield: "We've presented a paper in the Lancet two years ago on 12 children who came to us with 'regressive autism'. This is the key phenotype that we've been looking at – that is, children who are normal for the first year to 18 months of life and then regress either dramatically or over a period of months."
[5] Andrew *Wakefield v. Channel Four Television Corp., Twenty Twenty Prods. Ltd. and Brian Deer*, [2005] EWHC 2410 (QB) (Eng.).
[6] Exhibit numbering in this supplement continues from my amended declaration (Exs. 1-94)
[7] "Your clients ignore completely that when presented with a child demonstrating regressive autism and bowel symptoms the clinician is bound to investigate…"
[8] In his expert report of September 2003, submitted in litigation, Wakefield uses the expression "regressive autism" at least 30 times in the first volume alone, including in the titles of papers and abstracts of which he is author.
[9] Also reprinted in Wakefield's book, pages 206-7, with the letter headed: "re: Enterocolitis and regressive autism".

11. One quarter of the 12 children reported in the *Lancet* were recruited from the Brighton area, 60 miles south of London in 1996. Child 6 and Child 7 were brothers, and the mother of Child 12, Rochelle Poulter, was introduced by the brothers' vaccine campaigner mother, Isabella Thomas, both to Wakefield and to a provincial high street lawyer, Richard Barr, ran the claimants' side of the product liability suit and, in 1996, hired Wakefield. In recent years, Ms Poulter and Ms Thomas have campaigned with Rosemary Kessick, mother of Child 2, to assist Wakefield's denials of misconduct. All are former litigants in the product liability suit, as are parents of all the *Lancet* children except those of Child 11, who are Americans.

12. As I reported in the first "Secrets" article, despite being tabulated by Wakefield in the paper as having a *"behavioural diagnosis"* of *"autism"*, and hence part of his purported cohort of children with "regressive autism", putatively caused by MMR, I established that the Brighton area children did not have diagnoses of autism. In my first report, titled "How the case against the MMR vaccine was fixed", I wrote (Page 79, col 1, par 3):

> *None of these three even had autism diagnoses, either at admission or on discharge from the Royal Free.*

13. **Plaintiff states:** "However, the medical records and GMC transcripts containing references to Lancet Children's medical history and records clearly show that indeed Child 6, 7, and 12 all had a diagnosis of "autism". Multiple documents and references from the GMC transcripts establish these facts:"

14. **Reply:** Even aided by the former litigant parents, Wakefield identifies *not one instance* of any assessment of these children leading to any "behavioural diagnosis" of autism. Moreover, records plainly identify assessments leading to diagnoses of Asperger's disorder, language delay and other developmental issues. In two cases (Child 7 and Child 12), *his own records* are among documents reporting diagnoses of Asperger's, and there are

more, written by doctors, in exhibits to his second affidavit in this litigation and attached to a short declaration by Ms. Poulter.

15. I attached to my amended declaration as Exhibit 51 (BMJ 1239) the relevant chapter of the Diagnostic and Statistical Manual of the American Psychiatric Association, 4th edition (DSM-IV), which Wakefield stated in the *Lancet* (including at reference 1) to have been relied upon for the "neuropsychiatric diagnoses" set out in the paper's Table 2. This manual is the definitive account of the relevant diagnostic categories. As I explained in paragraph 200 of my amended declaration, autism and Asperger's disorder are *different diagnoses* under DSM-IV[10]. At paragraph 211, I reported from DSM-IV that a diagnosis of Asperger's means that: "Criteria are not met for another specific Pervasive Developmental Disorder".

16. These are not mere technicalities as, for examples, lengthy and careful deliberations in correspondence[11] exhibited by the plaintiff make clear. Clinicians go to considerable lengths to reach developmental (or what Wakefield calls "behavioural") diagnoses. Parents (who often battle to obtain or change a child's diagnosis) as well as doctors pay great attention to these. They are, moreover, fundamental to discussions of pervasive developmental disorders (or "autistic spectrum disorders") in journals such as the *Lancet*.

17. As indicated at paragraphs 218-20 of my amended declaration, the *Lancet* paper itself proves that Wakefield knew the correct nosology of these disorders[12], and represented

[10] "Asperger's Disorder can be distinguished from Autistic Disorder by the lack of delay in language development. Asperger's Disorder is not diagnosed if criteria are met for Autistic Disorder."

[11] For examples: Wakefield Ex. 145 ("Diagnosis: Autistic Spectrum Disorder"), Wakefield Ex. 98 ("a combination of severe learning difficulties and autistic behaviour"), Wakefield Ex. 87 ("the best label that might be attached is one of Asperger's syndrome"); Wakefield Ex. 195 ("he does not quite fall into the category of classical autism but he might be regarded as having an autistic spectrum disorder"); Wakefield Ex. 110 ("No specific diagnosis has ever been reached"); Wakefield Ex. 129 ("These features fill sufficient of the diagnostic criteria of autism to indicate the diagnosis is correct."); Wakefield Ex. 147 ("We concluded then that he had a combination of an Autistic Spectrum Disorder and Attention Deficit Hyperactivity Disorder").

[12] Referring to a "behavioural diagnosis" of "autistic spectrum disorder" (*not autism*) for Child 9, and "Autism? Disintegrative disorder?" for Child 4.

himself in the paper to be using it, as of course would be expected by the editors, peer reviewers and readers of a medical research journal directed at doctors and scientists. I also attach as Exhibit 99 (BMJ 1245, see 1247) a DSM-IV document from the American Psychiatric Association giving equivalent European codes and synonymous phrases for "Autistic Disorder", making clear that this disorder, and *only* this disorder, is properly classified as a diagnosis of "autism"[13]. Wakefield relied upon this information in *Channel 4* and filed with the court a verified statement (Ex. 100; BMJ 1153, see 1154) in which he tabulated "Autistic Disorder" as the diagnosis corresponding to "Childhood Autism" and distinguished this from Asperger's, which is not recognized as a regressive developmental disorder. He used the same distinction in numerous documents, including, for example, in a further research paper of his own which includes the *Lancet* children (Ex. 101; BMJ 3675)[14], and in his book.[15] He has told the *BMJ*:[16]

> This book deals comprehensively with Mr Deer's allegations, including all of the matters that you have labeled as fraud.

18. In addition to the DSM-IV manual, clinicians' correspondence exhibited by the plaintiff and his own use of the proper classifications during his former employment as a medical researcher, I could exhibit hundreds of documents making the position clear. For example, a printout from the website of the American Psychiatric Association (Ex. 102), refers to proposals to replace the present DSM-IV, and sets out the current nosology in its briefest form (my emphasis):

---

[13] Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition: "Autistic Disorder is sometimes referred to as *early infantile autism*, *childhood autism* or *Kanner's autism*." (emphasis in original)

[14] Wakefield AJ, Anthony A, Murch SH *et al*. Enterocolitis in children with developmental disorders. *Am J Gastroenterology*, September 2000 (retracted). "Developmental diagnoses were autism (50 patients), Asperger's syndrome (five), disintegrative disorder (two), attention deficit hyperactivity disorder (ADHD) (one), and dyslexia (one)."

[15] Andrew Wakefield, Callous Disregard, 2010. My emphasis: "A fundamental aspect of Asperger's *that distinguishes it from autism* is the normal acquisition of speech, and a diagnosis of Asperger's requires cognitive function within the normal range for age." Exhibit 57 (BMJ 474, see 482)

[16] Wakefield email to BMJ editor, Dr Godlee, 13 January 2011. Attached as Exhibit 2 to the amended declaration of Fiona Godlee in support of special appearance. 9 July 2012.

New name for category, ***autism spectrum disorder***, which includes ***autistic disorder (autism)***, ***Asperger's disorder***, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.

Wakefield Claims Brighton Area Children Had Behavioural Diagnoses Of Autism

Developmental Diagnosis For Child 6

19. **Plaintiff states:** "Child 6: With respect to the diagnosis of autism for Child 6… Some of the more specific examples are:

- "Dear Dr Wakefield, following our discussion over the 'phone the other day, Child 6 is a little boy with autism syndrome who does also suffer from bowel disorder. His mother is interested in entering him into your trial and I would be grateful if you could see her for discussion." GMC Day 4/9 C (quoting an 8/9/96 Letter from Dr. Nellatamby, General Practitioner ("GP") with a specialization in autism to Dr. Wakefield)."

20. **Reply:** This is not a diagnosis. GPs in the UK do not diagnose developmental disorders – a process that involves a complex, usually multi-disciplinary, assessment by specialists. Dr Nellatamby's "specialization" is that he has a child on the spectrum. Moreover, despite his imprecise language, he *did not* diagnose autism in Child 6. The quoted passage is a doctor-to-doctor communication, and such communications do not of themselves constitute diagnoses, as Wakefield himself testified before the General Medical Council (GMC) panel which in 2010 struck him off the UK medical register. Specifically, Wakefield denied diagnosing "disintegrative disorder" (an autistic spectrum disorder) when ordering tests. (Ex. 57; BMJ 1278, see 1281).[17]

21. The Brighton GP Dr Nellatamby was writing after a note had recently appeared in Child 6's records which said that Wakefield himself had contacted the doctor's office. The record can only be read to suggest that Wakefield – a non-clinical academic

[17] Q: "Reason for request"; "Relevant history"; "Current medication"; "Doctor's signature", at the bottom. If you fill that in, doctor, then you are giving information which informs those who are carrying out the test that a doctor has said that the child is suffering from a condition which merits the test. A: No. It is saying that that may be part of the relevant history in terms of the differential diagnosis. It is not necessarily a final diagnosis. It is providing something that may be considered as part of the differential diagnosis. Q: Now your explanation that you were using it as a way simply of identifying these children in particular you are abandoning now, are you? A: No, I am not. I am saying that your interpretation of the meaning of what is written there is not the final diagnosis."

gastroenterologist – had phoned and *told them* that Child 6 had autism (Ex. 103; BMJ 4208)[18], thus causing wrong information to be placed into the boy's notes.

22. **Plaintiff quotes:**

- "In a letter from Dr. Nellatamby to Dr. Bennett, a pediatrician, on March 11, 1997, requesting an opinion on his brother Child 7, Dr Nallentamby stated: "[Child 6], as you know, is autistic.""

23. **Reply:** This is not a diagnosis of autism. "Autistic" is not a synonym for autism, as Wakefield recognized in his reporting of Child 9 in the *Lancet* paper, describing him there as having a "behavioural diagnosis" of "Autistic spectrum disorder". Indeed, it is plain from both examples so far put forward by the plaintiff that, if Dr Nellatamby had wished to say that Child 6 had a diagnosis of autism, he would have done so. The reason he did not is that Child 6 had undergone a specialist assessment which (unhelpfully for Wakefield's enterprise) did not produce any such diagnosis.

24. Wakefield refers to Dr Bennett, a paediatrician. In December 1995, she had carried out a structured assessment of Child 6 and gave a diagnosis based upon it. She did not diagnose autism.[19] (Ex. 86; BMJ 1066) She diagnosed "Autistic spectrum and he probably has Asperger's Syndrome". This was prior to Dr Nellatamby's letters.

25. Subsequent to the first letter, in October 1996, Walker-Smith, the senior clinician involved in the *Lancet* project, wrote to Wakefield, *telling him* that Dr Bennett had diagnosed Asperger's.[20] (Ex. 104; BMJ 4196, see 4197 & 4199).

[18] 25 March 1996: "Dr Wakefield – Royal Free. To discuss association [between] measles and autism and inflammatory bowel disease. Discussed general concerns re family. If we feel [it is] relevant can refer for [investigations] to Professor Walker at the Royal Free."

[19] Dr Bennett, after a structured assessment of Child 6, in December 1995: "At home it is clear that [Child 6]'s behaviour is very difficult. His parents find it difficult to reason with him and he does not respond to the usual discipline measures. His mother was particularly concerned that he is not developing good peer relationships. All these features confirm that [Child 6]'s difficulties lie within the Autistic spectrum and he probably has Asperger's Syndrome, although this will become clearer as he becomes older. I explained to his parents that it is difficult at this early stage to predict how [Child 6] will be in the future."

[20] Walker-Smith to Wakefield, October 1996: "This is a child who has been diagnosed as Asperger's syndrome… He subsequently was diagnosed as Asperger's syndrome by Dr Bennett".

26. According to the *Lancet* paper, the children tabulated therein with behavioural diagnoses were assessed against DSM-IV criteria by Royal Free child psychiatrist Dr Mark Berelowitz. Notwithstanding Wakefield's claims in the paper to the contrary, Dr Berelowitz did not issue a behavioural diagnosis of autism, but in September 1997 wrote to him regarding Child 6 (Ex. 105; BMJ 4205, see 4207)[21]:

> it would seem that the most likely diagnosis is Asperger's Syndrome

27. As I explain from paragraph 143 of my amended declaration, I obtained access in *Channel 4* to Royal Free reports, including for Child 6 (Exhibit 44; also disclosed as BMJ 5261). This report, bringing together histories, diagnoses and other information for the purposes of Wakefield's own project, records no diagnosis of autism.[22] It describes the "initial diagnosis" for Child 6 as "Aspergers Syndrome" and the "current diagnosis" at the Royal Free as "Asperger's Syndrome (most likely)". Other Royal Free reports in the same series report diagnoses of "autism" for other children where apparently appropriate.

28. Under cross-examination by counsel for Walker-Smith at the GMC hearing, Dr Nellatamby also made his position clear: the boy "probably had Asperger's syndrome".[23] In September 1997, long after Child 6 was discharged from the Royal Free, Wakefield himself told the boy's mother, Ms. Thomas, that "the diagnosis for [Child 6] was likely to be Asperger's Syndrome" (Ex. 106; BMJ 4211, see 4213), and indeed, years later, Child 6 reported on the internet that he had Asperger's (Ex. 107; BMJ 4210)[24].

---

[21] Royal Free child psychiatrist Dr Berelowitz to Wakefield, September 1997, long after discharge: "Because of the mother's uncertainty about the timing of his developmental history, it is a little hard for me to be as confident as I would like about the diagnosis. However, it would seem that the most likely diagnosis is Asperger's Syndrome."

[22] Royal Free report: "Initial diagnosis: Aspergers Syndrome". "Current diagnosis (RFH): Aspergers Syndrome (most likely)."

[23] "Q: You would have seen the letter that had been written by Dr Bennett who was a community paediatrician that she considered that he fell within the autistic spectrum and probably had Asperger's syndrome. A: Yes. Q: I think that was as a result of a multidisciplinary investigation that took place in 1995. A: Yes."

[24] Child 6 as teenager: "I am one of the affected children with asperger's syndrome (AS), OCD and bowel disease."

29. I am unaware of any assessment leading to a diagnosis of autism for Child 6, and Wakefield has signally failed to produce one. And if Child 6 had Asperger's, he could not have had "regressive autism"[25], "regressive developmental disorder"[26] or "severe developmental regression"[27] – a most unhelpful outcome for Wakefield's enterprise.

Developmental Diagnosis For Child 7

30. **Plaintiff states: "**Child 7: With respect to the diagnosis of autism for Child 7… Some specific examples are:

- A letter from Child 7's GP, Dr. Bennett, dated February 27, 1997 states: "[Child 7] who would appear to have autism or at least be within the autistic spectrum.""

31. **Reply:** In fact, the letter is *from* Child 7's GP, again Dr Nellatamby, *to* Dr Bennett, a paediatrician. And this, too, is not a diagnosis. Indeed, so as to mislead, Wakefield has wrenched the above extract from its context, in which Dr Nellatamby expressly states that there was "no diagnosis" in the boy's records. Moreover, as the letter makes clear, not only was Dr Nellatamby *not* diagnosing, he was writing to Dr Bennett asking *her* to *tell him* what was wrong with Child 7.[28]

32. **Plaintiff quotes:**

- "As has been previously suggested, this pattern is that of an autistic disability...his [Child 7's] problems are best described as being due to a Pervasive Developmental Disorder in the autistic spectrum."

33. **Reply:** This is not a diagnosis of autism.

34. **Plaintiff quotes:**

- "We concluded then that he had a combination of autistic spectrum disorder and attention deficit hyperactivity disorder (ADHD)."

[25] See Exhibit 55 (also disclosed as BMJ 6121). "Rationale" document sent to doctors, February 1997.
[26] See *Lancet* paper, page 1, first sentence.
[27] Wakefield patent application including for a single measles vaccine. 6 June 1997. "All the children exhibited features of severe developmental regression".
[28] Dr Nellatamby to Dr Bennett, February 1997, (my emphasis): "I would be grateful if *you could give me some information* regarding this child who is a relatively recent registration with me and who would appear to have autism or at least within the autistic spectrum. I note from his previous records he has been under the general paediatricians regarding his absent seizures and has been on anticonvulsants. *There is no diagnosis however in his records and I just wondered what the state of play was.*"

35. **Reply:** This is not a diagnosis of autism.

36. Once again, the records reveal no diagnosis of autism for Child 7, while a substantial body of documents refutes any belief in one. Dr Nellatamby was asked directly about this matter at the GMC hearing, where he expressly confirmed that he *did not* believe that Child 7 had autism (Ex. 108; BMJ 434, see 437)[29]. His evidence was supported by his 1996 referral letter to the Royal Free, in which he said the boy *"probably does not have autism"* (Ex. 108; see supra). [30] In February 1997, Dr Nellatamby wrote to Dr Bennett (Ex. 109; BMJ 1081, see 1083)[31]:

> I have seen no evidence in him of autism.

37. Meanwhile, at the Royal Free, Walker-Smith responded to Dr Nellatamby, stating (Ex 62 page 9; also disclosed as BMJ 4217)[32]:

> I understand it is your opinion he could be within the autistic spectrum, although it is not your view that he does have autism.

38. After the boy's discharge from the Royal Free, Dr David Casson, a paediatric gastroenterologist and *Lancet* paper co-author, wrote to Dr Bennett (Ex. 62, page 10)[33] telling her that Child 7 *"is not thought to have features of autism"*.

39. The following month, June 1997, Dr Berelowitz, the Royal Free child psychiatrist involved in the project, and also a co-author of the paper, sent Wakefield a written opinion. In this letter, the psychiatrist makes it unsurprisingly clear that he regards

---

[29] Child 7's GP's evidence to the GMC panel. "Q: What was your impression of Child 7 in terms of behaviour, doctor? A: He was an odd child, in the sense that he was quite independent; did not make great eye contact, and behaved in a way, in the consulting room, differently to other children. So he might focus on odd things, like a curtain or something that a child might not ordinarily do. So he was different – without putting a diagnosis to it. Q: Was it your view at the time – and I do appreciate you are talking as a general practitioner – that he was autistic? A: I think "autism" is probably too strong a word. I felt he had a social disorder of some sort, yes."

[30] Dr Nellatamby referral letter to Royal Free, December 1996: "He himself probably does not have autism although this is not certain at present but he does have convulsions which I believe may make him eligible for your study."

[31] Dr Nellatamby to paediatrician Dr Bennett, February 1997: "He seems to be in the surgery setting a normal child thought perhaps a little obsessional. I have seen no evidence in him of autism…"

[32] Walker-Smith to GP, January 1997: "I understand it is your opinion he could be within the autistic spectrum although it is not your view that he does have autism."

[33] Dr Casson (Royal Free) to paediatrician Dr Bennett, May 1997, after Child 7's discharge: "He is not thought to have features of autism."

Asperger's and autism to be different diagnoses, opines that Child 7 has a "developmental disorder", but explains that he is not sure what it is and recommends that a more appropriate specialist than himself (Dr Berelowitz is not a developmental paediatrician) be consulted. (Ex. 63; BMJ 4214, see 4215)[34].

40. In September 1998 (20 months after Child 7 went to the Royal Free), a firm diagnosis was at last obtained. This was from London's Guy's hospital, a flagship UK medical centre with a specialist assessment unit for children's developmental disorders (Ex. 110; BMJ 1084, see 1086)[35]. The diagnosis was that:

> …we concluded that, at present, his problems are best described as being due to Pervasive Developmental Disorder in the autistic spectrum.

41. In terms of the Royal Free diagnosis, we know the eventual position because in 2006 Wakefield made a verified statement in *Channel 4*, among other things tabulating the diagnosis for Child 7. Contrary to what he said in the *Lancet*, and what he says in the *present* litigation, in his *previous* litigation he stated (Ex. 17; BMJ 744, see 762 – Child 7 is reference 1)[36]:

> Diagnosis: Asperger's syndrome

42. Much later, Child 7 declared on the internet that he had pathological demand avoidance syndrome, which is not classified on the autistic spectrum (Ex. 111; BMJ 4221). As with his brother, Child 6, there was no diagnosis of autism, as I said in my "Secrets" report, "either at admission or on discharge from the Royal Free".

Developmental diagnosis for Child 12

[34] Psychiatrist Dr Mark Berelowitz, June 1997: "I do think [Child 7] suffers from a developmental disorder, perhaps somewhere between Asperger's and Autism. However, I would want Andrew Lloyd Evans' views on the development following the febrile convulsion. I also retain some uncertainties about the strength of the conclusion that we should draw from some of the historical features."

[35] Guy's hospital, September 1998, seven months after the *Lancet* paper: "There are some aspects of [Child 7]'s behaviour which are rather different from that of most children with classic Autism or Asperger's Syndrome, in particular he is more actively defiant and avoidant, and we concluded that, at present, his problems are best described as being due to a Pervasive Developmental Disorder in the Autistic Spectrum …"

[36] Wakefield to defendants in *Andrew Wakefield v Channel 4 & Ors*: "Diagnosis Asperger's syndrome."

43. **Plaintiff states:** "With respect to the diagnosis of autism for Child 12… Some specific examples are:

- "D [diagnosis] 'Autism'. M [mother anxous re MMR & Autism & Crohns…"(citing diagnosis in GP record, July 19, 1996)"

44. **Reply:** This is not a diagnosis. GPs in the UK do not diagnose developmental disorders, and in this case the record is merely a note of what the mother told the doctor after becoming involved in Wakefield's network through Ms. Thomas, mother of Child 6 and Child 7. Wakefield gave evidence on this "D" note before the GMC panel. Under oath, he stated that it was derived from the mother (Ex. 112).[37]

45. The segment of GMC transcript from which the plaintiff pulls the "D" note, moreover, is immediately preceded by records showing that Child 12 *did not* have a diagnosis of autism, among other issues noting an assessment by a consultant child psychiatrist, Dr Richard Ing, who raised the possibility that the boy had Asperger's. (Ex. 113)[38]. Records following the "D" note also identify suspected Asperger's disorder. Even a letter from *Wakefield* to the boy's mother, sent *on the same day* as the "D" note (19 July 1996) said (Exhibit. 20; also disclosed as BMJ 4027)[39]:

> We have recently taken a profound interest in this subject, particularly in view of the link between bowel problems and Asperger's

[37] Cross examined on day 64: "Q: Perhaps you would look at the note above which appears to be a week before, 19 July, in the GP records. At the top of the page: 'Diagnosis "autism", mother anxious re MMR and autism and Crohn's but no blood per rectum, no symptoms of obstruction.' A: Yes, and I think what the mother is referring to here is the fact that she has become aware of this association through Mrs. 6 and she is talking to her doctor about the various associations between vaccine exposure and inflammatory bowel disease, but that is not something that she made contemporaneously."

[38] Consultant psychiatrist Dr Ing: "I would agree with the possibility that [Child 12] has Asbergers Syndrome. I intend to get further information from [the school] … to support this and I have arranged to meet [Child 12's] Mother to discuss the subject further."

[39] Wakefield to mother: "We have recently taken a profound interest in this subject, particularly in view of the link between bowel problems and Asperger's Syndrome."

46. Before the GMC panel, Wakefield named Dr Ing and said he deferred to him for a diagnosis in Child 12. That diagnosis, *Wakefield* said, was "Asperger's syndrome" (Ex. 107; BMJ 4021, see 4023)[40].

47. Two months after the "D" note, Child 12 received a diagnosis by a specialist paediatrician at a dedicated specialist centre. The diagnosis was of language impairment. (Ex. 114; BMJ 4018, see 4019)[41].

48. **Plaintiff quotes:**

- "It is interesting to see this child who really has the features of autism..." (letter from Walker-Smith to Wakefield Oct. 21, 1996…)

49. **Reply:** Again for Child 12, this is not a diagnosis, and Walker-Smith, a gastroenterologist, would not be qualified (or certainly wish) to diagnose developmental disorders (any more than a cardiologist would wish to diagnose Alzheimer's). In fact, Wakefield has truncated Walker-Smith's letter to obscure its message:

> It is interesting to see this child who really has the features of autism but rather minimal gastrointestinal symptoms. I did not feel it right in fact to proceed with our intensive programme at the moment until we have had ethical committee approval and it is clear that the parents wish us to proceed.

50. In the present litigation, Wakefield sought help from Ms. Poulter, mother of Child 12, who has exhibited two letters, written by Dr Ing, apparently based on assessments of her son. They were written in September[42] and October 1996[43] (accompanied by a report), just weeks before Walker-Smith's comments. However, these too show that Child 12 did *not* have a diagnosis of autism. Nor is there any mention of regression (Exhibit 1 to declaration

[40] "Q: I have to make the same point again to you, Dr Wakefield, that you were not qualified to make that diagnosis, differential or otherwise? A: Nor did I make that diagnosis. It was something that was merely part of the relevant background history, and this child did indeed have an autistic spectrum disorder provided by Dr Ing of Asperger's syndrome."

[41] Diagnosis by Dr Gillian Baird, at the Newcomen Centre at Guy's hospital, September 1996: "Impairment in respect of language."

[42] "I consider that he would have qualified for a diagnosis of Asperger's Syndrome."

[43] "Such language impairment would preclude [Child 12's] as qualifying for a diagnosis of Asperger's Syndrome. Equally he does not quite fall into the category of classical autism but might best be diagnosed as having an autistic spectrum disorder."

of Rochelle Poulter). These letters confirm that, as with Child 6 and Child 7, the *Lancet* paper's tabulation of Child 12 as having a "behavioural diagnosis" of "autism" is false.

51. Despite Wakefield's posturing in this litigation, he has known all along that there was no basis to tabulate Child 12 as having a "behavioural diagnosis" of "autism"[44]. This is made clear in the Royal Free report that I obtained for this child in *Channel 4* (Ex. 45; also disclosed as BMJ 5279, see also 5281)[45].

52. Moreover, Wakefield states in his book – which, as I have noted, "deals comprehensively" with all the matters we have "labeled as fraud" – that "*Child 12's developmental diagnosis was Asperger's syndrome"*. (Ex. 57; BMJ 474, see 482)[46].

Only one child clearly had regressive autism

Child 2 clearly had regressive autism

53. **Plaintiff states**: "Defendants' First Article states that "only one child clearly had regressive autism." For support, Defendant Deer "cites" to an opinion of an expert who testified on behalf of the GMC named Dr. Rutter. However, this is *not* what Dr. Rutter stated. Dr. Rutter actually stated:

- "In some cases there is some evidence of regression. In Child 2's case it is quite marked and repeated.""

54. **Reply:** Although fewer than half the *Lancet* children had autism diagnoses at all, the judgment that only one *clearly* had regressive autism was not based on any "cite" to Professor Rutter, who gave evidence for five days, of which I identify three in my online *BMJ* footnotes. Such footnotes serve a variety of purposes, directing readers to further

[44] See *Lancet* paper, Table 2.
[45] Royal Free pro forma report: "Clinical diagnosis: Asperger's Syndrome." "Initial diagnosis: Aspergers." "Current diagnosis (RFH): Language Delay. Possible Attention Deficit Disorder. Possible Features of Asperger's."
[46] Wakefield's book, 2010. "Child 12's developmental diagnosis was Asperger's syndrome… A fundamental aspect of Asperger's that distinguishes it from autism is the normal acquisition of speech, and a diagnosis of Asperger's requires cognitive function within the normal range for age.""

information. On day 35, for example, Rutter extensively discussed regression[47], making it clear that apparent regression is common in autism, usually temporary and can involve mere "ups and downs, errors, as it were, of measurement". These ups and downs, or parents' observations of them, would not give Wakefield – who was not even a clinician, much less a paediatrician or child development specialist – to announce, on the basis of little more than his own opinions and motivations, that the children had "regressive autism".

55. On days 35 and 39, Rutter extensively discussed Child 2, in terms quite different to any of the others[48] and described it as "a very unusual case"[49]. In his response, Wakefield truncates Rutter's remarks in a manner that obscures what he was saying. Rutter made it clear – as was plain during many months of evidence – that the children were a very mixed group.[50] My layperson's view was that they were what you might expect if you recruited through campaign groups and lawyers.

56. Although Rutter's evidence was of immense value in understanding developmental disorders, my summary was based on my attendance at the GMC hearing, my review of expert reports on two children's cases and much other material. By *"clearly"*, I

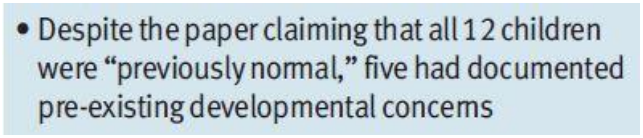
[47] Professor Sir Michael Rutter, GMC, day 35: "Developmental regression is a term that is used in rather varied ways so that one of the interesting things about autism is that in about a quarter/third of cases there is a transient period of regression involving the loss of previously acquired skills, which are usually of a temporary variety. That has been known for a very long time… The regression varies from very minor losses of skills that were only half acquired and some of that will probably be just ups and downs, errors, as it were, of measurement, if you like. There is good evidence from a variety of sources that there is also a true failure to use skills that had previously been present but which usually recover."

[48] Professor Rutter, GMC, day 35: "As I indicated in my report, Child 2 does not fit the ordinary criteria for a disintegrative disorder but there is no doubt that Child 2 had a very worrying series of regressions – not one but several of them – and that although Child 2 did not fit the criteria, as a clinician, I would have been inclined to approach it in the same sort of way, so that this is a case where it seems to me, following a full assessment, one quite likely would want to go on to investigations of a kind that would pick up the possibility of a progressive neurological disease."

[49] Day 39 page 18 of the GMC transcript.

[50] Professor Rutter, GMC, day 37: "I am making the point in my report that these are quite heterogeneous group of cases. In some cases there is some evidence of regression. In Child 2's case it is quite marked and repeated. That in itself was unusual, does not fit in with a disintegrative disorder, but it is certainly clinically significant, and that the cases also vary greatly in intellectual level. There are some that are of above average intelligence, and there are some who are profoundly intellectually impaired, and then there are a number in the middle. There are variations in terms of the extent to which there is a straightforward set of features like in autism that fit the criteria for autism spectrum disorder, and there are others in which one can say, there are some features but it is a bit mixed. So they are very heterogeneous."

meant so starkly that no two reasonably informed people would disagree. However, since the plaintiff here raises no example of a child's case, I am unable to provide a detailed analysis.



Wakefield Claims All Children Were "Previously Normal"

57. **Plaintiff states:** "It appears that this false statement refers to Child 4, 5, 7, & 8. But again, as evidenced from the GMC transcripts, these children were in fact previously normal as accurately reported in the Lancet paper:"

58. **Reply:** For this section of his response to our motion, Wakefield has made his own selection of children's cases. Nevertheless, I will deal with those he raises.

Child 4

59. **Plaintiff states:**

- "Child 4: Deer alleges that the medical records "give a different picture" for Child 4 that Wakefield reported in the Lancet and specifically, that he was "developmentally normal at age one year." However, evidence (normal development) is found in an undated letter from Dr. Shabde, a pediatrician, to Dr. Sendall, a GP in the medical practice caring for Child 4: "Child 4 is nine months old and appears to be growing and developing normally.""

60. **Reply:** Just as he picked through hundreds of pages of GP records for the Brighton area children (including records which in his petition he says he never saw before writing the *Lancet* paper) looking for the word "autism", he now picks through more, looking for any reference suggesting that *at some point* in the past somebody had said a child appeared to be "normal". In Child 4's case, the best he has found is a doctor who said that, at age nine months, the boy "appears to be growing and developing normally". Of course, one might find notes of such a nature in the records of *any* child who is not observed at birth to be disabled.

61. In quoting from Dr Shabde's letter, Wakefield truncates it so as to avoid reporting the expression "main worry" used by the paediatrician and a reference to an explicit *prior developmental concern* of Child 4's mother.[51]

62. The plain meaning of Wakefield's paper – without which it would not have been published in a medical research journal directed at doctors and scientists, much less have triggered a public health crisis – was that these children were normal until what he called *"the apparent precipitating event"*[52], which, in most cases, he said, was the administration of MMR.

63. But, in the case of Child 4, multiple records reveal developmental concerns throughout the boy's earliest years, *long before* he received the vaccine. As the boy's GP was asked at the GMC hearing, with the patient's notes in front of him (Ex. 115; BMJ 860, see 862-3):

> Q: (Reading) "Thank you for referring [Child 4], who presents with developmental delay. His mother is recently aware of this."
>
> (To the witness) So it seems that over the course of 1988 there had been a concern about developmental delay.
>
> A: Yes.

64. This was more than two years before Child 4 received MMR, in February 1991, at the age of 4.

65. As reported in the *BMJ*, Child 4's GP alerted Wakefield to preexisting concerns over the boy's development (Ex. 83; BMJ 859, see 874)[53]. Thus the first "Secrets" article was correct: medical records "give a different picture" to that presented in the *Lancet*.

---

[51] "[Child 4] is nine months old and appears to be growing and developing normally. As you may recall, the main worry initially was his small head which in fact is growing quite nicely between the 50th and 75th percentile. His general growth appears to be satisfactory with his weight just below the 50th centile. His mother is quite pleased with his progress and is no longer unduly worried."

[52] See the *Lancet* paper, second page, column 2: "Table 2 summarises the neuropsychiatric diagnoses; the apparent precipitating events; onset of behavioural features; and age of onset of both behaviour and bowel symptoms."

[53] GP referral letter to Wakefield, July 1996: "In general [Child 4]'s mother thinks that he developed normally initially and then subsequently his problems worsened and he lost some of the milestones he had achieved but

66. **Plaintiff states:**

- "Child 4's normal development to 18 months of age is captured in Dr. Casson's discharge summary from the Royal Free Hospital on October 16, 1996: "It is relevant to this admission that he was followed until [18] months of age at North Tyneside Hospital and on his discharge his development was normal."'

67. **Reply:** Having truncated a letter so as to evade references to prior developmental concerns, Wakefield now weaves his way in search of the word "normal" to a record taken from the mother by a gastroenterologist at the Royal Free in 1996. However, as I have already said, records show Child 4, born in January 1987, presenting with "developmental delay" before his MMR, and the GP had cautioned Wakefield about this background.

Child 5

68. **Plaintiff states:**

- "Child 5: The first reference to Child 5's behavioral and developmental regression that was in the possession of doctors at the Royal Free Hospital was the clinic record of Prof. Walker-Smith on November 8, 1996: "At 8/12 [eight months] good developmental progress. At 18/12 [18 months] stopped speaking and stopped responding."

- "Further corroborative evidence of Child 5's normal early development is available in the Royal Free Hospital admission clerking notes on November 12, 1996: "Remained well for first 18 months. Achieved early milestones normal. Was walking by seven to nine months of age. Was saying three to four words but then stopped talking, started making growling noises, lost interest in surroundings..."'

69. **Reply:** Despite Wakefield's *Lancet* paper referring to a "review of prospective developmental records from parents, health visitors and general practitioners", he again seeks comfort in records taken by gastroenterologists, years after the fact, from a parent complaining about MMR.

70. In this case, however, he unquestionably knows that concerns over this boy's development were documented *before* he received MMR. Wakefield was the co-ordinating expert witness for the children in the product liability suit and *must*, as a matter of

---

that he has subsequently improved on something of a restrictive exclusion diet. The professionals who have known [Child 4] since birth do not entirely agree with this however and there is a suggestion that some of [Child 4]'s problems may have started before vaccination."

professional obligation, have considered reports of other experts, including those who, like himself, framed the plaintiffs' cases in the best possible light. For example, in 2003 he received a report by Dr Marcel Kinsbourne for Child 5, who, before the lawsuit collapsed for lack of evidence, was one of eight test cases selected for trial. Wakefield must also have participated in detailed discussion of the specific facts.

71. Dr Kinsbourne is a paediatric neurologist and a professional witness on the US "vaccine court" circuit, who says he has testified in "hundreds of petitions for compensation for vaccine injury". In the UK, the Legal Services Commission reported in 2006 that he was paid more than £434,000, plus expenses, supporting Wakefield (who was paid more than £435,000, plus expenses, which was about eight times his reported annual salary) in the British lawsuit (Ex. 116).

72. Acting for Child 5, Dr Kinsbourne dated the boy's "lost development skills" to an episode at *11 months* of age, *before* his MMR. Kinsbourne (supported by other experts) confirmed in his report (Ex. 117)[54] :

> There are several notations in the medical records that [Child 5] lost development skills after this episode… The medical history does not give a clear picture of post-MMR regression in [Child 5]. There are several indications that his abnormality began before the vaccination.

Child 7

73. **Plaintiff quotes:**

- Child 7: "[Child 7] was brought to the Casualty Department here at the end of last week. There had been concerns since he was six weeks of age where he would have episodes where he would cry out, go red in the face and appear to be choking…I am suspicious that these episodes may be seizures. They do not sound typical of breath holding attacks and seem to occur rather unprovoked. On the positive side he appears to be developing normally and there are no significant abnormal findings."

[54] "[Child 5] was born on December 10, 1988, by natural delivery following an uneventful pregnancy. He walked at age 10 months and spoke before age one year. At 11 months of age, he had a high fever and three seizures in a day. Seizures have not recurred. He has a strong family history of febrile seizures. There are several notations in the medical records that [Child 5] lost developmental skills after this episode. [Child 5] received an MMR vaccination on April 10, 1990… The medical history does not give a clear picture of post-MMR regression in [Child 5]. There are several indications that his abnormality began before the vaccination."

74. **Reply:** Wakefield is still shopping for "normal", regardless of the context, and in defiance of clear evidence to the contrary. Indeed, as the record *he* produces here states, one doctor was concerned that the boy was experiencing seizures (as it turned out, he was), which would inevitably arouse concern over development, whether or not that concern was borne out later (which in this case it was). Child 7 had documented fits, including a reported episode involving *20 minutes* loss of consciousness. Also before MMR, he had documented *abnormal brain activity*, the *loss of the use of one side* for a period, *dragging of one leg*, "blue breath holding attacks" (Ex. 118; BMJ 1094, see 1096-97)[55] and was prescribed sodium valproate (which itself can have behavioural side effects). Seizures were reported for Child 7 before his MMR, and he was also prescribed an anti-convulsant (Ex. 119; BMJ 1289, see 1290-91). These symptoms and signs are *not normal*, but would arouse concern regarding a child who was still aged only 2½ when admitted to the Royal Free. And, of course, Wakefield was reporting in the *Lancet* retrospectively, after being told by Dr. Berelowitz that this boy had a developmental disorder.

Child 8

75. **Plaintiff states:** "Child 8: Deer asserts that Child 8 was not developmentally normal prior to MMR, and further, that she was globally delayed. In fact a developmental pediatrician assessed Child 8 as developmentally normal up until one month before her MMR. The same paediatrician diagnosed her as "globally delayed" after – not before MMR"

76. **Reply:** Oddly, Wakefield identifies, as his sole evidence for this assertion, his Exhibit A, merely a reprint of our first "Secrets" report. I am unable to find any mention in this report of Child 8 being "globally delayed" before vaccination.

77. **Plaintiff states:**

[55] Royal Alexandra Hospital, Brighton (1995). Prescription for sodium valproate, febrile convulsions,? history of complex seizures. May 1995: "a concern that the child had some drag in one leg". October 1995 (before MMR, in November 1995): "EEG abnormal."

- "However, there is a letter from Dr. Houlsby, the developmental pediatrician, to Dr. Shabde, a pediatrician, dated February 17, 1995, when Dr. Houlsby reviewed Child 8 just 3 weeks after her MMR vaccination. At this point, in contrast with his opinion on Child 8 just prior to MMR when he stated that developmentally, "her abilities….were not outside the range of normal" i.e. for a 17-18 month-old child, in this document he states that he now considered her to be "globally developmentally delayed functioning at about the one year level.""

78. **Reply:** Dr Weldon Houlsby, a consultant paediatrician, wrote to Child 8's GP in September 1996 – four months prior to the girl's admission to the Royal Free – confirming developmental concerns *before* she was vaccinated[56] (Ex 18; also disclosed as BMJ 4232, see 4233 & 4235). On 3 October, the girl's GP wrote to Wakefield, enclosing Houlsby's letter, and *telling Wakefield* of concerns before the girl was vaccinated[57] (See supra).

79. But Wakefield, who was not a clinician, had nothing to do with this child's care and, in fact, has never had legal care of a patient, chose to not to reveal the clear warning he was given, and instead elected to report in the *Lancet* that she was "previously normal".

Child 11

80. **Plaintiff states:** "Child 11: MMR at 15 months: (Note, because Child 11 is a U.S. citizen, his records were not available to Defendants, contrary to Defendants statement):"

81. **Reply:** I can make no sense of the content in parentheses.

82. **Plaintiff quotes:**

- "My son [Child 11] at age 15 months was immunized with the Merck MMR vaccine and became ill for the next several months. As his pediatric records indicate he came down with a viral infection, and shortly thereafter viral pneumonia. His condition slowly deteriorated over time, and was diagnosed as

[56] Dr Houlsby to Dr Tapsfield, 13 September 1996: "Her mother also brought up once again the relationship of her problems to her MMR immunisation. On reviewing her records I find that the concern about [Child 8]'s developmental delay was expressed by her mother and yourself [Dr Tapsfield] in May 1994, long before the MMR was given in January or February 1995. The fever associated convulsion which she had in February 1995 was in the context of a diarrhoeal illness associated with fever two weeks after her MMR immunisation. I feel therefore that it is extremely unlikely that the MMR was the cause of her present problems".

[57] 3 October 1996: "I enclose photocopies of some recent correspondence which gives a fair idea of [Child 8's] current state. I would simply reiterate Dr Houlsby's recent comment that both the hospital and members of the Primary Care Team involved with [Child 8] had significant concerns about her development some months before she had her MMR Vaccination."

being autistic on his birthday at age 3. The onset of his autistic behaviors began around 18 months."

83. **Reply:** This is a quotation from our Exhibit 48 (BMJ 4013): a letter from Child 11's father to Wakefield in January 1997. The plaintiff's response offers no further information on this child. *And no wonder*. Wakefield's gross falsification of this patient's record in the *Lancet,* so as to manufacture the 14-day maximum temporal link between MMR and autism, provoked outrage from the father, who described the paper as *"a clear misrepresentation of my son's history"* and *"an outright fabrication"* (Ex. 49; BMJ 4015).

84. The *Lancet* paper claimed that the "onset of behavioural symptoms" or "onset of behavioural problems" followed just *"1 week"* after MMR. But, kept secret for more than a decade, were Royal Free records which told different stories. These records, to which Wakefield had access, documented alternative histories for this child: neither of which can be reconciled with the paper, and either of which confirms the nature of Wakefield's enterprise.

85. At this stage, I will deal with the first alternative story, which is that Child 11's first behavioural symptoms *preceded* MMR.

86. The first record suggesting this is Child 11's official Royal Free discharge summary: a letter to an American doctor from Dr Casson, a *Lancet* paper co-author (Ex. 120; BMJ 1253)[58]. This said that the boy's "developmental milestones were normal until 13 months of age" – which would be *before* his MMR – and that "in the period between 13-18 months he developed slow speech patterns and repetitive hand movements."

87. The second record documenting the same observation is a Royal Free report which I obtained in *Channel 4* (Ex. 46; also disclosed as BMJ 5296), discussed at paragraphs 172-80 of my amended declaration. This report contains great detail from the boy's early history, including dates of vaccination and doctor visits, as well as US test results. This

[58] Dr David Casson, Royal Free discharge summary, May 1997: "His developmental milestones were normal until 13 months of age. In the period between 13-18 months he developed slow speech patterns and repetitive hand movements. Over this period his parents remarked on his slow gradual deterioration."

information indicates that it was generated in some substantial part from an American medical report, referred to in the father's 1997 letter as an enclosure (Ex. 48; BMJ 4013). The Royal Free report asks, in pro forma style, whether Child 11's "initial development" was "normal", and, "if so, until when?" It is completed: "13 months", which again would be *before* MMR. A box asks for the "initial behavioural abnormality" (a phrase used by Wakefield synonymously with "first behavioural symptom"), and this includes an entry:

> ?one history says symptoms from 13 months

88. I believe that this "history" could only have been taken from the American medical report. The father, who is sure that vaccines and other environmental issues cause autism, however, disagrees over the date of onset of his son's problems, and, indeed in his 1997 letter tells Wakefield that Child 11's "autistic like behaviors began around 18 months". This would be some three months *after* the boy's MMR – not one week, as reported in the *Lancet.* I will discuss this further in the next section, after dealing with the case of Child 6.

Child 6

89. As I have explained, the plaintiff picked the children he wished to review for his claims that they were all "previously normal" and that we had falsely said five were subjects of pre-existing concerns. He did not pick Child 6, and I am not surprised.

90. In response to the pro forma-style question as to whether Child 6's "initial development" was *normal*, the Royal Free report obtained for this boy in *Channel 4* (Ex. 44; also disclosed as BMJ 5261) squarely answers: "*No".*

91. The Royal Free report also includes an extract from a GP letter[59] indicating that the mother had originally blamed her son's problems on a *wild measles* infection. Dates are given, indicating that this infection occurred *three months* before the boy received MMR, and

[59] "GP Dr Ball letter, dated 03.04.93, that Mrs. [6] concerned that *since measles infection* [Child 6] had been generally unwell. Reported as developing sudden pyrexia's and listlessness."

involved a convulsion and hospitalization, confirmed in other records (Exhibit 86; BMJ 1065, see 1066)[60].

Wakefield Denies Reporting *Months* As *Days*

92. The plaintiff picks six children to review. But, on grounds of proportionality, I will review two cases, those of Child 1 and Child 11, to evidence our qualified statement referring to "some children". These two are among the eight from which Wakefield generated his 14-day maximum/6.3 day average temporal link, discussed at paragraphs 11-14, 57, 64 and 107-115 of my amended declaration. These cases are sufficient to expose the purported temporal link as false, and unmask the false claim in the paper's "Interpretation" section that "developmental regression" was "generally associated in time" with MMR.

Child 1

93. **Plaintiff states:**

- "Child 1 - MMR at 15 months: "[Child 1] initially developed normally, reaching the normal milestones until he was about 15 months old. He then regressed and has now been diagnosed as autistic."… (quoting letter from GP…)"

94. **Reply:** Child 1 *did not* receive MMR at 15 months, as Wakefield falsely claims here (but not elsewhere[61]). Child 1's date of birth was 14 January 1993 (Ex. 121; BMJ 470). The Royal Free report on this child obtained in *Channel 4* includes an entry for his MMR vaccination: "12 months – 19.1.94" (Ex. 43, also disclosed as BMJ 5244, see 5248). The vaccination date is confirmed in GP records, which also date a 21-month developmental

[60] Medical record, read at GMC: "18 March 1993 'Admitted overnight. Febrile convulsion.' Then underneath 'rash raw - florid measles.'"
[61] Wakefield's book, page 26 (Ex. 57): "Child 1 had developed normally to 18 months of age and regressed soon after MMR with a clearly delineated onset…" (Child 1 received MMR at 12 months of age).

check, thus double-sourcing the boy's birth month (Ex. 122; BMJ 471). Multiple records, including the Royal Free's, thus show that Child 1 received MMR at *12 months*.

95. **Plaintiff quotes:**

> "After MMR – 7-10 days later pale, ? fever, ? delirious (out of it) for 3 days. Had previously had fevers after immunisations. Diagnosed as autism." (quoting clinician note…).

96. **Reply:** I dealt with this matter comprehensively at paragraphs 51-57 of my amended declaration (and at similar length in my original declaration four months previously). This is the child whose mother only positively recalled that her son was "pale" 7-10 days after MMR. Walker-Smith recorded (incorporating question marks into his clinic notes) that she had told him that the boy "possibly" had a fever and "may" have been delirious, and he concluded that it was "difficult" to link the case with MMR. In writing the *Lancet* paper, Wakefield then changed the history, dishonestly omitting Walker-Smith's question marks, omitting "possibly", "may" or any uncertainty, interpreted "delirium" as fact, and covertly used this fig leaf to decide that this was the onset of the "first behavioural symptom" of the boy's purported regressive autism, tabulating it as having occurred "1 week" after MMR.

97. Royal Free records, however, document *normal* development to *18 months* – which would be *six months* after Child 1 received MMR. These records include the Royal Free report obtained in *Channel 4* ("18 months") (Ex. 43; also disclosed as BMJ 5244); a record by neurologist and *Lancet* co-author Dr Peter Harvey ("18 months or so") (Ex. 16; also disclosed as BMJ 3999); and a verified statement in *Channel 4* by Wakefield himself ("approximately 18 months followed by developmental regression") (Ex.17; also disclosed as BMJ 3498).

98. Thus, Child 1's "developmental regression" was not "associated in time" with MMR. According to records, including Wakefield's, the events were *six months* apart.

Child 11

99. **Plaintiff states:**

- "Child 11 – MMR at 15 months: (Note, because Child 11 is a U.S. citizen, his records were not available to Defendants, contrary to Defendants statement): "My son [Child 11] at age 15 months was immunized with the Merck MMR vaccine and became ill for the next several months. As his pediatric records indicate he came down with a viral infection, and shortly thereafter viral pneumonia. His condition slowly deteriorated over time, and was diagnosed as being autistic on his birthday at age 3. The onset of his autistic behaviors began around 18 months.""

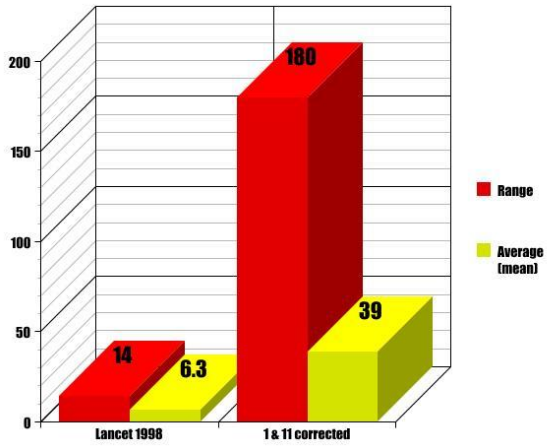
100. **Reply:** This merely repeats the same paragraph as deployed previously for this child. I reviewed the case in my amended declaration at paragraphs 172-80 (Royal Free report), 196 (in *Channel 4*) and 259-68 (Mr 11). This case is unusual in that, following my *Sunday Times* reporting of February 2009 (Ex. 25; BMJ 6181), Wakefield knew that I was in contact with the boy's family. But such an eventuality could not have been in his mind in 1997 when he tabulated the "onset" of Child 11's "behavioural symptoms" and "behavioural problem" as "1 week" after MMR – the same bogus time-frame he tabulated for Child 1 – so as to launch a vaccine crisis on a wholly false premise.

101. In fact, a history included in the Royal Free report obtained in *Channel 4* (Ex. 46; also disclosed as BMJ 5296), supported by the father's recent evidence, shows nothing occurring one week (or indeed several weeks) after Child 11's vaccination, at which point he acquired a chest infection.

102. In any event, on Wakefield's own most recent account, *stated above*, Child 11's "autistic behaviours began around 18 months", some three months, *not one week*, after his MMR.

103. To illustrate the effect of accurately reporting *just* Child 1 and Child 11, with the *actual* interval between vaccination and the recorded onset of behavioural symptoms, I have drawn the graph below. On the left is the temporal relationship claimed in the 1998 paper – the *only* evidence in that paper of any possible link between MMR and autism – and on the

right is the relationship with *just these two* children's cases corrected to what Wakefield has been driven over the years to admit:



- In nine cases, unremarkable colonic histopathology results—noting no or minimal fluctuations in inflammatory cell populations—were changed after a medical school "research review" to "non-specific colitis"

Wakefield's "New Inflammatory Bowel Disease"

104. **Plaintiff states:** "In nine cases, unremarkable colonic histopathology results – noting no or minimal fluctuations in inflammatory cell populations – were changed after a medical school "research review" to 'non-specific colitis'" -- is dealt with comprehensively at Second Affidavit of Andrew Wakefield…"

105. **Reply:** Wakefield does not set out the nature of his complaint in his response. *And no wonder.* The "Secrets" reports contain almost no examination of Wakefield's claims (found by experts in a consensus statement to be unsubstantiated[62]) of having discovered a

[62] Buie T, Campbell DB, Fuchs GI, *et al*. Evaluation, diagnosis, and treatment of gastrointestinal disorders in individuals with ASDs: a consensus report. *Pediatrics*, 2010; 125(suppl 1):S1-18. "The existence of a gastrointestinal disturbance specific to persons with ASDs (eg, "autistic enterocolitis") has not been established…In 1998, Wakefield et a reported an association between ileocolitis and developmental regression in 12 children and coined the term "autistic enterocolitis." From the same uncontrolled study they reported NLH of the ileum and colon as an abnormal finding in most children with ASDs. However, similar findings are known to be present in children with typical development, as well as children with food allergies and immunodeficiencies. The significance of these findings, therefore, is unclear. Wakefield et al also proposed a causal relation between measles, mumps, and rubella (MMR) vaccination and autism, a suggestion that was later retracted by many of the original authors. Other study-design limitations in these reports included flawed control groups, lack of validated and standardized definitions, and speculative interpretation of results."

new inflammatory bowel disease. I discussed this in two other *BMJ* articles, published in April 2010 (Disclosed as BMJ 1408) and November 2011 (Ex. 71; also disclosed as BMJ 1145). Indeed, my reporting of this issue in the "Secrets" series was confined to just two paragraphs at the penultimate page of the first report. One paragraph points only at Walker-Smith, while the other says:

> For the Royal Free team, however, when reporting on these patients, such motility issues were sidelined in the hunt for Wakefield's syndrome. In almost all the children, they noted commonly swollen glands in the terminal ileum, and what was reported as "non-specific colitis." In fact, as I revealed in the *BMJ* last April, the hospital's pathology service found the children's colons to be largely normal, but a medical school "review" changed the results.

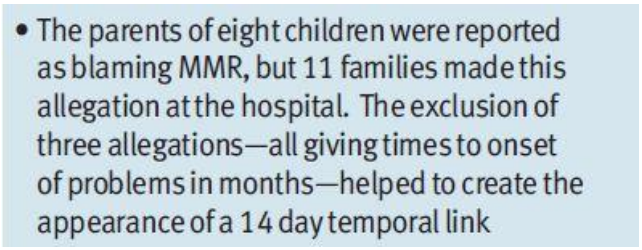
106. I am uncertain as to what in this paragraph Wakefield takes issue. In a 58-page complaint against me to the UK Press Complaints Commission (PCC) in March 2009 (Ex. 123; BMJ 5928, see 5932), he confirmed that diagnostic results obtained by the Royal Free hospital pathology service were subjected to a subsequent review by Dr Amar Dhillon, which generated different results, published in the *Lancet*.[63] In these circumstances, at the time of our publication in January 2011 (when we did not have Dhillon's raw data for evaluation) we could do no more than accurately report the explanation as given.

107. Although, as I say at paragraph 247 of my amended declaration, the changes between the findings of the hospital pathology service and those reported in the paper were sufficient to cause a prominent paediatric gastroenterologist to give the GMC a statement in

[63] Wakefield, complaint to the PCC, page 5: "Biopsies were initially reviewed by duty pathologists who often had no specialist expertise in gastrointestinal disease, particularly in children. Professor John Walker-Smith, the senior clinician, who has an unparalleled experience of the appearances of bowel disease in children, as was his normal clinical practice, reviewed all biopsies at a weekly clinico-pathological meeting of his team. This was undertaken with the assistance of histopathologist Dr. Sue Davies. At these meetings Professor Walker-Smith pointed out the fact that inflammation had been overlooked in some cases.
"It was decided that the senior consultant histopathologist with expertise in intestinal disease (Dr. Dhillon) should review all biopsies from autistic children, and that pathology should be graded on a proforma (or grading sheet) designed by him. Thereafter, a regular review of biopsies took place involving Drs. Dhillon and Anthony, a trainee pathologist. I was also in attendance. Dr. Dhillon's diagnosis formed the basis for what was reported in the *Lancet*;"

which he said he could not exclude "scientific fraud" (Ex. 70; BMJ 806, see 810)[64], we did not know about this statement at the time (or I would have reported it).

108. Although, it is now abundantly clear that the claims in the paper that consultant pathologists made "histological findings" of "colitis" for all but one of the children, and that all children had been found to have "enterocolitis", are false (and, in the latter case, Wakefield must have known they were false) (Ex. 69; BMJ 1137), both the *BMJ* and myself have made it clear that we *did not* rely on the wrong histopathology for our judgment that the paper was *fraudulent*. For example, in January 2012 *Nature* published a letter by me (Ex. 124)[65], responding to claims to the effect that our assessment was directed at bowel pathology, placed there on Wakefield's behalf. My complaints were lodged with the journal before I knew he had initiated his most recent lawsuit.



Wakefield's Exclusion of Parental Complaints About MMR

109. **Plaintiff states:** "The parents of eight children were reported as blaming MMR, but 11 families made this allegation at the hospital. The exclusion of three allegations – all giving times to onset of problems in months – helped to create the appearance of a 14 day temporal link." – is dealt with comprehensively at Second Affidavit of Andrew Wakefield…"

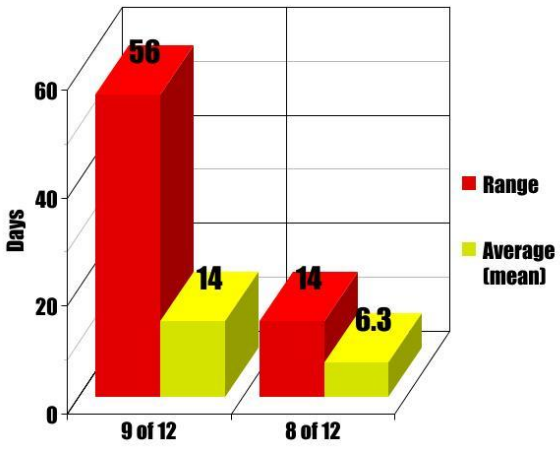
[64] Professor Ian Booth, expert report, November 2006: "In only one case was the altered histology report subsequently noted in the patients' clinical record. Had these been clinically relevant alterations one would assume that they would have been. It is therefore not possible on the basis of the information I have seen to exclude scientific fraud in this area of the Lancet publication."

[65] Brian Deer. Letter to *Nature*. 12 January 2012. "Your report fails to identify where the *BMJ*'s conclusions (that Wakefield's work was "an elaborate fraud"…) were reliant on bowel histopathology. I invoked patient selection, clinical histories and reporting with regard to autism… As no such proposition was advanced (histopathology was almost the only area where, until recently, we lacked critical raw data), why did you publish an article founded upon its denial? The denier, moreover, has no qualifications in medicine or pathology; misread the grading sheets, according to their author; and began working with Wakefield at a meeting of vaccine-campaign activists in Montego Bay, Jamaica, which he attended at the organizers' expense."

110. **Reply:** Again, Wakefield does not set out his complaint, and, again, this does not surprise me. His arguments here are meritless, running for an astonishing 111 of the 505 paragraphs of his 147-page affidavit. As far as I can tell, his case in this respect has two elements. First, he seeks to challenge our graph at page 43 of my amended declaration, illustrating changes (reported in the first "Secrets" article) in his data regarding the alleged "temporal link". Second, he tries to explain why only the parents of eight children are reported in the *Lancet* to have blamed MMR when records show that those of 11 children made this complaint to Royal Free doctors.

Our Reporting and Graph Showing Changed "Temporal Links" Between Versions

111. The following graph uses *Wakefield's own figures* as given in two different versions of the paper. This was not a situation where I worked out these figures myself. These are *Wakefield's data*, taken from the August 1997 version of his paper (Ex. 37; also disclosed as BMJ 5207, see 5208 and 5215) and from the final published paper of February 1998 (Ex. 1; BMJ 5794, see 5795). The bars on the left, below, accurately represent data from the August version, in which the families of *9 of 12* children are stated to associate MMR with the onset of behavioural problems. The bars on the right accurately represent data from the published paper, in which the families of *8 of 12* are reported to make this association.



112. In his second affidavit, Wakefield protests that, behind his calculations of a 56-day range/14 day average gap between MMR and what he called in the *Lancet* the "onset of behavioural problems" or "onset of behavioural symptoms", the August version includes not merely the parents of *nine* children blaming *MMR*, but also additional children's parents who identified *some other* "precipitating event". He says[66]:

> In fact the "56 days" refers to something quite different; it is the maximum interval for those children whose parents cited a possible environmental trigger, including MMR, measles disease, and otitis media – not MMR alone.

113. But, of course, this arcane wrinkle gets him nowhere. It makes no difference to the fact at issue, which is that he *altered* the data in such a manner that 14 days was stated in the August version to be the *average* time from the "precipitating event" to the onset of behavioural problems, and later 14 days was stated again in the published version, but this time as the *maximum*. Moreover, he finds himself unable to deny that this was accomplished after an association with MMR made by the parents of one child, reported in the August version, was dropped. In the plaintiff's 111 paragraphs concerning exclusions of parental complaints, I cannot find one which explains why this happened. This particularly surprises me because, when he published his book in 2010, following my reporting, he changed the number again: from *eight* of 12 back to *nine* (Ex. 125; BMJ 462).

114. Meanwhile, the remarkable durability of "14 days" – also occurring, as I explained in my amended declaration, both in prior vaccine litigation literature and in the initial complaint of Wakefield's associate Ms. Kessick – is left unexplained. And we might also now ask why in 1997 he *changed his mind*: not only about how many children whose parents blamed MMR to include in his "temporal link" calculations – which were his sole evidence of any association between MMR and autism – but also about whether to include at all those who blamed other precipitating events.

[66] Andrew Wakefield, second affidavit, paragraph 374.

115. The effect of his change of mind (as with numerous other alterations described in paragraphs 121-42 of my amended declaration, but which Wakefield ignores in his response) was startling. Firstly, the alleged temporal link dramatically tightened. Secondly, the paper was rendered vastly more credible to the *Lancet*'s editors, peer reviewers and readers, who would surely have been suspicious if they had known that 11 of 12 families (eventually all 12) who turned up at a north London hospital's paediatric bowel unit in the space of a few months, had blamed MMR for their child's developmental disorder.

116. Now, in light of the plaintiff's second affidavit, we see that there was yet more finessing. Wakefield also *changed* the underlying basis of his calculations to shift the spotlight away from *various* possible causes of developmental disorders (including measles and ear infections) to focus squarely on his target: *MMR*.

Unreported Complaints of Three Families Excluded From Wakefield's Calculations

117. To reprise the *Lancet* paper's first "Finding", it stated that:

> Onset of behavioural symptoms was associated, by the parents, with measles, mumps, and rubella vaccination in eight of the 12 children, with measles infection in one child, and otitis media in another.

118. This is repeated on the next page in the paper's "Results":

> In eight children, the onset of behavioural problems had been linked, either by the parents or by the child's physician, with measles, mumps and rubella vaccination… In these eight children the average interval from exposure to first behavioural symptom was 6.3 days (range 1-14).

119. But, as the Royal Free records were laid out at the GMC hearing, it became clear that both were untrue. As I have said, the parents of *three more* children reported the same association to Royal Free doctors, but their concerns were omitted from the paper.

120. At paragraph 388 of his second affidavit, Wakefield acknowledges and adopts a statement he made in his 2009 complaint against me to the UK Press Complaints Commission, in which he gave his explanation for this oddity:

> Parents of 8 of the 12 children made the link between MMR vaccination and onset of symptoms contemporaneously. Other parents made the link retrospectively, that is, some

> years later. We reported on those 8 who made the link at the time of their child's deterioration and excluded those who made the link later in order to remove any bias associated with recall that may have been prompted by, for example, media coverage.

121. To try to make good on this claim, he devotes some 19 pages of his affidavit to picking through children's records (including those which, according to his petition, he never saw when writing the paper) to interpret what he thinks the parents *must have believed* at various times between about 1989 and 1997. In one instance, he even relies on a newspaper clipping to purportedly evidence when a litigant parent (reported in the newspaper recalling events of years past) concluded that MMR made her children autistic.[67]

122. However, whatever he says now, the paper's first "Finding" and its "Results" cannot be true. Hospital records clearly show that three more families – those of Child 5 (Ex. 126; BMJ 899[68], Ex. 127; BMJ 902[69], Ex. 47; BMJ 5311, see 5315[70]); Child 9 (Ex. 19; BMJ 4237[71], Ex. 128; BMJ 918[72]); and Child 12 (Ex. 129; BMJ 1264[73], Ex. 130; BMJ 1266[74], Ex. 131; BMJ 1062[75]) – made the same allegation to Royal Free doctors.

123. Wakefield claims that these three families did not associate the "onset" of their child's "behavioural problem" at "the time of their child's deterioration". But not only would such an exclusion criterion have been a critical fact to report in the paper (and it was not), but it cannot be true. In addition to the withheld information about the *three*, Royal Free records

[67] *Daily Mail*, 12 August 1997. "It was only two years ago that the boys were diagnosed as autistic and that was after months of being told by various people that there was no link with MMR."
[68] "His parents feel that the onset of his neuro-developmental symptoms stems from the period 2 months after having had the MMR vaccination which he received on the 10th April 1990. A few months subsequent to this he started losing his skills."
[69] GMC transcript of records of Royal Free neurologist Dr Peter Harvey: "No doubt about relationship with MMR at onset. No doubt of normal earlier development", and then on page 39 "videos of his pre-MMR autism behaviour" - I am sorry: "Parents have no doubt about relationship of MMR outset. No doubt of normal earlier development".
[70] "By whom was the reaction noted? Parents."
[71] Local paediatrician statement: "The letter informed me that Child 9's mother linked his mental regression at age 18-20 months to MMR which he was given at 16 months of age."
[72] Discharge summary: "At 18-20 months of age he started to regress mentally. His mother links for that with MMR which was given at 16 months of age".
[73] GP record: "Call from Dr Wakefield. Needs colonoscopy B12 absorption tests. History of measles vaccination reaction."
[74] Wakefield Royal Free record, ordering tests: "Autistic spectrum disorder and bowel disorder following MMR."
[75] The records show a legal aid certificate was issued for Child 12 nine days before his first Royal Free outpatient appointment.

also show that families among the *eight*, whose parents *are* documented in the *Lancet* as making the association, *did not do so contemporaneously*.

Child 1

124. It has been established above that (notwithstanding Wakefield's false claim in this litigation referring to 15 months) Child 1's developmental problems are acknowledged by him elsewhere to have begun six months after the boy's MMR. This was the 3½-year-old whose the mother (2½ years after the fact) recalled that he was pale 7-10 days after his MMR in January 1994. The GP who referred the boy to Walker-Smith, in May 1996, wrote: (Ex. 132; BMJ 1087, see 1089) (my emphasis):

> [Mr and Mrs. 1's] ***most recent concern*** is that the MMR vaccination given to their son may be responsible for the autism

125. In the life of a 3½-year-old, 2½ years previously is not "recent".

126. Indeed, despite Wakefield's recent concern about the potentially contaminating effects of media coverage, cross-examined at the GMC in April 2008, he said he did not know whether Child 1's parents got the idea of a problem with MMR "prospectively" or whether they got it from reading a *newspaper* (Ex. supra)[76].

Child 2

127. Child 2, son of Wakefield's associate Ms Kessick, was born in July 1988 and vaccinated with MMR in November 1989[77]. There is no record of any contemporaneous association of developmental problems with the vaccine: unsurprising since Ms Kessick told me that those problems did not begin until up to six months afterwards, and her experts in the product liability suit similarly put the time in months. The first record making mention of concern about MMR was taken by the GP in November 1994 – *five years* after the boy was

[76] Wakefield: "I think the reason that the article rang a bell with them in the newspaper is that their child had gastro-intestinal problems. They felt that that was associated, or at least based upon the article – I cannot remember whether they did it prospectively or whether it was based upon the article – made an association between the exposure and the gastro-intestinal problems in their child which accompanied his developmental regression. That was my understanding."

[77] Child 2 was born on 29 July 1988, and vaccinated with MMR on 8 November 1989.

vaccinated. After seeing Ms Kessick at his surgery, the doctor noted bluntly (Ex. 133; BMJ 1121):

> Nil obvious re MMR story

128. In Wakefield's second affidavit (paragraphs 405-09), he overlooks this record, but cites others, dated August 1995, October 1995 and September 1996, which he says "provide ample evidence of mother of Child 2's contemporaneous concerns about MMR starting very soon after his exposure." However, Ms. Kessick also features in his book, where he describes how their relationship began in *May 1995* (Ex. 57; BMJ 474). This was *three months before* the first record he cites in his second affidavit to evidence her "contemporaneous concerns" of 1989.

Child 6

129. As I said in my amended declaration at paragraphs 156-66, I obtained in *Channel 4* a Royal Free record for Child 6, one of the three Brighton area children (Exhibit 44; also disclosed as BMJ 5261). This report includes an extract from an April 1993 GP letter reporting the mother's contemporaneous association of her son's problems with a *measles infection three months before* his MMR.[78] This was second-sourced at the GMC hearing (Ex. 86; BMJ 1056, see 1066).

130. Child 6 received MMR on 15 June 1993, at the age of 14 months.[79] As part of Wakefield's MMR project, three years and four months later (in October 1996) Walker-Smith took a history from the mother and, as Wakefield quotes in his second affidavit at paragraph 433, wrote to him that Child 6:

> had measles rash week before MMR at age of 15 months but the doctors proceeded with the MMR injection. He had behaviour changes within a week…

[78] GP Dr Ball letter, dated 03.04.93, that Mrs. [6] concerned that *since measles infection* [Child 6] had been generally unwell. Reported as developing sudden pyrexia's and listlessness.
[79] Child 6 was born on 29 April 1992.

131. In fact, Wakefield's second affidavit is misleading, truncating Walker-Smith's words at precisely the moment they become significant. Checking the letter we find that Walker-Smith told Wakefield (Ex. 104; BMJ 4196, see 4197) (my emphasis):

> He had behaviour changes within a week ***although mother has only relatively recently associated the change of behaviour with the MMR.***

132. We can be fairly hopeful that Ms. Thomas, the mother of Child 6, did not conclude that MMR might cause autism, or any serious problem, proximate to his vaccination because in November 1995, almost 2½ years after Child 6 had MMR, she took his younger brother, Child 7, to get the same shot.

133. If Wakefield had genuinely been concerned to "remove any bias" caused by media coverage, he would have omitted the claims of Ms. Thomas, representing one quarter of the eight children whose parents were said to have made the association with MMR. The month following Child 7's vaccination, Wakefield, along with Mr Barr and other vaccine campaigners, featured in a major feature (titled "A shot in the dark") in the *Sunday Times Magazine.*

134. In February 1996, when he hired Wakefield for £150 an hour to support the product liability suit (Ex. 8; also disclosed as BMJ 1703), Mr Barr trumpeted the *Sunday Times* breakthrough in a newsletter to his vaccine clients and contacts (Ex. 134; BMJ 1283, see 1284).

135. Mr Barr's newsletter also included a list of common symptoms (some as mundane as anal polyps) and he told his clients and contacts:

> If your child has suffered some or all of these symptoms could you please contact us and it may be appropriate to put you in touch with Dr Wakefield.

136. The following month, March 1996, Wakefield's name appeared in the Brighton GP's records for Child 6 (Ex. 103; BMJ 4208, see 4209)[80], and another note appeared in a hospital record for his brother, Child 7. This said: "Continues to be anxious re post effects of MMR vaccination". (Wakefield Exhibit 149).

Child 11

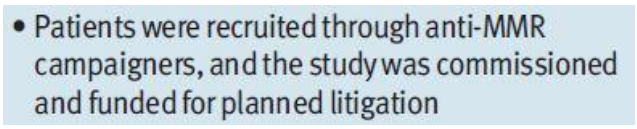
137. It has already been established that what the father of Child 11 called his son's "autistic like behaviours" started some three months after he received MMR, not "1 week" as claimed by Wakefield in the *Lancet*. Indeed, when shown the paper for the first time, in 2007, the father told me: "That's not right" and "That's not true".

Conclusion Regarding the Parental Associations

138. In his 2009 complaint against me to the PCC, almost two years before the "Secrets" series, Wakefield stated (Ex. 123; BMJ 5928, see 5942):

> the other authors generated and 'prepared' all the data that was reported in The Lancet. I merely put their completed data in tables and narrative form for the purpose of submission for publication.

139. It is clear from the records, however, that this claim is untrue. Firstly, authors identified 11 families making the association with MMR, not eight as he reported. And, if he did use the undisclosed criteria he claimed to exclude three families, then, on the same basis, he should also have excluded at least Child 1, Child 6 and Child 11, and probably also Child 7. Either way, he would not have had a paper in the *Lancet*.



[80] GP practice record, March 1996: "Dr Wakefield - Royal Free. To discuss association measles + Autism + inflammatory bowel disease. Discussed general concerns re family. If we feel relevant can refer for treatment to Professor Walker at the Royal Free for investigation."

Wakefield Denies Role of Campaigners And Legal Funding

140. **Plaintiff states:** "Patients were recruited through anti-MMR campaigners, and the study was commissioned and funded for planned litigation" -- is dealt with comprehensively at *See Poulter Declaration***.**"

141. **Reply:** This matter was exhaustively examined years ago. Ms. Poulter's declaration goes nowhere, not least because on 4 October 1996, two weeks before her son's first outpatient appointment at the Royal Free, both she and Wakefield attended a meeting of the litigation campaign group JABS ("Justice, Awareness and Basic Support") while he was recruiting for the study (Exhibit 135; BMJ 1428)[81]. It is uncontroversial that Ms. Poulter was introduced both to Wakefield and Mr Barr through a recommendation from Ms. Thomas, a JABS activist.

Patients Were Recruited Through Anti-MMR Campaigners

142. Following my first *Sunday Times* reports on MMR in February 2004, Jackie Fletcher, founder and organiser of JABS, wrote to Wakefield. Her letter explained that she had referred members of her campaign group to him, and she set out how she said this had come about (Ex. 136; BMJ 916)[82] . As I later noted in my first *BMJ* "Secrets" report, both she and Ms. Kessick would separately tell me that it was on Ms. Fletcher's advice that Ms. Kessick first approached Wakefield.

[81] Rochelle Poulter to Wakefield: "I would like to say how nice it was to meet you at the JABS open meeting in London on 4 October. I found your short discourse both informative and interesting."

[82] Jackie Fletcher to Wakefield: "…we thought it prudent when parents complained to us about the lack of treatment for their children's bowel problems to suggest they ask their doctor to write a letter of referral to you at the Royal Free Hospital. Some of the parents did not want to waste any time and in these cases we suggested they should write directly to your department, giving details of their GP and to describe precisely their child's symptoms, when the problem had started and what action if any had been undertaken already by the child's doctor. Some of the families were pursuing legal action against the MMR vaccine manufacturers other families within the group were not."

143. Mr Barr not only represented claimants in the product liability lawsuit, but also advised the JABS group. As I have said, he issued a newsletter in February 1996 expressly soliciting children for referral to Wakefield (Ex. 134; BMJ 1283, see 1284)[83].

The Study Was Commissioned and Funded For Planned Litigation

144. As I explained in paragraphs 20-21 of my amended declaration, in late 2003 and early 2004 I was told by authoritative sources that the study was commissioned and funded for planned litigation. These sources were, firstly, officials of the UK Legal Services Commission (successor to the Legal Aid Board), who disclosed that the board had granted a maximum of £55,000 to Wakefield for a "clinical and scientific study" (materially identical to what he submitted to the *Lancet*); and, secondly, Mr Barr, who said he had arranged payments for the work set out in the *Lancet* and had noted at the time of publication that the paper did not include a funding acknowledgement. I attach as Exhibit 137 (BMJ 941) the legal aid certificate naming Wakefield.

145. Finally, Wakefield himself wrote to Royal Free managers (Ex. 11, also disclosed as BMJ 6156)[84],[85] that the study was "sponsored by the Legal Aid Board".

Conclusion

146. As I said at the start of this supplement to my amended declaration, the detail here does not encompass the full basis upon which I came to believe that the plaintiff's *Lancet* paper was, as the *BMJ* editorial of 5 January 2011 put it, "an elaborate fraud".

[83] Dawbarns solicitors, newsletter, February 1996: "He is also anxious to arrange for tests to be carried out on any children vaccinated with the MR or MMR vaccine who are showing symptoms of possible Crohn's disease. The following are signs to look for. If your child has suffered some or all of these symptoms could you please contact us and it may be appropriate to put you in touch with Dr Wakefield."

[84] Wakefield to the Royal Free director of finance, 23 May 1997: "In addition, we have been awarded a grant of some £50,000 by the Legal Aid Board to investigate the possible association of this syndrome with the MMR vaccine. This money had been provided through Dawbarns Solicitors (see enclosed documentation) for the express purpose of performing the study outlined in the enclosed protocol. This protocol, as you will see, has been approved and passed by the Ethics Committee of the Trust."

[85] Wakefield to the Royal Free chief executive, 3 July 1997: "Further to our conversation the other day and your subsequent letter, I am writing to confirm that there is no conflict of interest in relation to the Legal Aid funding for our clinical study of children with autism and intestinal inflammation. This study, which has been sponsored by the Legal Aid Board, is similar to a study they have sponsored as an investigation of Gulf War Syndrome… Please find enclosed a copy of our first paper submitted to the Lancet concerning the children under investigation."

Nevertheless, I have replied to "Element 4" of his response, headed "The Statements Are False" (pages 34 to 40), as they relate to my reporting.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 24th day of July, 2012.

Brian Deer

Special note 1: It is not suggested that the lawyer or any other person referred to in this statement had knowledge at the time of Wakefield's improper activities with regard to the Lancet paper.

Special note 2: More information on this litigation is listed at briandeer.com.