BMJ 2018;360:k765 doi: 10.1136/bmj.k765 (Published 19 February 2018)

LETTERS

BAWA-GARBA CASE

GMC chair's reply to Nick Ross's second letter regarding Hadiza Bawa-Garba

Terence Stephenson *chair*

General Medical Council, London NW1 3JN, UK

The following is a letter of 12 February 2018 from the chair of the General Medical Council in reply to Nick Ross's letter of 5 February 2018 (posted 8 February 2018).[1 2]

Dear Nick,

After your meeting and exchange of correspondence with Charlie Massey in recent weeks, I welcome the opportunity to respond to the points you raise in your letter to me of 5 February 2018.[1 2]

I have read in full the court judgments and GMC decisions taken around the Bawa-Garba case, and I am keen to shed some light on our role and how it fits in a law abiding and democratic society.

I understand that you find the decision taken in this case hard to accept. I also recognise the anxiety felt in parts of my profession. We have publicly acknowledged that concerns about manslaughter by gross negligence convictions, and this subsequent judgment, could make doctors less candid about errors and that this case has set us back in our goal to support doctors as the best way of protecting patients. We are working hard to overcome this and the considerable misunderstanding and frustration, which are not entirely grounded in fact.

At the heart of this tragic case, a person was convicted in a criminal court of the very serious offence of gross negligence manslaughter after a 6 year old died. The GMC as a regulator, and the Medical Practitioners Tribunal Service that hears fitness to practise cases, cannot lawfully unpick or overturn the decisions of a jury in a criminal trial. As the external QC advice given to the GMC registrar made clear, and the High Court judgment in January 2018 confirmed, the tribunal erred in law by going behind the verdict of the jury. For the GMC not to appeal would be to endorse the tribunal's action in undermining the law of the land and would set an important precedent that would apply to all criminal convictions, not just manslaughter by gross negligence.

I agree entirely that to err is human, and I have certainly made mistakes as a doctor. But a conviction for manslaughter by reason of gross negligence is not about everyday mistakes, the failings must be truly exceptionally bad to result in a conviction taking into account all mitigating factors. You may consider the law around gross negligence manslaughter in healthcare to be flawed, and as a citizen it is your and everyone's right to make representations about that. But that is ultimately a matter for government and for parliament, not for a professional regulator. The GMC cannot be above the law.

We have announced a review to explore how the law of gross negligence manslaughter is applied to medical practice. There is clearly a critical need to examine how gross negligence manslaughter cases are started and investigated and the expertise and consistency applied to those investigations. We will bring together health professional leaders, defence bodies, patient, legal, and criminal justice experts from across the UK in work that will include a renewed focus on reflection and provision of support for doctors in raising concerns.

Since 2016 I and others have discussed with the Health Secretary the creation of a "safe space" in healthcare and a form of legal privilege, akin to the airline industry that you quote, but parliament has not enacted it. Until they do, the GMC remains bound by UK law as it stands.

In response to your specific request for a statement of our position, I wholeheartedly agree that protecting and promoting patient safety must be the first priority of the GMC and that medical candour is one crucial part of that. Retribution has no place in our work. We are clear, and this has been confirmed in many court judgments, that our role is not to punish doctors. The Medical Act 1983 sets out that our role is to protect the public. To your point about adversarial procedures, the legal systems of the UK are predominately adversarial in nature, and as a statutory body set out in UK law, we follow that law.

The GMC must of course remain an open organisation willing to learn but it cannot be one that ignores the law or is swayed in its decision making by outcry from either groups of doctors or sections of the public when the views of the rest of the UK's 65 million citizens are unknown. We know of nine convictions of doctors for gross negligence manslaughter since 2004. In every one, having considered the facts in each case, and without

chair@gmc-uk.org

regard to the seniority or ethnicity of the doctor concerned, the GMC has sought erasure.

Convictions for gross negligence manslaughter in medicine are rare. Figures from the *Journal of the Royal Society of Medicine* state that over a 200 year period 25 doctors were convicted of manslaughter. But as a profession we need to be candid against that risky backdrop, otherwise we are not professionals.

Let me close by making two important points.

Firstly, the GMC was removed from decision making in individual fitness to practise decisions in 2004 in the wake of public disquiet around several extremely bad doctors who had harmed patients and the system had failed to deal with them; the perception was that the GMC was a doctors' club looking after its own. I cannot envisage a situation where the public would countenance a return to the profession deciding among itself on the fitness to practise of its colleagues. But I can confirm that I and the council have full confidence in how the registrar has taken such a difficult decision after full consideration of this case and the law.

Secondly, I accept that regulation and the processes that we follow are not always perfect and that, as the independent regulator, we must be open to learning and change. But doctors currently have a form of self regulation, with a mix of medical and lay input at the highest level. Regulation by government would be a very different prospect, stripped of independence and at risk of being subject to the political tendency of the government of the day. I am far from convinced that the profession or the public would benefit from such an arrangement.

Terence Stephenson

Competing interests: None declared.

1 Ross N. Second letter to the GMC chair regarding Hadiza Bawa-Garba. *BMJ* 2018;360:k667. 10.1136/bmj.k667 29440052

2 Cohen D. Expert urges doctors to report themselves to GMC. *BMJ* 2018;360:k481. 10.1136/bmj.k481 29382662