

## ***Hadiza Bawa-Garba v The General Medical Council***

### **Note on the judgment and order of the Court of Appeal**

#### **Introduction**

The question at the heart of this appeal was whether the Medical Practitioners Tribunal was entitled to take account of systematic failures at the hospital, and failures by other staff who worked there, when deciding what action to take in relation to Dr Bawa-Garba.

The Court of Appeal has decided that the Tribunal is entitled to take account of such matters when deciding a doctor's fitness to practice.

#### **Background**

Dr Bawa-Garba had been convicted of gross negligence manslaughter for failures on her part in the care of Jack Adcock which led to him dying significantly sooner than would otherwise have been the case. Because of this conviction the Tribunal reviewed Dr Bawa-Garba's fitness to practice. It decided that Dr Bawa-Garba should be suspended for one year.

The General Medical Council (GMC) appealed against this decision to the High Court. The High Court decided that the Tribunal's decision to suspend Dr Bawa-Garba rather than strike her off the Register was wrong because:

- In reaching its decision the Tribunal had taken account of matters such as system failures at the hospital by the Trust and the failures of other people involved in the events leading to the death of Jack Adcock.
- These points had been taken into account by the jury in the Crown Court when it convicted Dr Bawa-Garba of gross negligence manslaughter.
- The Tribunal was therefore wrong to disregard the verdict of the jury and reach its own conclusion on the extent to which Dr Bawa-Garba was to blame for Jack's death.

Dr Bawa-Garba appealed to the Court of Appeal against this decision of the High Court.

#### **The decision of the Court of Appeal**

The Court of Appeal held that the matters the Tribunal was entitled to consider were different from those to be taken into account by the jury in the Crown Court.

Mr Justice Nichol, the judge in the Crown Court, had correctly directed the jury to ignore whether the hospital or others were at fault when deciding whether to convict Dr Bawa-Garba of gross negligence manslaughter. Mr Justice Nicholl directed the jury as follows:

*"You may or may not think that the hospital itself was at fault, but you must set those feelings aside. Your role is not to choose between various people who may have played a part in Jack's death. It is not your job to decide whether these three*

*defendants or any of them come top of that list or to try to rank them. Rather you must focus on the specific elements of manslaughter which the Crown must prove in relation to each of the defendants.”*

In contrast, when deciding what sentence to impose on Dr Bawa-Garba, Mr Justice Nichol had taken into account the systematic failures of the Trust, such as staff shortages and IT failures, and the failings by other medical staff involved in Jack’s care. He did so, and imposed a sentence which was at the bottom of the scale for gross negligence manslaughter.

*“In the present case the sentence passed by Nicol J of two years imprisonment suspended for two years was a conspicuously light sentence. In R v Babamiri [2015] EWCA Crim 2152 Lord Thomas LCJ said (at [37]) that an immediate custodial sentence of 12 months imprisonment was at the bottom end of the scale for gross negligence manslaughter. The sentence of Nicol J was even lighter than that. Nicol J said in his sentencing remarks that he passed sentence on the basis that the failures of Dr Bawa-Garba, led Jack to die significantly sooner than he would otherwise have done, rather than that her failures had significantly contributed to his death; and he took into account all the circumstances in which the offences took place, including that her responsibilities for Jack’s care and treatment were shared with others, as well as many points of personal mitigation.”*

The Court of Appeal held that, “..the decisions of the Crown Court and the MPT are taken by different bodies, with different functions, addressing different questions and at different times.”

When considering whether to suspend Dr Bawa-Garba or erase her name from the GMC Register, the Tribunal – like the judge when sentencing - was entitled to have regard to the failures of others which contributed to Jack’s death.

*“The Tribunal was just as much entitled to take into account, in determining the appropriate sanction, systemic failings on the part of the Trust, as part of the context for Jack’s tragic death and Dr Bawa-Garba’s role in it, as well as matters of personal mitigation, as Nicol’s J was entitled to do in determining the appropriate sentence for her crime: R (Campbell) v Council v General Medical Council [2005] EWCA Civ 250, [2005] 1 WLR 3488 at [19].”*

The Court of Appeal concluded that in all the circumstances the Tribunal was entitled to suspend Dr Bawa-Garba for a year rather than strike her name off the Medical Register.

*“Once it is understood that it was permissible for the Tribunal to take into account the full context of Jack’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 MA 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.”*

## **Conclusion**

The Court of Appeal has held that the GMC and the Divisional Court were wrong to conclude that the only option in Dr Bawa-Garba's case was erasure. It therefore quashed the decision of the Divisional Court, restored the decision of the Tribunal that she be suspended from practice for one year and ordered that Dr Bawa Garba's name be restored to the Medical Register. The Court also awarded costs against the GMC.

The GMC has said that it will not seek permission to appeal the Court of Appeal's decision to the Supreme Court.

The Tribunal had directed that there be a review hearing before the end of Dr Bawa-Garba's period of suspension. The Court of Appeal has ordered that hearing to be held as soon as possible. The Tribunal will decide what conditions, if any, to impose on Dr Bawa-Garba's future practice.

**Tim Johnson/Law**

*Solicitors*

**Monday 13 August 2018**