

Richard Wordsworth
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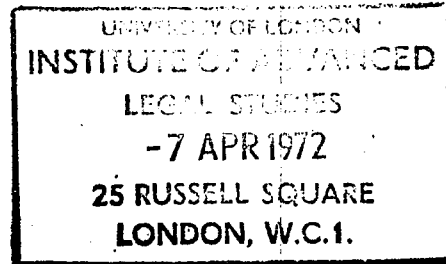
GENERAL MEDICAL COUNCIL

DISCIPLINARY COMMITTEE

Wednesday, 24 February 1971

Case of

BARKER, Richard Wordsworth



R E C O R D

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The President, Lord COHEN OF BIRKENHEAD, in the Chair

Case of

BARKER, Richard Wordsworth

The Committee inquired into the following charge against Richard Wordsworth Barker, registered as of The Boundaries, Four Marks, Alton, Hants, MB BS 1953
Durh:-

"That, being registered under the Medical Acts,

(1) In September, 1963, you entered into a professional relationship with Mrs Carola Alphonsa Maria Kerr then of Sweet Briar, Blackberry Lane, Four Marks, near Alton, Hampshire, and with her husband and son, and you subsequently attended her and members of her family on numerous occasions;

(2)(a) You retained Mrs Kerr's name on your list until November 20, 1968, when she removed her name from your list without the knowledge of her husband;

(b) You retained the names of Mr Kerr and his son and daughter on your list until October, 1969;

(3) For some weeks during July and August, 1968, you employed Mrs Kerr as a receptionist in your practice:

(4) During the period when Mrs Kerr and her family were your patients, and during the period when you employed Mrs Kerr as a receptionist, you abused your position as a medical practitioner by forming an improper association with her, and from November, 1968, onwards you frequently committed adultery with her, and since September, 1969 you have cohabited with her;

And that in relation to the facts alleged you have been guilty of serious professional misconduct."

* see page 49

Dr Barker was present and was represented by Mr F. Baylis, of Messrs Hempsons, Solicitors to the Medical Defence Union.

Mr G.J.H. Widgery, Solicitor to the Council, appeared in order to place the facts before the Committee.

The Assistant Registrar read the charge.

Mr WIDGERY: The facts set out in the charges in this case are, I understand, admitted, except that Dr Barker denies that he abused his position as a medical practitioner and he does not admit that he has been guilty of serious professional misconduct. It will be for the Committee to decide whether on the evidence you find that by entering into an improper association with his patient, Mrs Kerr, which led to their adultery, Dr Barker abused his position as medical adviser to Mrs Kerr and her husband and children and in so doing was guilty of serious professional misconduct.

Dr Barker is 44 years of age, he qualified in 1953 and is a Bachelor of Medicine and a Bachelor of Surgery of Durham University. He is in practice at Four Marks, a village on the main road between Alton and Winchester in Hampshire.

In August of 1963 a family called Kerr came to live at Four Marks - a Mr John Woodlands Kerr, his wife and their son Robert, then about three years of age.

The following month, in September 1963, the Kerr family became National Health Service patients of Dr Barker and from then on for the next five years or so Dr Barker was the family doctor and attended to Mr and Mrs Kerr and the children whenever required.

On 19 June 1964 Mrs Kerr had a second child, a daughter Anna, who was born in hospital, but Dr Barker provided the necessary ante-natal and post-natal treatment for Mrs Kerr.

By 1966 a friendship had developed between Mrs Kerr and the doctor's wife, Mrs Barker, probably due to the fact that their children, or some of them, were at the same schools, and the two ladies were on Christian name terms and paid social visits to each other's house.

From March 1966 for the next two years or just over, until June 1968, Mrs Kerr did night work at the local hospital at Alton. She was not a nurse but she assisted the nurses or did some domestic or general work.

In July 1968 for two or three weeks she acted as Dr Barker's receptionist when his usual receptionist was away on holiday.

Mr Kerr will say that up to this time, the summer of 1968, his marriage was a happy one so far as he is concerned, and he will say that he and his wife were affectionate by nature and that all was well in the marital camp.

Shortly after this, in September 1968, Mr and Mrs Kerr went on holiday and when they returned Mrs Kerr began to go out in the evenings - this was after she had given up her work in the Alton hospital - and it was said that the purpose of her so doing was to give German lessons to Dr Barker.

I should explain that Mrs Kerr was of German origin.

She was away from home in the evenings from about 7 until 10 or 11 o'clock. Her periods of absence grew longer and at times she did not come home until the early hours of the morning.

This led, not unnaturally, to rows between Mr and Mrs Kerr, and their relationship deteriorated, and Mr Kerr will say that on occasions his wife did not return until the early hours of the following morning, and that she was also at times absent during the day, noticeably on a Wednesday, which was Dr Barker's day off.

By November 1968 Mrs Kerr was refusing to have sexual intercourse with her husband, and over the first weekend and the last weekend in November 1968 Mrs Kerr and Dr Barker went away and stayed at a hotel in Oxford and committed adultery.

On 20 November 1968 Mrs Kerr arranged for her name to be removed from Dr Barker's list but her husband knew nothing of this at the time.

The names of Mr Kerr and the two children remained on Dr Barker's list until October 1969.

From November 1968 adultery took place between Dr Barker and Mrs Kerr frequently, and in the following month, December, Mr Kerr left his wife and took the two children and moved away from Four Marks and went to live elsewhere. His wife stayed on in the house at Four Marks.

Then in February 1969 Mr Kerr took proceedings in the Alton Magistrates' Court for an order for legal custody of the two children. He also made an attempt to effect a reconciliation with his wife but without success.

In September of 1969 Mrs Kerr left her husband's house

at Four Marks and went to live with Dr Barker at his house in the same village, and I understand they have remained there ever since.

In 1969 Mrs Barker, the doctor's wife, brought divorce proceedings against her husband on the ground of adultery with Mrs Kerr, and the decree nisi in those proceedings was made on 1 October 1969 and the decree absolute followed on 1 February 1970.

You have before you the documents in this case. There are the two confession statements which briefly confess to the adultery taking place over the two weekends in November 1968. These are followed by the letter for explanation on pages 3 and 4. Then there is a letter from Messrs Hempsons dated 20 July, on page 5, which in effect admits the facts but does not admit professional misconduct.

Then there is Messrs Hempsons' letter, on page 6, dated 24 July 1970, which perhaps I should read. It is addressed to the Registrar and is as follows:-

"We have looked again at your letter to Dr Barker of the 25th June and we feel that it might be helpful to ask that the additional observations set out below should also be considered by the Council.

We are instructed that Dr Barker had no social contact with Mrs Kerr at all prior to July 1968. Then, at the suggestion of his receptionist who was leaving, Dr Barker employed Mrs Kerr for a period of 2½ weeks as a receptionist. Then Dr Barker went on holiday with his family to Germany and whilst on holiday conceived the idea of learning German. On his return he arranged, with the knowledge of his wife and Mrs Kerr, for Mrs Kerr (who is of German nationality) to give him lessons in the German language. These took place several times each week and it was through these lessons that the friendship between Dr Barker and Mrs Kerr came into existence. It so happened that neither were happy in their own marriage and the friendship quickly developed into a close affection and it was in November 1968 that Dr Barker and Mrs Kerr provided the evidence of adultery for divorce, and they have lived together as man and wife ever since.

On the basis of these facts we respectfully submit that Dr Barker did not, in his association with Mrs Kerr, abuse his position as a medical practitioner."

I would submit that whether or not there was any social contact or relationship between Dr Barker and Mrs Kerr before July of 1968 or indeed at any time is quite irrelevant in the circumstances of this case, and I suggest that what Dr Barker did in this case was to allow his professional relationship with this woman to deteriorate into an improper association; and, as you well know, in the de Gregory case in 1961 Lord Denning said: "A medical man who gains the entry into the family confidence by virtue of his professional position must maintain the same high standard when he becomes the family friend." The same theme was followed by the late Lord Upjohn in the McCoan case three years later, in 1964, when he said: "One of the most fundamental duties of a medical adviser, recognised for as long as the profession has been in existence, is that a doctor must never permit his professional relationship with a patient to deteriorate into an association which would be described by responsible medical opinion as improper."

That is all I wish to say in opening the case, and the only witness I shall be calling is Mr Kerr.

John Woodlands KERR sworn

Examined by Mr WIDGERY:

Q Is your name John Woodlands Kerr? A. Yes.

Q Do you live at 74 Windmill Street, Brill, near Aylesbury, Bucks? A. I do.

Q What is your occupation? A. I am in the Diplomatic Service.

Q Were you married in 1961? A. On the 18th August 1961.

Q What is your wife's full name? A. Carola Alphonsa Maria Kerr, formerly Kroh.

Q I believe you have two children, a son and daughter now aged 10 and 6 respectively? A. Yes.

Q Did you in August 1963 go to live at Four Marks, Hampshire? A. Yes.

Q At that time was your address at Sweet Briar, Blackberry Lane, Four Marks? A. It was.

Q How many doctors were there? A. In Four Marks at that time there was one, so far as I was aware.

Q Who was that? A. Dr Barker.

Q Can you see Dr Barker here today? A. Yes.

Q You said you went to Four Marks in August. Did you and your wife and son the following month become National Health Service patients of Dr Barker? A. I think almost as soon as we went there we became patients.

Q From then on did Dr Barker provide any medical treatment which you or your family required? A. Yes, we had the normal illnesses, I suppose.

Q Your son Robert was quite young at the time? A. He was a year and 9 months when we went down there, and he suffered from acute ear trouble, I recall, and had excessively high temperatures.

Q Did Dr Barker attend to your son? A. Yes.

Q What about your wife? Did she have any illnesses? A. I cannot recall exactly now the illnesses from which she suffered, possibly influenza and things of this kind, and possibly German measles, but Dr Barker certainly came to the house to visit us.

Q Then your wife became pregnant again towards the end of 1963? A. Yes.

Q And did Dr Barker attend her throughout her ante-natal period? A. Yes.

Q And after the child was born? A. Yes.

Q Your second child was your daughter Anna? A. Yes.

Q When was she born? A. She was born on 19 June 1964 in Winchester Hospital.

Q Did you yourself have any occasion to be attended by Dr Barker? A. Fortunately I enjoy quite good health most of the time. I did go to his surgery quite frequently for minor ailments and he may have attended me once at home. I could not be sure on this point.

Q Was there any friendship between your respective families - your wife and the doctor's wife?

A. Early in 1968, I think about April, a friendship was struck up between Dr Barker's wife and my own wife. I have seen Mrs Barker in our house on what were purely social visits. I eventually, to be sociable towards her, called her by her first name, but my relationship with Dr Barker was strictly an impersonal one.

Q Was your son at the same school as the Barker child?

A. Yes. I think I am right in saying this was how the friendship began initially.

Q Can you tell us about your wife's occupation? She did some work for a while? A. Yes. This was from the 18th March 1966 until 27th June 1968. My wife went into Treloar Hospital in the autumn as a nurse assistant on night duty.

Q Had she left the house before you got home in the evening? A. Yes, it was quite a complicated arrangement. I would come home in the evening, arriving about seven. I would then take care of the children while my wife went off to work. She was back about an hour after I left in the morning, and for that hour the children would be with a neighbour to whom I took them.

Q When your wife gave up her work at the hospital, which you said was in June 1968, did she then take up some employment with Dr Barker? A. Yes, Dr Barker's regular receptionist I think was away on holiday, and the arrangement was that my wife should sit in for her, so to speak, which she did, I think, from 22 July for a period of 2½ to 3 weeks.

Q Did you have any objection to that? A. I did not, quite frankly, no.

Q What was your normal pattern of travel? You left home at what time in the morning to go to London? A. At about quarter to seven, and I would be back in the evening at seven o'clock to take care of the children.

Q At the time in July 1968 when your wife went to act as receptionist for a short while for Dr Barker, what was your relationship with your wife? A. Excellent; very good indeed.

Q Would you say your marriage was happy up to this stage? A. I do not think there is a perfect marriage. Our marriage was happy and we had a good physical relationship, and it was normal in every way. The children loved us both and we loved the children and it was very much a family unit.

Q Had you at this time, in the summer of 1968, any suspicions or apprehensions about your wife's association with Dr Barker? A. Not initially. I just could not conceive that such a thing could occur. I held him in very high respect and I was deeply indebted for the way he helped the children initially when we moved down there. Later on I am afraid I did have my suspicions.

Q In August 1968 did you go on holiday with your wife and children? A. Yes, we went on holiday to the coast, to Huddiford in Hampshire, in August.

Q Was your relationship with your wife at that stage normal and happy? A. I would say absolutely ideal. We had sexual intercourse every night. I remember this fact distinctly because we spoke about this.

Q So you had a happy holiday? A. Indeed.

Q What happened when you returned home to Four Marks after that holiday? A. It was shortly after that that our relationship began to deteriorate and my wife took a job in a boutique in Alton. I just simply did not understand what had gone wrong.

Q And then did your wife take on any other occupation in the evenings at about this time? A. She told me that she had decided to give German lessons to Dr Barker.

Q At what time of day or night did these take place? A. I can only tell you what I know about my wife's movements. I came home at seven o'clock and she would go out immediately, or very shortly thereafter, and she would come back possibly at half-past 10 or half-past 11.

Q Did the pattern change after a while? A. Yes, her absences from the home began to lengthen and she would stay out frequently until the early hours of the morning.

Q What about the daytime? Were you able to check her absence in the daytime? A. I began to notice that her absences were corresponding with Dr Barker's times off duty. It was transparently obvious. On a Wednesday she would be away the whole day from the early morning until late in the evening, and Wednesday was his day off.

Q How long did this state of affairs continue - these German lessons or your wife's absences in the evening? A. In terms of weeks or months?

Q Weeks or months if you like? A. This went on from some time after my return from holiday until finally I spoke to my wife about this about the 5th November.

Q You have seen, I think, confession statements signed by your wife and by Dr Barker? A. I have.

Q In which they admit that they spent the first weekend and the last weekend of November 1968 together at a motel in Oxford? A. Yes.

Q Can you tell us about an occasion at the end of November when you were in your local village with your wife and the children? It was a Saturday? A. Yes, she had told me previously that she was going away that weekend. She refused to say where or when she would be coming back and she left the children and myself outside the post office, as I recall, in the village at about 11

o'clock on the Saturday morning.

Q Had you all set out from your house together to do the shopping? A. Yes. As I recall, it was raining heavily, and I do not drive a car, and my wife drove us very kindly to the post office and left the children and myself there. The children were extremely distressed, and she went off without saying where she was going or when she would be coming back.

Q So you did not know where she was going? A. I had no idea. I had previously pleaded with her to leave a telephone number or address in case the children became ill or ---

Q What did you do after that happened? A. I picked up the telephone and rang Dr Barker's number and there was a recorded announcement to the effect that the doctor was off duty until the following Monday morning, and that in case of need one should get in touch with Dr Goode of Alton.

Q When did your wife return from this weekend visit? A. At half-past two on the morning of Monday, 2 December.

Q And we know now from the confession statements that she had been spending the weekend with Dr Barker? A. Yes.

Q Did you take any action to leave the house with your children after this? A. I did. The children became so distressed at the time, with these prolonged absences, that I left and took the children away on Wednesday, 18th December, first to Alton and then to the London Cromwell Road Air Terminal.

Q And you have in fact been living elsewhere with the children ever since? A. I have.

Q Did your wife stay on at Four Marks in your house? A. Yes, I had not notified her that I was leaving, but I did leave her a note. My wife stayed on in the house. I understand that she moved out in September 1969.

Q Did you make any attempt after that to effect a reconciliation between yourself and your wife? A. Yes, we left on the 18th December and on the 5th January 1969 I met my wife by arrangement at the Convent of St Lucy in the village of Medstead, the adjoining village, and I am afraid the meeting was a complete failure because my wife did not seem capable of rational discussion.

Q Did you consult solicitors at that time? A. Yes, afterwards. My solicitors on my instructions wrote to my wife asking her if she was prepared to return - pleading with her, really, to give up her present conduct. I said that I would return and I offered to try to re-build the marriage.

Q But that effort did not succeed? A. No.

Q And then did your wife leave your house in Four Marks in the autumn of 1969? A. Yes, I think in September 1969.

Q Do you know where she went? A. She went to live with Dr Barker, I understand.

The LEGAL ASSESSOR: There is a limit to the admissibility of inadmissible evidence, unless it is admitted.

Mr WIDGERY: I think the facts are admitted so I need not pursue the question. (To witness): Would you like to tell the Committee anything about your marriage until your wife became friendly with Dr Barker? A. I think it was a normal marriage.

Q I would like you to look at a letter from Dr Barker's solicitors, Messrs Hempsons. It is the letter of the 24th July on page 6. In the middle paragraph of that letter, about two-thirds of the way down, there is a sentence which starts, "It so happened that neither were happy in their own marriage" - "neither" meaning, of course, Dr Barker and Mrs Kerr. Would you please just comment on that? A. It is difficult for me to comment any further than I have done already. As I said at the outset, we had a normal family relationship. One only had to look at our two children to see this. We had our ups and downs - what couple don't? - but it was most definitely a very solid family unit, with a unique degree of closeness.

Cross-examined by Mr BAYLIS:

Q You married your wife in 1961? A. Yes.

Q And it was in 1963 that you moved to Four Marks?
A. Yes.

Q Having previously lived in Holland Park or Kensington?
A. Yes.

Q And almost at once the whole of your family joined Dr Barker's medical list? A. Yes.

Q He being the only doctor in the area? A. Yes.

Q And for the next five years he was the family doctor?
A. He was.

Q Looking after any illnesses there were which needed looking after? A. Yes.

Q You told the Committee that so far as you were concerned you had very little illness and required very little medical attention? A. Yes.

Q You have told the Committee that it was in early 1968 that your wife became friendly with Mrs Barker because the children went to the same school? A. Yes.

Q It is right, is it not, that so far as Dr and Mrs Barker were concerned as a pair there was no social contact between you and your wife and them during this period? A. Not that I am aware of.

Q You never visited each other for bridge or dinner or anything of that sort? A. No.

Q Then in July 1968 your wife spent 2½ weeks acting as receptionist for the doctor at his surgery? A. Yes.

Q I expect you knew that this was because the receptionist was temporarily away or there was not one available? A. Yes.

Q You did not have any objection to that? A. It was presented to me rather as a fait accompli. I did not object to it. I did not challenge it. I would like to make this clear.

Q You were not consulted beforehand and when you were told it was going to happen you did not object? A. I did not.

Q And it went on for a very short period in any event - 2½ weeks? A. Yes.

Q You have told the Committee how you went on holiday down to Cornwall and how in October of 1968 your wife told you that she was asked to and agreed to give Dr Barker some German lessons - because your wife speaks German, being of German nationality? A. She speaks German but as far as I know she has no qualifications as a teacher.

Q I do not think she claims it, but she does in fact speak it. It was arranged and indeed it did happen that those lessons were given in the evening? A. Yes, so I understand.

Q Two or three times a week? A. Yes.

Q Do you know where they took place? A. I could not say. I would not have thought this was a matter in dispute. I assume they took place at his home.

The PRESIDENT: They did not take place in your house? A. No.

Mr BAYLIS: Did you raise any objection to this arrangement? A. I did not at the outset.

Q It was in about November that your wife told you that she had formed an affection for Dr Barker and that that was reciprocated? A. She did not reveal the name of the person.

Q She told you she had fallen in love with somebody? A. Yes.

Q At all events, you discovered the position fairly quickly? A. She referred vaguely to "this man". That

was the expression she used. The doctor's identity was never revealed.

Q At all events, you left the area and went to live somewhere else with the children on the 8th December 1968?
A I did.

Q Where did you go and live? A. To begin with I went to stay with my sister in Scotland and subsequently to a village in Buckinghamshire, to which I have returned.

Q At all events, some way away from Four Marks? A. A two hours car journey.

Q I ask this because it is known from the Executive Council records that officially your name remained on the Medical List of Dr Barker until October 1969? A. Yes.

Q In so far as you or your children required any medical treatment after December 1968, did you go to another doctor? A. Yes, we did.

Q But presumably you did not officially join the list of the other doctor? A. I cannot recall. I think we probably did.

Q You may or may not have done, but according to the records of the Executive Council your name remained on the list of Dr Barker until October 1969, and that is one of the matters this Committee is dealing with? A. Yes, I see.

Q At all events, you had another doctor when you needed one from December 1968? A. Yes.

Q You have told the Committee that your marriage was a normal one until the friendship of your wife and Dr Barker supervened? A. Yes.

Q I am afraid I must ask you one or two questions about that. Was this your first marriage? A. No.

Q It was in fact your third marriage, I believe?
A. Yes.

Q The previous two having ended in divorce? A. Yes, my first wife divorced me and I divorced my second wife. That should be made clear.

Q And is it the case that more or less throughout your marriage your wife made clear to you that she was not at all happy with you? A. On the contrary.

Q Were there in fact many quarrels and rows between you? A. Not many. We had disagreements, as almost every married couple have.

Q Were the quarrels - I am sorry to have to put it to you - in fact due to your intemperance? A. No.

Q Did you in fact get drunk on your wedding day? A. I had a bit to drink, yes.

Q Do not think I am expressing any criticism of you. A. Not a bit.

Q But is it a fact that you got very drunk and had to be taken home from your wedding reception? A. No, on the contrary.

Q At all events, there was no honeymoon, was there? A. Oh, yes, there was.

Q Was there an incident a year after you were married, that is to say, in 1962, which involved certain pills that your wife had been prescribed? A. Can you elaborate?

Q Was there an occasion when you had a bitter quarrel with your wife, and in relation to the pills which she was taking, for arthritis, you said to her, "Why don't you take all of them?", and she did? A. I cannot recall this; I can recall having to take her to hospital.

Q Having taken the pills did she have to go off to the local hospital to have her stomach pumped out? A. She went to the local hospital. I cannot recall what treatment she received.

Q It is my duty to suggest that that is what occurred. I am not suggesting that you were seriously suggesting that your wife should try to commit suicide, but you were unkind enough to say, "Why don't you take all the pills?", which she promptly did, to her detriment. (No answer.)

Q Was there an occasion in 1963, while you were living in Holland Park, when you had another terrible row arising out of a proposed visit to some friends, when you got very intoxicated and smashed the glass of a bus time-table in the street? A. I did, yes.

Q And had to be taken to hospital. You cut your hand? A. Yes, I cut my hand.

The LEGAL ASSESSOR: There were two questions. One was whether you were very intoxicated when you did this. Were you intoxicated when you did it? A. Not to the extent that has been suggested here.

Mr BAYLIS: Let us have it fairly. One does not go round smashing bus time-table glasses in the normal course of events. Had you drink taken and did that affect your action on that occasion? A. It probably did, yes.

Q And were you quarrelling with your wife at the time? A. I think we had a quarrel, yes.

Q I think after that episode your wife left you, taking the children with her? A. She did.

Q She remained away for about six weeks? A. About six weeks.

Q Did your wife consult a probation officer called Mrs Rawlings? A. She did.

Q And did Mrs Rawlings do her best to bring you together again? A. I think she succeeded largely.

Q Did your wife return to you on certain conditions? A. I believe so. I cannot recall what they were.

Q Were the conditions twofold, namely, that you should stop drinking and that you should accept psychiatric advice? A. The first one I agree with. I question the second. What was suggested was that I should go to a marriage guidance authority.

Q I think you sought assistance at the Tavistock Clinic? A. I did.

Q You gave evidence before a court which has been referred to in proceedings arising out of the custody of your children? A. Yes.

Q In the course of those proceedings did you admit that there were occasions when you had struck your wife? A. I do not recall having said such a thing.

Q Did you strike your wife on a number of occasions during your marriage? A. No, I do not think I ever did. It happened the other way round. My wife struck me on several occasions.

Q Did she? A. Yes.

Q I have to put it to you that there were a number of occasions on which you struck her with your fist, on at least one occasion giving her a black eye? A. I cannot recall.

Q If your wife testified to that fact - that it was her memory that you did that - you would not challenge it? A. I could not because I cannot recall the event.

Q I am sorry to have to put these questions to you, but in the light of the evidence you have just given do you still contend that your marriage was a normal, happy, one until the association between your wife and Dr Barker arose? A. I do, and that is why I am fairly unperturbed by your line of questions so far, because the answer to this whole thing is that when we moved to Four Marks our marriage improved enormously, and there is no question, as I said at the outset, that this was a family unit, with the children happy and my wife and I happy with each other. We had sexual intercourse on every night of the holiday that we had in August 1968. This seems to me to conflict with the line of questioning which you put to me. I have tried to be as straightforward with my replies as I can. I cannot recall things that happened all these years ago, but the fact of the matter is that this was a happy marriage at the material time.

Q I quite accept that you have done all you can to assist the Committee but you will appreciate that my duty is to put matters to you in relation to which your wife - she is still your wife - is later to give evidence in this case. I think it is right that you have in fact issued a divorce petition against your wife? A. Yes.

Q A long time ago? A. I am not sure of the facts.

Q A good 18 months ago? A. I believe so.

Q And for reasons which are for you to decide, you have not brought that case to trial? A. Yes. It is difficult for me. I have not come prepared to discuss this aspect. I do not know what relevance it has.

Q You have not freed your wife by bringing the case to court, so that you can get a divorce decree, have you? A. Well, there are many considerations.

Q It is right also that you are asking for the discretion of the court to be exercised in your favour? A. Yes.

The PRESIDENT: With regard to the matters to which Mr Baylis referred in relation to allegations of cruelty against your wife by you or vice versa, since you went to Four Marks have you ever struck your wife? A. No.

Q Has the relationship since you went to Four Marks been of the type which you indicated by the words "no different from any other marriage"? I think you said that in August 1968 on the holiday you were ideally happy? A. Yes, it was a happy, normal marriage. Life is difficult for people. We had our difficulties. I do not deny that. This was a thoroughgoing marriage.

Re-examined by Mr WIDGERY:

Q While you were at Four Marks did you at any time have occasion to discuss with Dr Barker your own matrimonial position? A. No, not that I can recall.

Witness withdrew

Mr WIDGERY: That is the case.

Mr BAYLIS: I will call Dr Barker at once.

Richard Wordsworth BARKER, sworn

Examined by Mr BAYLIS:

Q Dr Barker, what is your address? A. The Boundaries, Winchester Road, Four Marks, Hants.

Q Mr Widgery has outlined your professional career to the Committee. You are 44 years of age? A. Forty-five.

Q Forty-five now. You qualified at Durham University in 1955? A. Yes.

Q Did you see hospital service at various hospitals, including the Royal Victoria Infirmary in Newcastle? A. Yes.

Q Did you then decide to enter general practice? A. Yes.

Q I think you started as a one-year trainee assistant? A. Yes.

Q Did you then become first of all an assistant and then a partner in a practice at Wallsend-on-Tyne? A. Yes.

Q For how long did that go on? A. Three years, I think.

Q Then I think in 1961 you applied for and were appointed to a vacancy in Four Marks? A. Yes.

Q Is that a single-handed practice? A. This is a single-handed dispensing practice.

Q Approximately how many patients are there on your list? A. Two thousand five hundred.

Q A good many of the facts in this case are already common ground and therefore, subject to anything my friend says, I can leave you on a good deal of this evidence. Was your first contact with Mr and Mrs Kerr and their family in 1963? A. Yes.

Q When they joined your medical list as patients? A. Yes.

Q Is it right that for the next five years you were the family doctor? A. I was.

Q We have heard that early in 1968 a degree of friendship, arising out of the association between the children, sprang up between Mrs Barker and Mrs Kerr, but so far as you were concerned, until July 1968 did you have any social contact with Mr or Mrs Kerr at all? A. No, none.

Q For example, did you ever visit their home on any social occasion? A. No.

Q Did you ever associate with them at any social functions? A. No.

Q Up to that time did you call either of them by their first name? A. No.

Q Were they in fact just like any other of your 2,500 patients? A. Yes.

Q When was your first contact with Mrs Kerr otherwise than in a purely professional relationship? A. In September 1968.

Q We have heard of the occasion on which you employed her as a receptionist. When was that? A. I think that was in July 1968.

Q Very briefly, how did that occur? A. My receptionist at that time had indicated to me that she would like another job, one which brought more money, and she suggested Mrs Kerr as a replacement. Mrs Kerr, during the course of consultation, asked if I would consider her, and I said No, I would not, I would be advertising later on when it came up, but it so happened that a short while later my then receptionist was going on holiday and Mrs Kerr was in the surgery and I said, "Look here, here's a chance to show what you can do. Mrs Lucas is going on holiday. Would you like to try it for two weeks or 2½ weeks?", and she did.

Q During that short period what was your relationship with her? A. Just the same as with any receptionist; a purely employer/employee relationship.

Q That short period came to an end and your receptionist came back? A. That is right.

Q Shortly after that did you go on holiday with your family? A. Yes, I went to Spain.

Q While you were there did you form any particular ambition? A. Yes, my marriage was very unhappy and probably the least happy thing about it was the holidays. My former wifewould not go on holiday with me alone, she would take friends with her, and usually friends I could not get on with. Also, I did not very much care for a camping holiday, which was what she liked, but I was stuck with it. There were a lot of Germans there and they seemed to me to be quitean attractive lot of people. I decided that the next holiday I had would be in Germany, perhaps at winter sports, and that I would like to speak the language. It was then that I made the decision to ask Mrs Kerr if she would give me German lessons.

Q You knew that she was of German nationality? A. I did, yes.

Q And you simply asked her if she would give you German lessons? A. I did.

Q And she agreed to do so? A. She did. She said that she was no German teacher.

Q Was there any question of payment? A. No.

Q This was just a friendly act on her part? A. Yes.

Q In consequence did she give you German lessons? A. She did.

Q How often did these lessons take place? A. Two or three times a week has been mentioned but I think it was rather less than that. Once or twice a week in the first

instance.

Q Where did they take place? A. At my home.

Q Whereabouts in your home? A. In the lounge - in one of the lounges.

Q Did your wife know that this was happening? A. Yes, and sometimes she was present.

Q Did she raise any objection? A. No.

Q You have told us that at that time your own marriage was an unhappy one? A. Yes.

Q Did your relationship with Mrs Kerr during this period of the German lessons make any change? A. No, not to my knowledge.

Q You have misunderstood me. During the period of the German lessons with Mrs Kerr was coming to your home a couple of times a week, or whatever it may be. Did your relationship with Mrs Kerr change? A. It changed when I asked her if she would like to go out for a meal. I took her out for a meal. We went to the French Horn at Sonning, rather a nice place, and that is when the relationship, as a romantic relationship, started.

Q It was a dinner for two, was it? A. Dinner for two.

Q As people do, I suppose you discussed your own lives and troubles? A. Of course we did.

Q And aspirations? A. Yes.

Q Did you both realise that you felt more for each other than simply German teacher and student? A. Yes, we were so similar in our tastes and we got on so well it seemed impossible that we had not known each other for a great deal longer and had not been brought up in the same family, because our ideas and ways of doing things were so similar.

Q What happened as a result of this? A. Our relationship just blossomed.

Q And is it right that it led to your committing adultery in November 1968? A. Yes.

Q I think we have heard that this was at a motel near Oxford? A. Yes. We made no attempt to hide the fact that the position was as it was. I used my name, and so on.

Q Did you tell your wife what had happened? A. In December I told her.

Q Did you have any contact with Mr Kerr about this? A. No.

Q We know that he left at about that time? A. Yes.

Q Have you in fact been associating with Mrs Kerr ever since? A. Yes.

Q Did she subsequently move into your house? A. Yes.

Q Did she change her name to yours? A. Yes.

Q And are you living together as man and wife in Four Marks?
A. Yes.

Q We have heard that your wife divorced you and therefore you are free to marry? A. Yes.

Q And that Mr Kerr is at any rate in the train of taking divorce proceedings against his wife. What would be your intention assuming that the matter goes through and he divorces his wife? A. I would marry Mrs Kerr - or Mrs Barker, as she is now known.

Q It is said that you retained Mrs Kerr's name on your list until November 20, 1968. Is that right so far as you know?
A. No, because she asked me to sign her medical card so that she could transfer to another doctor at the beginning of October, and I did this.

Q I presume it took a month for it to go through the medical records. It is alleged in paragraph (4) that in relation to Mrs Kerr you abused your position as a medical practitioner in the association which you formed with her. Do you feel able to accept that that is true? A. I do not.

Cross-examined by Mr WIDGERI:

Q How did you first come to know Mrs Kerr? A. When they registered with me, I suppose; I cannot remember exactly.

Q I suggest it was because she and her husband became your patients in 1963? A. Well, yes.

Q And for the next five years you had, I understand, a purely doctor/patient professional relationship with the family? A. Yes.

Q And you attended Mrs Kerr when her second child was born? A. Yes.

Q And you attended the family whenever anyone needed a doctor? A. Yes.

Q So is it right that by 1968 you knew the family and Mrs Kerr fairly well? A. As well as I know any other family; not terribly well.

Q They had been your patients? A. They had been my patients and they had been treated in an average way.

Q And you live in a small community so you would have presumably known them as residents as well as patients?
A. I did not know them as residents. It is not so small a community. At the moment you can hardly call Four Marks a community.

Q For two years between 1966 and 1968 Mrs Kerr worked at the Alton Hospital, I believe? A. I would not know whether she worked there or not.

Q Do you know? A. No.

Q You did not know at the time? A. She tells me that she worked there but I do not know whether that would be evidence.

Q My question is: Did you know at the time that she was working at the hospital over this period? A. I did not know.

Q Did you ever see her at the hospital in the course of your duties? A. No, never. I never go to the hospital except to take specimens and I certainly never saw her.

Q We know that in July 1968 she became your receptionist for a short period? A. Yes.

Q And you in the end invited her to take a temporary post? A. Yes.

Q So you were inviting Mrs Kerr as your patient to become your employee? A. Yes.

Q And then immediately after that, or a few weeks after that, you started with the German lessons. Is that right? A. Yes.

Q Throughout all this time this lady was still your patient? A. Yes.

Q And we have heard of the subsequent development in your relationship with her: that between September and November it developed into adultery taking place at the motel in Oxford? A. Yes.

Q So is not it the case that you allowed your professional relationship with this lady to deteriorate into something else? A. I do not think it did. My professional relationship with her was a separate one from the relationship I had with her as a German teacher, and from then on she was not my patient. I do not think I let it deteriorate. That is my opinion.

Q You took on a new relationship with this lady? A. As a German.

Q A lady who was your patient at the time? A. She became my German teacher. She was my patient at the start of the time and she was teaching me German, and in the technical sense she was on my list.

The PRESIDENT: Is not this a matter for the Committee to determine, rather than the witness, Mr Widgery?

Mr WIDGERY: Yes. (To witness): And your professional relationship continued throughout the whole of this time until the adultery commenced in November, at any rate? A. It did not.

My professional relationship with her - as far as I was concerned, she was off my list at the beginning of October, when I signed her medical card, and I believe that she had treatment from the doctor of her next choice.

Q Is it the case that you have not treated her professionally as a doctor since October 1968? A. It is.

The PRESIDENT: Might we get a few dates as clearly as possible? Mrs Kerr and her family returned from holiday some time in August of 1968? A. That I do not know. I think it was September.

Q This was, I think, the evidence we had: that they went on holiday in August. You went on holiday when? A. In August.

Q You went to Spain on holiday, and you returned when? A. In September.

Mr WIDGERY: The lessons could not have started before September? A. No, it could not.

Q So you had German lessons for how long? A. Six weeks, I should say, or eight weeks, perhaps, until Mrs Kerr left in December. They could not continue after that because Mrs Kerr was so distressed.

Q They continued after you had committed adultery in the motel in November? A. Yes.

Q How long did these German lessons last? A. They are still going on! I am sorry.

Q I do not mean the total duration of the course of German but each of the individual lessons? A. An hour, probably less, but no more than an hour.

Q And then did she leave after an hour? A. Yes, she did.

Q You heard the evidence of Mr Kerr? A. I have heard it, yes.

Q That she did not return home until much later? A. That was not because she was with me.

Q But at any rate, as far as you were concerned, it was about one hour? A. Yes. It would be very difficult for me to keep her in the house with my wife there.

Q Yes, but they lasted about an hour. They were in the lounge and your wife was occasionally present and knew about it? A. Yes.

Q Was it towards the end of one of these lessons that you invited her to have a meal? A. Yes.

Q And within a very few weeks of that you were committing adultery? A. I was, yes.

Q She was off your list in October 1968? A. Yes, she was.

Q I think you said that was at her request? A. It was at her request.

Q Was that ever discussed with you? A. Before she gave ---

Q Before she removed her name from your list? A. No, it was not discussed with me.

Q Did you ask her why she did it? A. Yes, I did, and she ---

Q You had better not tell me what she said. But the other members of your family remained on your list in fact for a year or so after that? A. They did, yes.

Q You did not inform the family that she had taken herself off your list? A. The family were not there then. They left in December.

Q This was in October. A. No, I did not inform them.

Q There were two months in which you might have informed them? A. I know the wife removed herself from her list. My own wife removed herself from her list and did not tell me.

Q That is irrelevant. A. I did not think to inform Mr Kerr.

Q You have, I think, agreed that you looked after this family for several years, not less than five years, before she took her name off your list. You had seen them professionally. You had looked after her during one of her pregnancies, giving ante-natal and post-natal treatment? A. I did not deal with her post-natally.

Q Ante-natally? A. Yes.

Q At any rate, she was your patient? A. Yes.

Q And then following that she removed herself from your list, when this adulterous association commenced? A. A little bit before the adulterous association.

Q Before the adulterous association commenced? A. Yes.

Q That is your version of what happened? A. It is, my Lord.

Q When you started this adulterous relationship, knowing that Mr Kerr was one of your patients, you did not in fact tell him that you were committing adultery with his wife? A. No, I did not.

Re-examined by Mr BAYLIS:

Q On the question of Mrs Kerr working at Treloar Hospital,

it may have been raised because Mr Widgery may think this is a general practitioner hospital. A. It is not.

Q In fact it is a large mainly orthopaedic hospital?
A. Yes.

Q You are not on the staff of that hospital? A. No.

Witness withdrew

Mr BAYLIS: I call Mrs Kerr.

Carola Alphonsa Maria KERR sworn

Examined by Mr BAYLIS:

Q I know that you are now known as Mrs Barker. Will you forgive us if we call you Mrs Kerr? It will be clearer for the purposes of the record. A. Yes.

Q Mrs Kerr, are you of German nationality? A. Yes.

Q And in 1961 were you married to Mr Kerr, who has given evidence in this case? A. Yes.

Q Were there two children by that marriage? A. Yes.

Q In 1963 did you move to Four Barks? A. Yes.

Q And did you and all your family join Dr Barker's medical list as patients? A. Yes.

Q We have heard - and it is not disputed - that Dr Barker was the family doctor for the next five years? A. Yes.

Q Including ante-natal treatment given to you in relation to the birth of your daughter? A. Yes.

Q Prior to 1968 did you have any social relationship with Dr Barker at all? A. No.

Q For example, had you ever visited, with your husband, the Barker home for dinner or bridge or anything of that sort? A. No.

Q Prior to July 1968 did you ever call Dr Barker by his first name? A. No.

Q Or vice versa? A. No.

Q Did he show you any particular affection or regard at all during that period? A. No.

Q We know that in July 1968, Mrs Kerr, there was a change, and Dr Barker has told us the circumstances in which you acted for 2½ weeks as a receptionist in his surgery. A. Yes.

Q What was your relationship with Dr Barker during those 2½ weeks? A. I was just his receptionist and secretary and he was my boss.

Q What did you call him? A. I called him Dr Barker.

Q During that period did you ever go out together socially? A. No.

Q Then we know that in August of 1968 Dr Barker went on holiday, and he has told us that he came to want to learn German and asked you if you would give him some German lessons? A. Yes.

Q And you agreed to do so? A. Yes.

Q You are not a teacher of German; you just happen to be able to speak German. A. I am German. It is my mother tongue.

Q And you agreed to give him German lessons. Approximately how often did those take place? A. Two or three times a week.

Q Where did they take place? A. In the lounge of Dr Barker's home.

Q Was Mrs Barker sometimes there? A. Yes.

Q Did she show any evidence or say anything to suggest that she objected to this? A. No, she did not.

Q Did you tell your husband you were going to give Dr Barker German lessons? A. Yes.

Did he object? A. No.

Q Generally speaking, at what time in the evening did these visits for this purpose take place? A. Some time after the evening surgery - half-past seven, eight o'clock.

Q On average how long did each lesson last? A. An hour or two; never more than two hours.

Q We have heard evidence that in October of 1968 you asked Dr Barker to sign your medical card so that you could change on to the list of another doctor? ... Yes.

Q Can you tell the Committee as near as you can the date when that took place? A. During the first week of October I joined Dr Everett's list. I am not quite sure of the date when Dr Barker signed the card.

Q At all events, you joined Dr Everett? A. Yes.

Q Was he a doctor in Four Marks? A. No, in Alton.

Q Why did you do that? A. After having worked for Dr Barker and giving him German lessons I thought I might be embarrassed if I ever had anything else like a sore throat and I thought it was proper to go to somebody else.

Q Did you tell your husband that you had made the change? A. I do not think so.

Q Dr Barker has told us of an occasion when he took you out to dinner in Reading. Did you change on to the list of Dr Everett before or after that dinner party? A. Before - I am quite sure, yes, before.

Q Did you change on to the list of Dr Everett at a time when your feelings towards Dr Barker were changing? A. No, before.

Q Is it right that on one occasion during these German lessons Dr Barker did ask you to go out to dinner with him? A. Yes.

Q What happened at that dinner? A. It was rather a nice place that he took me to and it was very romantic - a thing I had not experienced for some years - and in the course of the evening I think I realised that there was more between him and me.

Q And he made it clear that he felt the same way? A. Not directly, no; we did not speak about it.

Q At all events, as from that moment did your feelings towards each other change? A. Yes.

Q And did the friendship between you ripen very quickly afterwards? A. Yes.

Q It is admitted that relatively soon after that you committed adultery with Dr Barker in Oxford? A. Yes.

Q And that to all intents and purposes you have been living with him as man and wife ever since? A. Since September 1969.

Q And I think you stayed in your own home for the time being? A. Yes, until September 1969.

Q But ultimately your husband left on December 8th. We know that? A. He left in December 1968.

Q I suppose the answer is that you moved in with Dr Barker when Mrs Barker moved out? A. Yes.

Q At all events, your emotional relationship with Dr Barker has continued ever since this period in November 1968? A. Yes.

Q And for the last year or more - eighteen months - you have been living together as man and wife in Four Barks? A. Yes.

Q What do you propose to do about marriage if and when you are free to do so? A. We hope to get married.

Q I have to ask you some questions about your own marriage to Mr Kerr. You married in 1961. So far as you were concerned was it a happy and normal marriage? A. No.

Q How would you describe it? A. It was fairly unhappy.

Q I do not want to do any more harm than I can help - you will understand this - but did your husband have problems in relation to drink? A. Yes, he did. He did drink rather heavily.

Q In fact, he has told us that he had a good deal to drink on the day of his marriage to you? A. Yes.

Q Is that correct? A. Yes, that was the first time I knew that he was drinking more than one would expect.

Q What happened at the end of the wedding reception? A. It was extremely unpleasant. There was this unpleasant scene in a pub on the way home, and friends had to take him home.

Q Do you recall an incident relating to pills which had been prescribed for your arthritis in 1962? A. Yes, I was given some tablets to take for a pain in my right hand, and during the course of a continuous row I took the tablets to take one and Mr Kerr said "Why don't you take the lot?", which I did do.

Q He was not being serious? A. Well, it sounded very serious, in a row.

Q Were you having a row at the time? A. Yes.

Q You do not really think he meant you to do it? A. Well, no, but it was one of those unpleasant things that be said.

Q At all events, you took him at his word, literally, and took all the pills? A. Yes.

Q What happened to you? A. I took myself off to Casualty at Hammersmith Hospital, where I had my stomach washed out, and came back the following day.

Q This was all before you moved to Four Marks at all? A. Yes.

Q Your husband has told us quite fairly that there was an incident when he had some drink and had a row with you and smashed a bus time-table in the street, in I think 1963. Do you remember that? A. Yes.

Q Was that in the course of a disagreement with your husband? A. Yes.

Q What kind of disagreement - a bitter one? A. A fairly bitter one.

Q Was it in fact in the course of a fairly severe quarrel? A. Oh, yes, it was rather silly.

Q He had to go off to hospital? A. Yes, I stopped a taxi and took him to the entrance to the Casualty Department, where I got out of the taxi while he went in to have his hand seen to.

Q I think it is right, is not it, that you left your husband after that episode? A. That night.

Q And stayed away for about six weeks? A. Yes.

Q And your husband has told us that it was through the interception of the Probation Officer that you agreed to return to him on certain conditions? A. Yes.

Q What were they? A. That he would stop drinking and that he would have psychiatric treatment.

Q Did he honour those conditions? A. For the time being, for a short while, yes.

Q Did your husband ever use physical violence towards you? A. Yes, on one or more than one occasion.

Q What kind of physical violence? A. He hit me.

Q How about when you moved to Four Marks in 1963? Did the marriage get better? A. It was better for a while after I returned in 1963 and for the first few months in Four Marks.

Q How about after that? A. It deteriorated fairly rapidly when I knew that I was pregnant again.

Q That was in about 1966, I think? A. 1964.

Q And you had Anna? A. Yes, she was born in June 1964.

Q And during the next four years how did your marriage go? A. We had frequent rows and were very short of money and I did not have any friends. When Anna was old enough I started to do night duty at the local hospital.

Q Were you happy at that time? A. I was fairly happy going to work and I liked the job as a night nurse.

Q But in your home? A. I was happy with the children, yes. The weekends were never very happy.

Q Your husband has told us that in, I think, August 1968 you had a holiday together. He says it was a very happy one? A. It was happy, yes.

Cross-examined by Mr WEDGERY:

Q Would it be fair to say that your marriage had its ups and downs, like most marriages? A. I should think it was more downs than ups.

Q At any rate, would you agree that after you moved to Four Marks it was on the whole a happier period than before you were at Four Marks? A. It was happier from my point of view, in that I was living in more agreeable circumstances, but I was not happier with my husband after Anna was born.

Q But there came a time in the summer of 1908 when things were happier between you and your husband; when you went on holiday, for instance, in August? A. Yes.

Q And you were having frequent sexual relations with your husband at that time? A. Yes, before the time of the holiday.

Q And you have just said you had a happy holiday?
A. From a holiday point of view it was very happy, yes.

Q How friendly were you with Mrs Barker? A. I had met her two or three times.

Q Was this through your children being at the same school? A. I should think so. I first met her on sports day.

Q And did she sometimes come to your house and you go to hers? A. She came twice to my house and I think I saw her once or twice at her house.

Q Were you on Christian name terms? A. Yes.

Q When you started on these German lessons which you were giving to Dr Barker you used to leave home, as we have heard from your husband, at about seven o'clock in the evening, or soon after, and to begin with you used to get back between 10 and 10.30. Do you agree with that?
A. I do not think I ever left as early as 7, because the surgery would not finish till 7.30.

Q So it might have been 7.30 when you left? A. Yes.

Q When did you normally get back - 10.30 or later?
A. I think it was nearer ten o'clock. I do not think I stayed later than ten.

Q How long would it take you to go from your house in Four Marks to Dr Barker's house? A. Walking, about 15 minutes, and driving three minutes.

Q Did you normally drive? A. Yes.

Q Is it true to say that after these German lessons had been going on for some time you were later in getting back home - sometimes the early hours of the morning?
A. Not in September, October, no.

Q During the course of the lessons, which we understand started in September? A. No, I did not get back home in the early hours of the morning.

Q Not in September? I do not know the month. What I am putting to you is that gradually, once you had started giving these lessons, your period of absence from home got longer and at times you did not get home until the early hours of the morning? A. No, I do not think I ever got home in the early hours of the morning while my husband was at home.

Q Whether your husband was at home or not, did you ever get home in the early hours from these German lessons? A. Not after German lessons, no. I am sorry; I am not quite sure what you would like to know.

Q How long were you away from the house? Your husband says it was from 7 or 7.30 until 10.30 or 11.30? A. When I started to give Dr Barker German lessons at his house I used to arrive between 7.30 and 8 and I would leave at about 10 o'clock.

Q Later on did the time get longer? A. When?

Q At the beginning of October? A. There was not very much space from the beginning of the German lessons and the beginning of our relationship.

Q But do you agree that you were away from home longer as the lessons went on, getting into October? A. I am terribly sorry. I do not think so. After the German lessons I always returned at about 10 o'clock.

Q After the visits to Dr Barker's house. Whether they were for German lessons or not I do not know but did the visits start to get longer? A. Not in September or October, no.

Q You are saying they never lasted until later than 10.30? A. No.

Q Who was present in the house when these lessons were being given? A. I am not quite certain but I think the two children were at home and sometimes Mrs Barker.

Q What ages were the children? A. Christine will be 16 in April and Paul 14 in September. That is now, so they were then about 13 and 11.

Q And would they have been in bed normally? A. I should think so.

Q And was Mrs Barker there sometimes as well? A. Yes.

Q And sometimes she was not? A. Sometimes she would go out, after I had arrived.

Q When was the date of the dinner party at Sonning? A. It was at the French Horn in Sonning, sometime after the middle of October.

Q Some time after the middle of October? A. Yes. It was a Saturday, I think.

Q And was this about the time you decided to take your name off Dr Barker's list? A. I had already left his list then.

Q You had set in motion the machinery for your name being changed? A. I do not quite understand.

Q You had taken steps to transfer your name to some other doctor's list? A. Yes, in September.

Q In fact, would you accept from me that the date when the transfer went through, according to the Executive Council's records, was 20 November; but obviously there is a time lapse? A. Yes, there is. I had treatment from Dr Everett's locum first of all and that was on 14 October.

Q So by reason of these frequent visits to Dr Barker's house in the evening did you realise you were becoming emotionally attached to him? A. Not until after we went out for dinner.

Q You mean you just suddenly went out to dinner and then your relationship entirely changed? A. I do not think it changed. I realised that there was more than I had until then thought.

Q You were becoming fond of him? A. Yes, after the dinner.

Q Was that really why you decided to take your name off his list? A. No, I had taken my name off the list at the end of September and we did not go out to dinner until mid-October.

Q What I am suggesting to you is that you realised by this time that you and Dr Barker were in love with each other and therefore you decided to take your name off his list? A. No, I do not think so. I mainly went off his list because I thought it proper, having worked for him; I thought I would be embarrassed.

Q Would you agree that at the time you took your name off his list without your husband's knowledge you realised you were becoming fond of the doctor? A. Not at that time, no. I did not realise it then.

Q You realised it a fortnight later, when you had dinner. Is that it? A. Yes, on this special occasion.

The PRESIDENT: Did you tell your husband you were removing your name from Dr Barker's list? A. No, I do not think I told him. I am not quite certain about it.

Q When you consulted Dr Everett's locum on 14 October you were not on Dr Everett's list, were you? A. Yes, I was. I had been accepted a week or ten days previously.

Q You see, it is said that your name was retained on Dr Barker's list until November 20, 1958? A. I think this is when the Executive Council finally changed over, but there is sometimes quite a considerable time-lag between changing doctors and records being forwarded to the new doctor.

Q Was it for a minor or major illness that you saw Dr Everett? A. It was for a sore throat.

Q. Have you seen Dr Everett since? A. Yes, or his locum or partner. He is in partnership with Dr Wilson.

Q. Was this marriage in 1961 your first marriage? It was your husband's third? A. It was my first.

Q. How long had you known him before marriage? A. Three months.

Q. Was he temperate, to your view, during that time? A. Very reasonable.

Q. Why did you think that Dr Barker asked you to give him German lessons? A. He knew I was German.

Q. Yes, but there are German teachers who have special knowledge of teaching German? A. Of course there are, but whether they are readily available to come to a doctor's house I am not sure.

Q. You spoke of the possibility of being embarrassed if he examined you? A. Yes.

Q. That is why you changed? A. Yes.

Q. You were not embarrassed when he examined you during the period of five years? A. I never had any serious illness.

Q. Did he examine you in your ante-natal period? A. Only what he does at his surgery. He referred me to Mr Hammons, who is a gynaecologist, to go to his clinic, and I was delivered by Mr Hammond in Winchester.

Q. And you were his receptionist in July for how long? A. Two and a half weeks.

Q. Although you had had five years under Dr Barker you still feel, do you, that you would have been embarrassed, after working for him for only that short period? A. I think it was working for him for those 2½ weeks that made me think of changing.

Witness withdrew

Mr BAYLIS: With your Lordship's permission I will tender certain testimonials from Dr Barker's colleagues as part of the evidence.

The PRESIDENT: I think I ought to ask the Legal Assessor about this. I am always concerned about putting in evidence of character at this stage. The first point is whether the facts alleged have been proved to our satisfaction.

Mr BAYLIS: Indeed. I am anxious to put in, as a part of my defence to the charge, this evidence as to character.

The PRESIDENT: Does not that come later?

Mr BAYLIS: I quite appreciate that I normally do put it in later. In my submission, as a part of a doctor's defence on a charge of abusing his professional relationship he is entitled to tender evidence that he is of good character, which is what I am seeking to do at this juncture.

The PRESIDENT: I must ask the Legal Assessor to assist us here, because it is not for me to express any views on this. It is for the Legal Assessor to assist the Committee.

Mr BAYLIS: I am proceeding under Rule 18(g). I have adduced the evidence of Dr Barker and Mrs Kerr and I am seeking to adduce further evidence in the form of testimonials from professional colleagues.

The LEGAL ASSESSOR: Are these agreed documents?

Mr WIDGERY: Yes, they are agreed documents.

The LEGAL ASSESSOR: These documents have been shown to you and agreed as such - is that right? Are the facts agreed?

Mr WIDGERY: I opened the case on the footing that the facts alleged in support of the charge were admitted.

The PRESIDENT: Mr Baylis said that some of the facts are admitted but not all.

Mr BAYLIS: The facts are admitted on the terms of my letters of 20th and 24th July.

The PRESIDENT: But what I was concerned about was whether it was proper at this stage to put in testimony which was unrelated directly to the facts alleged against the practitioner. This is a matter on which I think it is for the Legal Assessor to assist us.

Mr BAYLIS: My submission is that there is no limit to the type of evidence I can call in answer to the charge. Of course, what I am seeking to do is open, perhaps, to the objection that Mr Widgery might make that it is not oral but written testimony, but the Committee under the rules have power to receive testimony otherwise than sworn evidence of witnesses. I am entirely in your hands. In many ways I think it might be more convenient to you to have them at this stage, but if your Lordship, with the advice of the learned Legal Assessor, feels I should not do so, naturally I will bow to that decision.

The PRESIDENT: It is for the Legal Assessor to advise. I was asking for help as to whether we were now just considering whether the facts alleged against the practitioner in the charges have been proved to our satisfaction, and if you were able to adduce evidence that he was a saint I am not sure how far that would be relevant to the facts alleged against him in this charge. I am sure the learned Legal Assessor will tell us that you can later, if these facts are found proved, adduce evidence as to character and the previous history of your client, under Rule 23(3).

Mr BAYLIS: Indeed, and that is the way I usually present cases to your Lordship's Committee, by presenting evidence of character purely in mitigation. In this case I do not want the Committee to be in any possible doubt that the facts are challenged in regard to the vital constituent of head (4) that the doctor abused his position as a medical practitioner. My submission is that in seeking to persuade the Committee that the doctor has not abused his professional position in relation to a particular matter I am entitled to tender evidence that he is of good

character.

The LEGAL ASSESSOR: , Mr Baylis, the only relevance of hitherto good character in criminal proceedings is in going to the question of the credit or otherwise of the accused person in those instances where he gives evidence in the case. Is that the basis of your submission - that the Committee should look at this evidence at this stage inasmuch as it relates to the creditworthiness of your client in the evidence that he has given to the Committee?

Mr BAYLIS: I would put my submission in that way, yes.

The LEGAL ASSESSOR: Mr Widgery, are the facts set out in these testimonials (a) known to you and (b) agreed by you as being true?

Mr WIDGERY: Yes, that is the case.

Mr BAYLIS: No, it is not the case. Mr Widgery has not seen these testimonials.

Mr WIDGERY: Oh, I see. I have not seen these documents. I do not know what they are. I have no objection whether they are put in now or later.

The LEGAL ASSESSOR: How can you just hand them in at this stage without calling the makers of the documents, if they are not agreed?

Mr BAYLIS: I quite appreciate that I would normally call the witnesses as to character if I want to tender character evidence as a part of my defence.

The LEGAL ASSESSOR: And I gather you do.

Mr BAYLIS: I do, but I do not have the witnesses here. My submission would be that this Committee has a general power under Rule 47(3) to receive oral, documentary or other evidence of any fact or matter relevant to the inquiry.

That is the authority under which this Committee receive written testimony as opposed to oral testimony.

The LEGAL ASSESSOR: And also sub-rule (4) helps to some extent. I think your Lordship can see these documents. What weight you will attach to them is a matter strictly for the Committee.

The PRESIDENT: I am sure it is proper to accept the Legal Assessor's opinion on this. I was only concerned because occasionally I have been a little worried where there is a certain concertina-ing of the different items which we have to decide, which should be consecutive rather than taken at the same time. I have expressed this view to you on other occasions.

Mr BAYLIS: I will endeavour not to do that in this case. The first is a statement from Mr P.C. Ardblaster, Consultant Physician to the North Hampshire Group: "I have known Dr Richard Barker since July 1965. Many of his patients have received hospital treatment at the Royal Hampshire County Hospital, Winchester, Lord Mayor Treloar Hospital, Alton and Basingstoke District General Hospital. I am happy to state that his standard of care has been excellent, and his personal interest in the patients' welfare commendable. I have also consulted with Dr Barker on a domiciliary basis wherein he has shown considerable judgment in the selection of patients for whom domiciliary care was appropriate. His medical practice has been single-handed. He has thus carried by present-day standards an unduly high moral and legal obligation towards his patients, and this he has executed conscientiously, achieving a high standard of patient care and satisfaction. I am not aware of periods of absence from

his practice. His availability has seemed exemplary and I know that he has also undertaken cover for Dr Alan Goode, FRCGS, in Alton. His patients speak highly of his ability and personal qualities, which have earned him respect in the community."

The next is from Dr D.A. Bennett, Consultant Psychiatrist to the North Hampshire Hospital Group: "I have known Dr Barker since taking up my present appointment in 1965... In my opinion he is a highly competent and mature clinician", etc.

The next is from Mr Harry Haysom, Consultant Surgeon of Old Alresford, Hampshire: "Dr Richard W. Barker was appointed to the Four Marks general practice in May 1961. I met him within a day or so of his appointment and have done most of the surgery from his practice since this time. I think it would be fair to say that perhaps I know Dr Barker and his family as well as any medical person in this area, because, not only have I done the surgery from his practice but I have also treated all of his family over these years. Individually they are a very likeable family but there was little doubt in my mind when I first met the Barker family that there was a certain degree of tension within the family. When Dr Barker first came to the area I was most impressed by his keenness in the practice and his tremendous keenness to learn and improve his knowledge; never would I do a domiciliary visit in his practice without him being present. A year or two after his arrival his keenness appeared to wane and there was a certain something about him that made one sense he was working under strain, and although to some extent it was

a shock to hear of the break in the family, it was of no great surprise as I felt that this was a completely incompatible marriage. Since Dr Barker's marriage has dissolved there is no doubt that his keenness in his practice has returned to its original zest. On the occasions that I have discussed with Dr Barker his present domestic situation he has told me that when the lady concerned was on his practice list he had no feelings..."

The LEGAL ASSESSOR: How does this go to creditworthiness as distinct from mitigation?

Mr BAYLIS: I do not think that paragraph does, so I will leave the rest of it.

The PRESIDENT: I think you had better continue as you wish.

Mr BAYLIS: It will be appreciated that I cannot leave out paragraphs and so on. I must go through them.

The PRESIDENT: You must do what you feel is best for your client.

Mr BAYLIS: The next is from another consultant, Mr Alan Goode, "writing on behalf of Dr Barker of Four Marks who has been in general practice in this area for about nine years". He says: "Soon after he arrived here we agreed to deputise for each other on alternate weekends and one half day each week. This has continued ever since. He has always carried out his duties conscientiously in spite of the fact that my own practice extends over a wide area. His personal conduct to my patients has always been above reproach."

Then Dr Brinton of Winchester writes: "I have known Dr Barker since he came to Hampshire in 1961 and have seen

quite a lot of him from the point of view of Consultant Physician to the Winchester Hospital Management Group.

I have always had the highest opinion of Dr Barker's professional capacities and also of his conduct in the wider field of human behaviour."

Dr P.R. Payne, Consulting Gynaecologist, says: "I have known Dr Barker for the last nineteen months and have always found him to be not only a pleasant colleague but also a conscientious doctor. I have also known Mrs Carole Kerr as a patient, and have found her to be a very pleasant and sincere person. My impression is that the association between these two persons is a genuine and lasting one, and I am told that the practice in general has benefited rather than suffered from the liaison between Dr Barker and Mrs Kerr."

Then there is a letter in handwriting from Dr M.B. Wilson, a general practitioner in Alton.

The final letter is from the Clerk to the Hampshire Executive Council: "My Executive Council learned with great regret that Dr Barker is to appear before the General Medical Council and they have asked me to write and inform you of this and to express their willingness to give such help as they can at this time. Dr Barker was appointed by the Executive Council to the practice at Four Marks some nine years ago and has in every way justified the Council's choice. The practice has grown over the years and the doctor now has almost 2,500 patients on his list. He dispenses for almost all of them, 17 per cent of whom are over the age of 65, and many live in the small villages and hamlets surrounding Four Marks. My Council would find it

extremely difficult to find a replacement with the qualities that Dr Barker has and they sincerely hope that it will not be necessary for them to have to do so."

I am much obliged to your Lordship and the Committee for permitting me to tender those testimonials at this stage. That is the close of the evidence for the defence.

The PRESIDENT: Mr Widgery, do you wish to address the Committee?

Mr WIDGERY: There is nothing further that I wish to say.

The PRESIDENT: Mr Baylis, do you wish to address the Committee?

Mr BAYLIS: My task now is to address you under Rule 18(j). Mr Widgery, in his opening to your Lordship and the Committee, referred quite properly to the judgments of their Lordships of the Judicial Committee of the Privy Council in the cases of de Gregory and McCoan, with which you are very familiar. In my submission, nothing in those judgments throws any doubt on the fact that it must be shown in a case such as this that the doctor has abused his position as a medical practitioner, and, indeed, that is specifically alleged in the charge against Dr Barker in paragraph (4) and is specifically challenged by him. If that proposition requires any support at all it receives support of the most compelling nature from the relevant paragraph on page 9 of the January 1971 edition of the "blue book". In that paragraph the Council says this: "The Council has always taken a serious view of a doctor who abuses his professional position in order to further an improper association or to commit adultery with a person with whom

he stands in a professional relationship. In an inquiry before the Disciplinary Committee, if a doctor is shown to have been guilty of adultery in divorce proceedings in the High Court in the United Kingdom or the Republic of Ireland, such finding must, in accordance with the Medical Acts, be accepted by the Disciplinary Committee as conclusive evidence of the facts so found." Thus, in my submission, this Committee and the General Medical Council have accepted the proposition which I advanced in this case and have advanced on a number of previous occasions, that a doctor does not automatically abuse his professional position as a doctor simply because he forms an association with or even commits adultery with a woman who is or was his patient. In my submission it is the duty of this Committee - and it is a duty which I acknowledge the Committee follow - to judge every case in accordance with the particular facts. I am bound to accept that there may be in a particular case, where this kind of charge is laid, no direct evidence that the doctor abused his position - there may be no letters or anything of that sort - and that the Committee are entitled to draw inferences from the facts produced to the Committee. But in my submission there must be some evidence placed before this Committee enabling them to draw an inference that the doctor has abused his professional relationship as a medical practitioner. If a doctor stands or has stood in a professional relationship to a patient and he subsequently meets her in circumstances which are wholly unconnected with his practice and are wholly outside the professional relationship, if he then falls in love with her or if he forms an association which on any view could be described

as improper, in my submission he should not be found to have abused his position as a medical practitioner, even though the Committee may take the view that his conduct is to be censured and criticised.

I am well aware and very conscious of the drawing room analogy drawn by the Privy Council in the de Gregory case, but in my submission those words, however harsh and restrictive they may have been, must be read in the light of the obligation on the part of the complainant to demonstrate to the satisfaction of this Committee that there has been an abuse of the doctor's position as a medical practitioner.

If the Committee are in a particular case satisfied that the association between the doctor and the patient had nothing to do with and did not spring from the professional relationship, if they are satisfied that the doctor did not take advantage of his position as a doctor to form the association with the woman concerned, then in my respectful submission the law as applied by this Committee, and as stated quite explicitly in the current edition of the "blue book", is such that the Committee should acquit him of an abuse of his position as a medical practitioner.

In my submission this is precisely the case here. Dr Barker and Mrs Kerr have been perfectly frank from the outset with this Committee. There has never been any dispute that there was a professional relationship in the widest and fullest sense between the Kerr family and Dr Barker which prevailed for five years. During that period it was a wholly professional relationship. There was no

social relationship, there was no friendship, there were no meetings at social events; nothing of that sort at all.

Then in July of 1968 there was a short period when Mrs Kerr acted as the receptionist for the doctor, and it appears from the evidence - and it is not challenged - that nothing in the way of an improper association arose out of those 2½ weeks. She continued to call the doctor "Dr Barker" and she merely acted as a receptionist. What happened, as we have heard, was that a friendship arose out of the fact that in September 1968, after he had come back from holiday, Dr Barker persuaded Mrs Kerr to give him German lessons. You may think that Dr Barker gave his evidence convincingly on this point. You may think that there was no suggestion that the German lesson episode started with any concept in either of their minds of an improper association. He simply wanted to learn German. Mrs Kerr came along to his house. The lessons were given in his drawing room. Often his wife was there, and certainly the semi-grown-up children were around the house. In fact, what happened was fairly vividly described, in my submission. One day Dr Barker asked Mrs Kerr out to dinner and it turned out to be a somewhat romantic occasion, when they realised that they were both unhappy, that they were both very much of a mind with each other, very "simpatica" towards each other, and although it is perhaps in a way a somewhat incredible episode, is there really any doubt that what happened was that that evening, and rapidly during the next fortnight, they fell in love with each other? The relationship then developed extremely rapidly, for within two or three weeks they had made it clear that they were going to make their lives together. They did not sneak off and have

some clandestine sexual relationship in the back of a car; they went quite openly to a motel in Oxfordshire, and Mrs Barker was told. We are not quite sure of the circumstances in which Mr Kerr learned but at all events very soon afterwards he discovered what had happened and he left the matrimonial home and took the children away to London. That relationship, which I have described as starting at this restaurant in Bonning, has become a permanent and lasting relationship. They have been together ever since. They are now, without apparent scandal in the area, living together as man and wife, and doctors are prepared to write in commendable terms about Dr Barker knowing that their letters are going to be read to this Committee. They are living together as man and wife in Four Marks and he is carrying on his practice.

In my submission, there are no grounds whatever upon which the Committee can jump to the inference - contrary to the evidence, in my submission - that anything happened before September 1968 or that anything that happened between Dr Barker and Mrs Kerr sprang from anything except their association during this brief period when they were giving the German lessons, and in particular from the moment they fell in love during the course of this dinner party.

My argument, in addressing you on whether or not you should find the facts of the charge proved, is that this is a case falling squarely within the argument I have advanced to your Lordship on the basis of the current edition of the "blue book". It is a case where two people fell in love with each other, where there is no evidence whatever that the doctor took advantage of his professional position, there is no evidence at all that he abused his position as a medical

practitioner, and in my submission, therefore, although the whole of the rest of the facts, subject to minor modifications, are not disputed, the vital passage in paragraph (4), namely, the accusation that Dr Barker abused his position as a medical practitioner in forming his association with Mrs Kerr, has not been proved and, indeed, is not true. Accordingly, in my submission to your Lordship and the Committee, the Committee should find that the facts alleged in the charge are not proved to their satisfaction.

The PRESIDENT: What are the minor modifications you wish us to consider?

Mr BAYLIS: In (2)(a) the date should be October 1968. These are points I have already made in my letter of 20 July to the Preliminary Proceedings Committee. That was the evidence of Mrs Kerr. In (2)(b) I ask you to find that though he may have technically retained the name of Mr Kerr and his son and daughter on his list until October 1969, in practice Dr Barker ceased to be their doctor in December 1968.

The PRESIDENT: The charge is that he retained the names of Mr Kerr and his son and daughter until October 1969. You are not suggesting that we should alter that, are you?

Mr BAYLIS: No.

The PRESIDENT: If you wish to alter the charge in any way we should alter it before we go into camera to decide whether the facts alleged have been proved. You would like to alter November 20, 1968 to October 1968, without specifying the date in October?

Mr BAYLIS: That would be my submission, yes, that so far as (2)(a) is concerned the date should read October 1968. Subject

to that, it is admitted.

In (2)(b) I do not ask your Lordship to modify the wording. I accept that there was a retaining for official purposes. I would ask the Committee merely to make note of the fact that Dr Barker was not the doctor of Mr Kerr and his family after December of 1968.

The PRESIDENT: I think Mr Widgery should be invited to comment on your request to alter the wording in (2)(a).

Mr WIDGERY: I have no objection, if it will assist, if the date is altered to October 20. The only information I have to put before the Committee is the Executive Council's records, which show the date of the transfer as the 20 November, but I am quite prepared to accept that there was probably a time lapse of a few weeks or a month before the actual official date of transfer was recorded, so I have no objection if the charge is amended so that it reads October 20, 1968 instead of November 20, and I regard it as irrelevant to the outcome of these proceedings.

The LEGAL ASSESSOR: Mr Baylis, as I understand it, what you are saying is that although technically the name may have remained on the list until November 20, in fact this doctor had sought to transfer the name off the list some time in October.

The PRESIDENT: Not the doctor, the patient.

The LEGAL ASSESSOR: Yes, indeed - the patient had sought to transfer her name off this doctor's list some time in October.

Mr BAYLIS: I think she did more than seek; she seems to have succeeded.

The LEGAL ASSESSOR: Except that the record had not gone

through.

Mr BAYLIS: So it appears.

The LEGAL ASSESSOR: Because in a sense (2)(a) and (b) are very much in like state. The technical administrative procedure has not been completed, though in practice the earlier date in each instance may be the ones that matter.

Mr BAYLIS: Yes.

The PRESIDENT: I think the evidence from the Executive Council is that the name was on the list until November 20, but bearing in mind the evidence given by Mrs Kerr, that she applied to have her name removed in the first half of October, we need not really take any notice of this, need we?

Mr BAYLIS: If you have clearly taken the point I do not ask for any modification.

The PRESIDENT: It comes out in the evidence, at any rate.

Strangers then, by direction from the Chair, withdrew and the Committee deliberated in camera.

Strangers having been readmitted:

The PRESIDENT: Dr Barker, the Committee have determined that the facts alleged against you in the charge have been proved to their satisfaction, with the following exception. The Committee have not found proved the words in head (4) of the charge, namely, "and during the period when you employed Mrs Kerr as a receptionist". The Committee have determined that all the remaining facts alleged against you in the charge have been proved to their satisfaction.

Mr WIDGERY: There is nothing further that I have to say in this case.

Mr BAYLIS: I need address you in mitigation only very briefly indeed, because I hope your Lordship and members of the Committee will already have appreciated all the points that can be taken in mitigation. I must accept, and Dr Barker must accept, that you have found it proved that during the period when Mrs Kerr and the family were patients, Dr Barker abused his position as a medical practitioner. In my submission, this is not a case in which the doctor on any view could be said to have behaved in a grossly improper manner or to have behaved with serious dishonourable intentions or conduct. This is a case of two people who were unhappy in their marriages, who formed an attachment, and it so happens that by misfortune they were doctor and patient in their relationship with one another. Dr Barker is a man who, on the evidence of the testimonials your Lordship has been good enough to allow me to tender in evidence already, is highly thought of both by his colleagues and by the Executive Council, who say in terms that they would be very sorry to lose him as a doctor in the area.

I hope your Lordship and members of the Committee will feel able to say that, notwithstanding the fact that you have found the facts proved, subject to the amendment your Lordship mentioned, this is not a case where you are satisfied that Dr Barker has been guilty of serious professional misconduct.

If you feel unable to accept that submission, then all it is necessary for me to say is that I hope the Committee will feel able to take a course which does not deprive the community in

Four Marks of the services which Dr Barker has rendered so well during the past nine or ten years. Unless I can assist you further, that is all I wish to say in mitigation.

Strangers then, by direction from the Chair, again withdrew and the Committee deliberated in camera.

Strangers having been readmitted:

The PRESIDENT: Dr Barker, in the view of the Committee the evidence which has been adduced shows that you abused your position as the family's medical adviser in order to *
pursue your association with Mrs Kerr. They have accordingly judged you to have been guilty of serious professional misconduct in relation to the facts which have been proved against you in the charge, and they have directed the Registrar to suspend your registration for a period of nine months.

* This was not changed,
see page 1.