

Dr Hadiza BAWA-GARBA (6080659)
DETERMINATION ON SANCTION - 09/04/2019

1. Having determined that Dr Bawa-Garba's fitness to practise remains impaired by reason of her conviction, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

2. The Tribunal has taken into account the evidence received during the earlier stage of the hearing where relevant to reaching a decision on sanction. This included, but was not limited to, certificates from:

- BMJ learning – 'Guidelines for the Management of Acute Gastroenteritis in Children in Europe';
- NHS Health Education England – 'Sepsis in Paediatrics';
- NHS Health Education England – 'Safeguarding Certificate Level 3 (2014) – Maintaining and Uploading Competences'.

3. The Tribunal also received further evidence at this stage of the proceedings, including documentary evidence on behalf of Dr Bawa-Garba in the form of recent certificates of completion for the following NHS Health Education England CPD courses:

- 'The Acutely Unwell Child' Module;
- 'Paediatric Emergencies' Module;
- 'Neonates Module'; and
- 'Utilising the BNF for Children' Module.

4. The Tribunal was also provided with a copy of a Certificate of Assessment for the Department of Health course entitled 'Spotting The Sick Child'.

5. Dr Bawa-Garba gave oral evidence to the Tribunal at this stage in the proceedings by means of a video link.

Submissions

6. Throughout his submissions on behalf of the GMC, Mr Jackson referred the Tribunal to relevant paragraphs in the 'Sanctions Guidance' (February 2018 edition). In summary, Mr Jackson submitted that the appropriate and proportionate sanction in this case is now a period of conditional registration. Mr Jackson submitted that conditions would now be an appropriate sanction taking into account the extended period of Dr Bawa-Garba's absence from active clinical practice, and also taking into account the evidence of Dr Bawa-Garba's positive and continuing remediation to date. Mr Jackson

submitted that only an extended period of conditions would facilitate Dr Bawa-Garba's safe return to practice and that some additional extra supervision, albeit perhaps in the early stages of Dr Bawa-Garba's return to work, would be appropriate.

7. Mr Hayton also submitted, on Dr Bawa-Garba's behalf, that a period of conditions would be an appropriate and proportionate sanction. Mr Hayton submitted that Dr Bawa-Garba has taken a very positive approach to reflection and remediation. He submitted, however, that it is necessary for Dr Bawa-Garba's practice to be restricted to some extent in order to protect her, patients, and to secure the confidence of the public and the profession that this case is being dealt with appropriately.

8. Mr Hayton reminded the Tribunal of the evidence of both Dr Cusack and Dr Bawa-Garba that, given the amount of time since Dr Bawa-Garba last had face-to-face contact with patients, Dr Bawa-Garba would need a level of supervision above that of a 'normal' ST4 trainee upon her return to work. Mr Hayton also reminded the Tribunal of Dr Bawa-Garba's personal circumstances at the present time, and the fact that she does not intend to resume active clinical practice until February 2020, some six months after her current period of suspension is due to expire. Given that plan, Mr Hayton accepted that conditions may well be imposed on Dr Bawa-Garba's registration for a substantial period of time. Mr Hayton also reminded the Tribunal of Dr Cusack's evidence that 'supervision' of Dr Bawa-Garba's practice, as defined in the *Glossary for undertakings and conditions*, would be proportionate, workable and necessary and that a level of 'close' or 'direct' supervision would be unnecessary, given the extent of Dr Bawa-Garba's remediation.

The Tribunal's Determination on Sanction

9. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgment. In so doing, it has given consideration to all the evidence, its finding on impairment of fitness to practise, and the submissions made by Mr Jackson, on behalf of the GMC, and Mr Hayton on behalf of Dr Bawa-Garba. The Tribunal also had regard to relevant paragraphs in the 'Sanctions Guidance'.

10. Throughout its deliberations the Tribunal bore in mind that the purpose of sanctions is not to be punitive, but 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.

11. In making its decision, the Tribunal also had regard to the principle of proportionality, and it weighed Dr Bawa-Garba's interests against those of the public. It also considered and balanced the mitigating factors in this case against the

undoubtedly serious offence for which Dr Bawa-Garba was convicted in November 2015. The Tribunal considered the following to be mitigating factors:

- there is extensive evidence of Dr Bawa-Garba having engaged very positively with her Educational Supervisor, Dr Cusack, with whom she has met on a fortnightly basis since her conviction;
- as a result of their fortnightly meetings, Dr Cusack has a thorough and comprehensive knowledge of the shortcomings in Dr Bawa-Garba's practice which manifested on 18 February 2011, her reflections on those shortcomings and the steps she has taken to remediate them, and his evidence was that outside of undertaking clinical practice, Dr Bawa-Garba has undertaken all the training and steps possible to keep her clinical skills and knowledge up to date, including active participation in the regular educational supervision meetings;
- there is evidence that Dr Bawa-Garba has the support not just of Dr Cusack and others at the Trust, but also the Postgraduate Dean for the East Midlands Deanery, and the Head of School, East Midlands School of Paediatrics;
- Dr Bawa-Garba has fully remediated the concerns of the 2017 Tribunal insofar as has been possible for her without returning to clinical practice;
- Dr Bawa-Garba has apologised for her failings on numerous occasions including during this hearing and has expressed remorse for them;
- Dr Bawa-Garba has sufficient insight into her failings and what she should have done differently in respect of Patient A;
- Dr Bawa-Garba's insight regarding her next steps and her phased return to clinical practice are realistic and workable; Dr Bawa-Garba recognises and accepts that by reason of her extended absence from face-to-face contact with patients, her successful and safe return to practice will not be straightforward;
- Dr Bawa-Garba's remediation and the CPD she has undertaken in the intervening period has been targeted in particular at the specific concerns raised by the 2017 Tribunal regarding her treatment of Patient A;
- given Dr Bawa-Garba's personal circumstances and her suspended registration, she has nevertheless remediated the concerns of the 2017 Tribunal.

The Tribunal concluded that the mitigating factors in this case were extensive and substantial, and these must be borne in mind when considering the appropriate and proportionate sanction.

12. In deciding what sanction, if any, to impose the Tribunal considered each of the options available, starting with the least restrictive.

No Action

13. The Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only apply in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case which would outweigh Dr Bawa-Garba's own admission that, by reason of her extended absence from clinical practice, her skills and knowledge are not currently up to date. In any event, the Tribunal was satisfied that given the nature of this case it would not be sufficient, proportionate, or in the public interest to conclude it by taking no action.

Conditions

14. The Tribunal next considered whether to impose conditions on Dr Bawa-Garba's registration. In so doing, it bore in mind that any conditions imposed would need to be appropriate, proportionate, workable, and measurable.

15. In considering whether conditions would be workable in this case, the Tribunal had regard to paragraph 82 of the 'Sanctions Guidance', which states that conditions are likely to be workable where:

- a. the doctor has insight;
- b. a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings;
- c. the Tribunal is satisfied the doctor will comply with them; and
- d. the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.

16. Having considered the evidence before it, the Tribunal was satisfied that all of the factors listed above are apposite in this case.

17. As noted in the Tribunal's determination at the impairment stage of these proceedings, following the untimely and tragic death of Patient A on 18 February 2011, Dr Bawa-Garba continued to work in clinical practice without concerns being raised until January 2015, when she was removed from having face-to-face contact with patients by the Trust pending the outcome of her criminal trial in November 2015. Having been convicted in November 2015 Dr Bawa-Garba was suspended from practice that same month. The evidence of both Dr Bawa-Garba and Dr Cusack was that they have met fortnightly since for educational supervision.

18. Dr Cusack's evidence was that Dr Bawa-Garba has continued to reflect deeply on the shortcomings in her clinical practice in relation to Patient A, the consequences of her actions on the family of Patient A, what she should have done differently, what she has learnt from the mistakes, and the further learning she needs to undergo to be able to return safely to clinical practice. His evidence was supported by Dr Bawa-Garba's updated reflective statement.

19. Dr Cusack's further evidence, supported by that of Dr Bawa-Garba, was that Dr Bawa-Garba is currently on maternity leave and that she does not intend to

resume clinical practice until February 2020, when she hopes to be able to return to work as an ST4 doctor as part of an approved training programme. The Tribunal noted Dr Cusack's evidence that there is a structured return to work programme in place at the Trust and that Dr Bawa-Garba will require a higher level of supervision than the 'ordinary' ST4 doctor given her prolonged absence from clinical practice. The Tribunal was satisfied from Dr Cusack's evidence, based on their extensive supervision meetings over a long period of time, that Dr Bawa-Garba has full insight, that a period of retraining and supervision is necessary, that Dr Bawa-Garba will comply with any conditions on her registration, and that she has the potential to respond positively to any such restrictions on her practice.

20. The substance of Dr Cusack's evidence was supported by Dr Bawa-Garba's oral evidence to the Tribunal and her updated reflective statement. The Tribunal noted that Dr Bawa-Garba accepts, realistically, that she will need to be successful in obtaining a new training number and to re-commence training as an ST4 doctor in February 2020. The Tribunal also noted the letters of support from the Trust and the East Midlands Deanery to the effect that Dr Bawa-Garba will be appropriately supported during her return to clinical practice.

21. The evidence before the Tribunal shows that Dr Bawa-Garba has undertaken a significant amount of remediation already and that she has booked further courses to be undertaken prior to her resuming work in February 2020. The Tribunal was satisfied that the CPD Dr Bawa-Garba has done has been appropriately focused on the concerns raised by the 2017 Tribunal regarding her treatment of Patient A. She has completed a number of courses, including an approved course on 'Sepsis in Paediatrics'. In light of the remediation Dr Bawa-Garba has undertaken, the Tribunal has already determined that the risk of her putting another patient at unwarranted risk of harm is low.

22. Given the remediation Dr Bawa-Garba has already undertaken and the full insight she has developed into her shortcomings, the Tribunal was satisfied that Dr Bawa-Garba has the potential to respond positively to remediation, retraining, and to her work being supervised. From the evidence before it, the Tribunal was also satisfied that Dr Bawa-Garba remains fully committed to keeping her skills and knowledge up to date and that she has made substantial progress in doing so despite not being in clinical practice. The Tribunal was struck, for example, by Dr Cusack's evidence that Dr Bawa-Garba frequently attends their regular meetings with journal articles or other publications detailing cases or clinical scenarios she wishes to discuss with him. The Tribunal concluded that Dr Bawa-Garba has been particularly proactive in her engagement with Dr Cusack.

23. The Tribunal was therefore satisfied that a period of conditional registration would be an appropriate and proportionate sanction in this case which would adequately address Dr Bawa-Garba's extended absence from clinical practice whilst at the same time protecting the public and maintaining confidence in the profession. As noted in its earlier determination at the impairment stage of these proceedings, the Tribunal is satisfied that the public interest in this case has been served by the cumulative suspension of Dr Bawa-Garba's registration for 18 months. The Tribunal therefore considered that any sanction higher than that of a period of conditional registration would be disproportionate and punitive. The Tribunal applied the

principle from the case of *Bijl v General Medical Council (GMC)* [2001] UKPC 41 and determined that it would not be in the public interest to deprive the public of an otherwise competent and dedicated practitioner who has the potential to respond positively to conditional registration.

24. The following conditions are public and will be published:

- 1 She must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:
 - a the details of her current post, including:
 - i her job title
 - ii her job location
 - iii her responsible officer (or their nominated deputy)
 - b the contact details of her employer and any contracting body, including her direct line manager
 - c any organisation where she has practising privileges and/or admitting rights
 - d any training programmes she is in
 - e of the contact details of any locum agency or out of hours service she is registered with.
- 2 She must personally ensure the GMC is notified:
 - a of any post she accepts, before starting it
 - b that all relevant people have been notified of her conditions, in accordance with condition 9
 - c if any formal disciplinary proceedings against her are started by her employer and/or contracting body, within seven calendar days of being formally notified of such proceedings
 - d if any of her posts, practising privileges, or admitting rights have been suspended or terminated by her employer before the agreed date within seven calendar days of being notified of the termination
 - e if she applies for a post outside the UK.
- 3 She must allow the GMC to exchange information with any person involved in monitoring her compliance with her conditions.
- 4 a She must have a workplace reporter appointed by her

- responsible officer (or their nominated deputy).
- b She must not work until:
 - i her responsible officer (or their nominated deputy) has appointed her workplace reporter
 - ii she has personally ensured that the GMC has been notified of the name and contact details of her workplace reporter.
- 5
- a She must design a Personal Development Plan (PDP), with specific aims to address any areas identified by her Educational Supervisor.
 - b Her PDP must be approved by her responsible officer (or their nominated deputy).
 - c She must give the GMC a copy of her approved PDP within three months of these substantive conditions becoming effective.
 - d She must give the GMC a copy of her approved PDP on request.
 - e She must meet with her responsible officer (or their nominated deputy), as required, to discuss her achievements against the aims of her PDP.
- 6
- a She must have an educational supervisor appointed by her responsible officer (or their nominated deputy)
 - b She must not work until:
 - i her responsible officer (or their nominated deputy) has appointed her educational supervisor
 - ii she has personally ensured that the GMC has been notified of the name and contact details of her educational supervisor.
- 7
- a She must be closely supervised by a clinical supervisor, as defined in the *Glossary for undertakings and conditions*:
 - i for a 3 month period from the commencement of a training programme approved by the relevant Postgraduate Dean, following which the supervision level will reduce and she must be supervised by a clinical supervisor, as defined in the *Glossary for undertakings and conditions* ; or alternatively,
 - ii for a period of 6 months from the commencement of any other post, following which the supervision level will

reduce and she must be supervised by a clinical supervisor, as defined in the *Glossary for undertakings and conditions* ; and

- iii. her clinical supervisor must be appointed by her responsible officer (or their nominated deputy).
- b She must not work until:
 - i her responsible officer (or their nominated deputy) has appointed her clinical supervisor and approved her supervision arrangements
 - ii she has personally ensured that the GMC has been notified of the name and contact details of her clinical supervisor and her supervision arrangements.
- 8 She must not work in any locum post or fixed term contract of less than 3 months duration.
- 9 She must personally ensure the following persons are notified of the conditions listed at 1 to 8:
 - a her responsible officer (or their nominated deputy)
 - b the responsible officer of the following organisations:
 - i her place(s) of work, and any prospective place of work (at the time of application)
 - ii all of her contracting bodies and any prospective contracting body (prior to entering a contract)
 - iii any organisation where she has, or has applied for, practising privileges and/or admitting rights (at the time of application)
 - iv any locum agency or out of hours service she is registered with
 - v if any of the organisations listed at (i to iv) does not have a responsible officer, she must notify the person with responsibility for overall clinical governance within that organisation. If she is unable to identify that person, she must contact the GMC for advice before working for that organisation.
 - e her immediate line manager and senior clinician (where there is one) at her place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

25. The Tribunal determined to impose these conditions on Dr Bawa-Garba's registration for a period of 24 months. It considered this to be an appropriate period

to allow Dr Bawa-Garba to return to work in February 2020 as an ST4 as she intends, providing she meets the pre-requisites for doing so, and to be closely supervised when she initially does so. The level of supervision will then be reduced as set out in the conditions. For the avoidance of doubt, condition 7(a)(ii), which is an alternative to 7(a)(i), will apply from the commencement of the first post, and the six month period of close supervision will not restart if Dr Bawa-Garba subsequently changes post; any period already spent working under close supervision after the date of this hearing will count towards the total six month period.

26. The Tribunal was satisfied that the imposition of these conditions on Dr Bawa-Garba's registration will be sufficient to allow her safe and successful return to practice and to also adequately protect the public. The current order of suspension will not be revoked as it was imposed to meet the public interest issues raised by Dr Bawa-Garba's conviction; the conditions will therefore not become effective until the current order of suspension expires which, in the absence of any appeal of this decision, will be in July 2019.

27. The Tribunal has determined to direct a review of Dr Bawa-Garba's case. A review hearing will convene shortly before the end of the period of conditional registration, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Bawa-Garba to demonstrate that she has made a successful return to clinical practice and that her skills and knowledge are up to date. It therefore may assist the reviewing Tribunal if Dr Bawa-Garba provides the following evidence:

- up-to-date reports from her workplace reporter;
- a copy of her PDP;
- up-to-date reports from her educational supervisor;
- up-to-date reports from her clinical supervisor;
- evidence of relevant CPD;
- any other information that Dr Bawa-Garba feels would assist the reviewing Tribunal, such as recent testimonials.

28. The MPTS will write to Dr Bawa-Garba notifying her of this decision, her right of appeal, and confirming the date on which the conditions become effective if she does not exercise her right of appeal.

29. That concludes this case.

