



Dr Hadiza BAWA-GARBA (6080659)
DETERMINATION ON IMPAIRMENT - 08/04/2019

1. The Tribunal has convened to review Dr Bawa-Garba's case in accordance with Rule 22 of the General Medical Council's ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules').

Background

2. The background to Dr Bawa-Garba's case was set out in detail by the Medical Practitioners Tribunal which first considered her case in February and June 2017 ('the 2017 Tribunal') in its determination produced at the conclusion of the facts and impairment stages of that hearing. The background has been subsequently set out in detail by both the Divisional Court and the Court of Appeal in those Courts' respective judgments relating to the case. The Tribunal therefore does not intend to rehearse the background to this case beyond the following summary.

3. On 18 February 2011, Patient A, a six year old boy, died following his admission to the Children's Assessment Unit ('CAU') at Leicester Royal Infirmary after a referral by his GP. On the day of Patient A's admission and untimely death, Dr Bawa-Garba was the most senior doctor present in the CAU. At the time, she was a Specialist Registrar in the sixth year of her postgraduate training ('ST6').

4. On initial examination of Patient A, Dr Bawa-Garba made an incorrect diagnosis of gastro-enteritis with moderate dehydration when in fact Patient A had sepsis. Dr Bawa-Garba did not take action in respect of a clinical reading which ought to have been a clear indicator for a diagnosis of sepsis. She also failed to review the results of investigations or to prescribe antibiotics in a timely fashion and did not seek input from more senior staff. In addition, Dr Bawa-Garba failed to document the need to discontinue medication in Patient A's initial notes which resulted in Patient A incorrectly being given a further dose of that medication. Further, although it was ultimately determined not to have contributed to Patient A's death, Dr Bawa-Garba mistakenly interrupted the resuscitation of Patient A while medical staff were responding to a 'crash-call', causing efforts at resuscitation to cease for a period of between 30 seconds and two minutes.

5. As a result of the events summarised above, on 4 November 2015 at the Crown Court sitting in Nottingham, Dr Bawa-Garba was convicted of manslaughter on the grounds of gross negligence. On 14 December 2015 she was sentenced to 24 months imprisonment suspended for 24 months.

The 2017 Tribunal

6. Having first considered and found proved the fact of Dr Bawa-Garba's conviction and sentence, the 2017 Tribunal went on to determine that Dr Bawa-Garba's fitness to practise was impaired by reason of her conviction. It determined that Dr Bawa-Garba's acts and omissions had fallen 'far below the standards expected of a competent doctor at her level' and that those acts and omissions and her ensuing conviction had brought the profession into disrepute and had breached a fundamental tenet of the medical profession relating to the provision of good clinical care.
7. Having determined that Dr Bawa-Garba's fitness to practise was impaired by reason of her conviction, the 2017 Tribunal went on to consider the appropriate sanction, if any, to impose on her registration. In so doing, the 2017 Tribunal determined that whilst Dr Bawa-Garba's clinical failings had been undoubtedly serious, they were nonetheless capable of being remedied and that, at the time of the hearing in 2017, Dr Bawa-Garba had in fact already undertaken 'significant' remediation.
8. The 2017 Tribunal noted that no concerns had been raised in respect of Dr Bawa-Garba's fitness to practise prior to the events of 18 February 2011. It also noted that, following the death of Patient A, Dr Bawa-Garba had continued to practise without further incident or concerns being raised. The 2017 Tribunal considered that the risk of Dr Bawa-Garba putting another patient at unwarranted risk of harm in the future was low.
9. The 2017 Tribunal had regard to the witness evidence of Dr Jonathan Cusack, a Consultant Neonatologist with the University Hospitals of Leicester NHS Trust and Head of Neonatal Services in Leicester. Dr Cusack was appointed Dr Bawa-Garba's Educational Supervisor in 2014. Dr Cusack's evidence to the 2017 Tribunal detailed multiple systemic failures which were identified in a Trust investigation into the events of 18 February 2011. The 2017 Tribunal determined that whilst Dr Bawa-Garba's actions fell far short of the standards expected and were a causative factor in the early death of Patient A, they took place in the context of wider failings outside of Dr Bawa-Garba's control. The 2017 Tribunal accepted Dr Cusack's evidence that Dr Bawa-Garba had reflected deeply and had demonstrated significant and substantial insight. It stated, however, that it had been unable to conclude that Dr Bawa-Garba had complete insight into her actions as it did not hear evidence from her directly.
10. The 2017 Tribunal also had regard to the judgment in the case of *Bijl v General Medical Council (GMC)* [2001] UKPC 41, in which the Court was of the view that the career of an otherwise good doctor should not be sacrificed in order to satisfy a public demand for blame and punishment.
11. Ultimately, in light of the above and in all the circumstances of Dr Bawa-Garba's case, the 2017 Tribunal determined that a fully informed and reasonable member of the public would view a period of suspension as an appropriate sanction. Taking into account its over-arching objective and the fact that Dr Bawa-Garba remained at that time subject to a suspended custodial sentence, the 2017 Tribunal determined to suspend Dr Bawa-Garba's registration for the maximum available period of 12 months.

12. The 2017 Tribunal directed that, prior to the conclusion of the period of suspension, Dr Bawa-Garba's case would be reviewed by another Medical Practitioners Tribunal and that, for the purposes of that review, Dr Bawa-Garba may wish to submit:

- evidence that she had kept her medical knowledge up to date;
- evidence that she had reflected on the Tribunal's findings and further evidence of reflection and insight into her actions;
- up to date references and testimonials; and
- any other evidence that Dr Bawa-Garba felt may have been relevant.

The GMC's Appeal

13. Under powers accorded to it by Section 40A of the Medical Act 1983, as amended, and introduced in January 2016, the GMC appealed the 2017 Tribunal's decision to impose a period of 12 months suspension on Dr Bawa-Garba's registration. The GMC's appeal was made on the basis that the circumstances of the case called for the erasure of Dr Bawa-Garba's name from the medical register.

14. On 25 January 2018, the Divisional Court issued a written judgment on the GMC's appeal, substituting the original sanction of suspension with the erasure of Dr Bawa-Garba's name from the medical register.

15. The Divisional Court considered, among other things, that in reaching its determinations the 2017 Tribunal had not respected the verdict of the jury in Dr Bawa-Garba's criminal case which had found that her failings were 'truly exceptionally bad'. The Divisional Court considered that the 2017 Tribunal, having considered systemic failing or failings of others and personal mitigation which had already been considered by the jury, came to its own, view that Dr Bawa-Garba was less culpable than the verdict of the jury established. The Divisional Court also considered that the only sanction properly and reasonably open to the 2017 Tribunal was that of erasure.

Dr Bawa-Garba's Appeal

16. Dr Bawa-Garba appealed the decision of the Divisional Court to the Court of Appeal. On 13 August 2018, the Court of Appeal issued its judgment, clarifying and distinguishing between the different roles of criminal courts and disciplinary tribunals. The Court allowed the appeal and set aside the decision of the Divisional Court, thereby restoring Dr Bawa-Garba's name to the medical register and reinstating the original sanction of suspension imposed by the 2017 Tribunal.

17. In its decision, the Court of Appeal commented at paragraph 87, as follows:

"Undoubtedly, there are some cases where the facts are such that the most severe sanction, erasure, is the only proper and reasonable sanction. This is not one of them. Once it is understood that it was permissible for the Tribunal to take into account the full context of [Patient A's] death, including the range of persons bearing responsibility

for that tragedy and the systemic failings of the Trust, as well as the other matters relied upon by Dr Bawa-Garba, and that the Tribunal plainly had in mind its overriding obligation to protect the public for the future, in the tri-partite sense stated in section 1(1B) of [the Medical Act 1983], it is impossible to say that the suspension sanction imposed by the Tribunal was not one properly open to it and that the only sanction properly and reasonably available was erasure.”

The 2018 Review on the Papers ('the first review')

18. Dr Bawa-Garba and the GMC agreed that the first review of Dr Bawa-Garba's case should be considered on the papers in accordance with Rule 21B of the Rules.
19. Accordingly, a Legally Qualified Chair ('LQC') of the MPTS first reviewed Dr Bawa-Garba's case on 19 December 2018 having considered terms of an order which both parties agreed the LQC could make. In their respective submissions both parties agreed that, on that date, Dr Bawa-Garba's fitness to practise remained impaired by reason of her conviction and that her registration should be subject to a further period of suspension for six months.
20. The LQC reviewing Dr Bawa-Garba's case considered that since the original order had been made on Dr Bawa-Garba's registration on 13 June 2017, although the legal issues in the case had been subject to appeal and further appeal, little appeared to have changed in terms of Dr Bawa-Garba's fitness to practise. The LQC also noted that Dr Bawa-Garba had not produced any of the evidence that the 2017 Tribunal had suggested she may wish to when her case were to be reviewed (as set out at paragraph 12 of this determination). The LQC also noted that Dr Bawa-Garba had indicated, via her legal representatives, that she felt unable to attend a public hearing at that time due to the circumstances.
21. Taking the above into account and in the circumstances as they were on 19 December 2018, the LQC determined that Dr Bawa-Garba's fitness to practise remained impaired by reason of her conviction. Having made that determination, the LQC reviewing Dr Bawa-Garba's case considered the appropriate sanction to impose. In so doing, the LQC applied the principle of proportionality, and weighed Dr Bawa-Garba's interests with the public interest.
22. Having considered all the evidence presented by the parties, together with their submissions, the LQC was satisfied that, in the circumstances as they stood on 19 December 2018, a further period of suspension was appropriate and proportionate and would be sufficient to protect the public and the public interest. The LQC therefore determined that Dr Bawa-Garba's registration be suspended for a further period of six months following the expiry of the order imposed by the 2017 Tribunal.
23. In reaching that decision, the LQC took into account the position as it then was, whereby little appeared to have changed from the position existing in June 2017 and where no evidence had been available to address the remaining concerns of the 2017 Tribunal as to Dr Bawa-Garba's fitness to practise. The LQC determined that a further period of suspension for six months should allow Dr Bawa-Garba some

further time to address her personal circumstances, which her representatives had referred to, and to address the matters which the 2017 had outlined in its determination. The LQC recommended that for the purposes of the next review hearing, Dr Bawa-Garba should address the matters listed at paragraph 12 of this determination above.

This Review Hearing

24. This Tribunal must consider, under Rule 22(1)(f) of the Rules, whether Dr Bawa-Garba's fitness to practise is currently impaired by reason of her conviction.

The Evidence

25. The Tribunal has taken into account all the documentary evidence adduced by the parties. This included, but was not limited to, the following:

- the sentencing remarks from Dr Bawa-Garba's criminal trial;
- the determinations of the 2017 Tribunal;
- the determinations of the first review by the LQC in 2018;
- the judgments of the Divisional Court and the Court of Appeal relating to this case;
- documentation relating to Dr Bawa-Garba's professional training, development, and performance from 2008-2017, including evidence of her continuing professional development ('CPD'), her appraisals and feedback;
- a number of testimonials provided on Dr Bawa-Garba's behalf;
- evidence of the CPD undertaken by Dr Bawa-Garba since December 2018;
- a 'Support for Reapplication to a Speciality Training Programme' form completed by Dr Cathryn Chadwick, Head of East Midlands School of Paediatrics, dated 30 January 2019, and an appended letter of support;
- a letter dated 6 March 2019 from Dr Damian Roland, Interim Education for the Emergency Department at Leicester Royal Infirmary, supporting Dr Bawa-Garba in 'simulation training as part of any relevant educational activity she needs to undertake'; and
- a document entitled 'Updated Reflections on the Case of Patient A' by Dr Bawa-Garba, dated 15 March 2019, and produced following meetings with her educational supervisor Dr Jonathan Cusack; and
- a signed witness statement from Dr Bawa-Garba, dated 7 April 2019.

26. The Tribunal also received a signed a witness statement from Dr Cusack, Consultant Neonatologist and Dr Bawa-Garba's educational supervisor, dated 18 March 2019. Dr Cusack also gave oral evidence to the Tribunal. Dr Cusack's evidence was that Dr Bawa-Garba has reflected fully on the events of 18 February 2011, that she has fully remediated her shortcomings on that date, and that she has full insight into what happened and what she should have done differently. Dr Cusack also told the Tribunal about the nature and content of the regular (fortnightly) meetings he has had with Dr Bawa-Garba since 2014, and their discussions around her CPD and her plans to return to practice.

Submissions

27. In summary, Mr Jackson submitted on behalf of the GMC that, notwithstanding the completeness of Dr Bawa-Garba's insight into the events of 18 February 2011 and all of the steps she has taken to remediate her shortcomings since then, Dr Bawa-Garba's fitness to practise remains impaired by reason of her extended absence from medical practice.

28. Mr Hayton, on behalf of Dr Bawa-Garba, told the Tribunal that he had no submissions to make to suggest anything other than Dr Bawa-Garba's fitness to practise being impaired as a consequence of her extended absence from medical practice.

The Relevant Legal Principles

29. The Tribunal reminded itself that at this stage of the proceedings there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

30. The Tribunal must determine whether Dr Bawa-Garba's fitness to practise is impaired today. The Tribunal bore in mind that at a review hearing there is a burden on the medical practitioner to demonstrate that the concerns of the previous Tribunal have been sufficiently addressed.

31. In considering whether the concerns of the previous Tribunal have been addressed, the Tribunal reminded itself that it should consider issues such as, for example, the level of Dr Bawa-Garba's insight, whether there is likely to be any recurrence or whether she has taken steps to mitigate the concerns raised, and whether there is any evidence of her having remediated.

32. Throughout its deliberations, the Tribunal bore in mind the need to protect the public. This is the Tribunal's statutory overarching objective, which includes:

- protecting, promoting and maintaining the health, safety and well-being of the public;
- promoting and maintaining public confidence in the medical profession; and

- promoting and maintaining proper professional standards and conduct for members of that profession.

The Tribunal's Determination on Impairment

33. Dr Bawa-Garba has not had face-to-face contact with patients since January 2015, having been removed from such duties pending the outcome of her criminal trial in November 2015. Having considered all the evidence before it, the Tribunal concluded that Dr Bawa-Garba has reflected appropriately on the events of 18 February 2011, her part in them, and on the shortcomings in her practice which manifested in her care of Patient A as detailed by Dr Cusack in his oral and written evidence. The Tribunal accepted that Dr Bawa-Garba has undertaken significant steps to remediate the concerns identified by the 2017 Tribunal, as shown in her 'Updated Reflections on the Case of Patient A' document. The primary consideration for this Tribunal to determine, therefore, is whether or not Dr Bawa-Garba's fitness to practise remains impaired by reason of her extended absence from medical practice, especially given the lapse of time since she last had face-to-face contact with patients.

34. The Tribunal agreed with the assessment of the 2017 Tribunal that the shortcomings in Dr Bawa-Garba's practice which led to the events of 18 February 2011 are capable of being remedied and it was satisfied that Dr Bawa-Garba has fully remediated insofar as she is capable whilst not in clinical practice. Dr Bawa-Garba continued to work for around four years after the death of Patient A until January 2015, when she continued to work, albeit in a non-patient facing capacity, until her criminal conviction in November 2015. During that time, no concerns were raised regarding Dr Bawa-Garba's competence. Having had regard to the documentary evidence and to Dr Cusack's evidence, the Tribunal was satisfied that Dr Bawa-Garba has continued to remediate and it noted her evidence of CPD and the evidence of the CPD she intends to undertake in the near future. The Tribunal was therefore satisfied, as the 2017 Tribunal had been, that the risk of Dr Bawa-Garba putting another patient at an unwarranted risk of harm is low.

35. Whilst the Tribunal has not heard oral evidence from Dr Bawa-Garba at this stage of the proceedings, it has had regard to the documentary evidence provided to it, as well as to the evidence of Dr Cusack. From this evidence, the Tribunal was satisfied that Dr Bawa-Garba has sufficient insight into her conviction, its seriousness and its consequences. The Tribunal noted that Dr Bawa-Garba's registration was suspended for 12 months by the 2017 Tribunal, and that her registration was then suspended for a further 6 months in December 2018. The Tribunal was therefore satisfied that the public interest in this case has already been served by those two periods of suspended registration. However, it was clear to the Tribunal that Dr Bawa-Garba has now had an extended period of time during which she has been unable to practice and she has not had face-to-face contact with patients since January 2015. In those circumstances, the Tribunal determined that Dr Bawa-Garba's fitness to practise should be found impaired because of her extended absence from medical practice.

36. The Tribunal therefore determined that Dr Bawa-Garba's fitness to practise remains impaired by reason of her conviction.