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Dr. Bawa-Garba: Support is a lot more than indemnity

Background

Outrage from the medical community and a crowdfund for a legal team are finally giving Dr. Bawa-Garba the support that she needs to fight her case, but only after a criminal conviction and being struck off the GMC register.

The pertinent question here is: **How did this matter get to this point?**

Analysis

A timeline is provided in the Annex. The disturbing element in this case is that all of the medical disciplinary proceedings appear to have been driven by an initial decision to pursue a criminal trial. The jury in a criminal trial are laymen who, in this instance, are making important decisions on complex processes in an environment that was clearly far from perfect.

The decision to strike off Dr. Bawa-Garba can be traced back to the initial decision of the Crown Prosecution Service to charge the Doctor with manslaughter. An excellent article by Jenny Vaughanin the *Medicolegal* journal entitled “*Gross negligence manslaughter and the healthcare professional*”. This article highlights a worrying trend for individual healthcare professionals, in the Bawa-Garba incident both a doctor and a nurse, to be singled out for gross negligence for system failures in a system. Within the NHS, the civil indemnity cover is at the entity level – CNST or Clinical Negligence Scheme for Trusts. Currently manslaughter charges are brought against individuals, although there are now calls for a criminal prosecution against Leicester Royal Infirmary.

Following their convictions nurse Amaro and Dr. Bawa-Garba both faced disciplinary tribunals from their professional bodies. It is not clear if the Medical Protection Society, which defended Dr. Bawa-Garba for the criminal trial, continued to support her at the GMC Tribunal. In the experience of Medical Risk Services Limited, the Medical Defence Union and Medical Protection Society often discontinue their discretionary support as soon as a criminal conviction is secured. The case of Dr. Paterson is the most recent example. It is likely that Dr. Bawa-Garba faced this tribunal having to fund her own representation.

The GMC would feel compelled to review a medic’s fitness to practise following a criminal conviction. The GMC would have asked a senior paediatrician to prepare a breach of duty report that would have been considered by a panel of senior doctors. This initial panel found that Dr. Bawa-Garba was fit to continue to practice, but might require some additional training.

The GMC then decide to appeal the finding of their own Tribunal, giving the following statement. “*We never take the decision to appeal lightly and we only do so if, after careful consideration of all of the relevant circumstances, we conclude that a Medical Practitioners Tribunal’s decision was insufficient to protect the public.*”

The GMC is successful in its appeal and on 25th January 2018 Dr. Bawa-Garba was struck off the GMC register. The High Court determined that the Medical Practitioners Tribunal Service, which would have comprised of a number of senior doctors that had considered a detailed technical medical report prepared by a leading paediatrician, had not given sufficient weight to the lay jury in a criminal trial. In particular: The High Court

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held that the Tribunal “*did not respect the true force of the jury’s verdict nor did it give it the weight required when considering the need to maintain public confidence in the profession and proper standards*”.

Medical Risk Services Limited’s conclusions

The ramifications from the Bawa-Garba incident are wide ranging and significant. The UK Health Secretary, Jeremy Hunt, has already ordered a review into whether and how criminal prosecutions should be brought against doctors.

From the perspective of Medical Risk Services Limited, an organisation that is developing services and products to assist doctors in protecting themselves against malpractice claims and their consequences, both in NHS and private practice, the following points are salient.

- Malpractice claims should start with the entity that is organising and co-ordinating the work. The claim should be de-personalised from the outset and should only be directed to an individual should a full study of the facts determine that a person was entirely reckless, dishonest or malicious.
- The opinion of leading practicing, doctors from the relevant field should be canvassed immediately and made available to the process.
- Dr. Bawa-Garba has not been effectively supported from the outset. She is still exposed to a terrible process seven years after the incident.
- All individuals who are subject to investigation should be supported throughout the entire process.
- Indemnity should be contractual and cover innocent victims with a legitimate claim for harm regardless of where the process goes.

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Annex A - Timeline

18 February 2011

A six year old boy is admitted to the Children's Assessment Unit (CAU) at Leicester Royal Infirmary following a referral from his GP. The boy had Down's Syndrome and a known heart condition. He had been admitted to A&E suffering from diarrhoea, vomiting and had difficulty breathing.

Dr Hadiza Bawa-Garba was a specialist registrar in year six of her postgraduate training (ST6). She had an 'impeccable' record. The doctor had recently returned from maternity leave and this was her first shift in an acute setting. She was the most senior doctor covering the CAU, the emergency department and the ward CAU that day. She saw the boy at about 10.30am.

The boy was receiving supplementary oxygen. Dr Bawa-Garba prescribed a fluid bolus and arranged for blood tests and a chest x-ray. At 10.44am the first blood gas test was available and showed a worryingly high lactate reading. The x-ray became available from around 12.30pm and showed evidence of a chest infection.

Dr Bawa-Garba was heavily involved in treating other children between 12 and 3pm, including a baby that needed a lumbar puncture. At 3pm Dr Bawa-Garba reviewed the boy's x-ray (she was not informed before then that it was available) and prescribed a dose of antibiotics immediately, which Jack received an hour later from the nurses.

A failure in the hospital's electronic computer system that day meant that although she had ordered blood tests at about 10.45am, Dr Bawa-Garba did not receive them until about 4.15pm. It also meant her senior colleague was not available.

During a handover meeting with a consultant at about 4.30pm, Dr Bawa-Garba raised the high level of a protein marker for inflammation in the boy's blood test results and a diagnosis of pneumonia. She did not ask the consultant to review the patient. She said that the boy had been much improved. At 6.30 pm, she spoke to the consultant a second time, but again did not raise any concerns.

When she wrote up the initial notes, she did not specify that the boy's medication for his heart condition should be discontinued. Jack was subsequently given his evening dose of enalapril by his mother after he was transferred to the ward around 7pm.

At 8pm a 'crash call' went out and Dr Bawa-Garba was one of the doctors who responded to it. On entering the room she mistakenly confused the boy with another patient and called off the resuscitation. Her mistake was identified within 30 seconds to two minutes and resuscitation continued.

This confusion did not contribute to the boy's death, as his condition was already too far advanced. At 9.20pm, the boy died.

2 November 2015

Isabel Amaro, an agency nurse on the ward, is given a two-year suspended jail sentence for manslaughter on the grounds of gross negligence.

4 November 2015

Nottingham Crown Court convicts Dr Bawa-Garba of manslaughter on the grounds of gross negligence.

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14 December 2015

Dr Bawa-Garba receives a 24 month suspended sentence.

8 December 2016

Dr Bawa-Garba's appeal against her sentence is quashed at the Court of Appeal.

13 June 2017

The Medical Practitioners Tribunal Service (MPTS) says Dr Bawa-Garba should be suspended for 12 months and rejects an application from the GMC to strike her off the register. It says: 'In the circumstances of this case, balancing the mitigating and aggravating factors, the tribunal concluded that erasure would be disproportionate.'

8 December 2017

GMC takes the MPTS to the High Court and argues its own tribunal was 'wrong' to allow Dr Bawa-Garba to continue to practice.

25 January 2018

The GMC successfully appeals at the High Court bid to have the MPTS decision overruled, leading to Dr Bawa-Garba being struck off the medical register.