

From the Chief Executive



BY EMAIL: hsccom@parliament.uk

Dr Sarah Wollaston MP
Chair,
Health Committee
House of Commons
London
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17 October 2018

Dear Sarah,

I am writing further to the evidence given to the Select Committee yesterday.

At the hearing, the Chief Executive of the GMC, Charlie Massey suggested that the GMC's power to appeal decisions of the MPTS was justified by the Authority's decision not to appeal the case of Dr Jane Barton and that the GMC would have done so had it had power of appeal at the time. As Mark Stobbs, on behalf of the Authority indicated, the Authority does not share this interpretation of events and as I was Chief Executive of our predecessor body the CHRE at the time, I think it is helpful to put on record what happened.

After the GMC panel in January 2010 placed Dr Barton under conditions of practise rather than any more severe sanction, the then Chief Executive of the GMC, Niall Dickson, telephoned me and said he was going to make a public statement that the GMC was referring the case to the CHRE. He said in the same telephone call that the GMC had already consulted Counsel and that he recognised that it was very unlikely that we would be able to appeal.

As Mark Stobbs told the Committee yesterday the Authority looked very closely at the decision in Dr Barton's case. We concluded that the decision was unduly lenient (as the then test was). We went on to consider, as our legislation requires us to do, whether to exercise our power of appeal. Dr Barton was under 11 conditions of practice which rendered it almost impossible for her to work. We sought legal advice from two separate Counsel both of whom advised that our prospects of a successful appeal in the courts were very low. We decided, reluctantly, not to appeal, and made public our decision as follows, 'It is the opinion of CHRE that erasure should have been the result of this case. Erasure would have ensured that patients were fully protected. Erasure would have maintained confidence in the medical profession and ensured that the public retained trust in the system of regulation. The GMC panel's decision in our view was lenient but not so unreasonable that it could be appealed.' (March 2010)

The GMC put out a press release stating, 'This was a complicated and difficult case which has caused anguish and upset to a great many people. We understand and support the

view of the CHRE that Dr Barton should have been erased from the medical register but also understand and accept the legal position in relation to an appeal.'

Immediately after we made our decision the GMC informed the CHRE that Dr Barton would retire on March 31, 2010. She remained registered with the GMC until 9 March 2011.

Following the Gosport Hospital Enquiry report our internal Scrutiny Committee, which is responsible for quality assuring our work has reviewed our handling of the Dr Barton case. It noted, in particular, that the scale of the problem at Gosport was not clear at the time – the GMC had charged 12 cases of inappropriate prescribing, which was on the evidence before them; there was (and is) no evidence that Dr Barton had any malicious intent; there had been no police prosecution; Dr Barton had practised for eight years following the incidents without concern; the conditions imposed by the panel had the effect of preventing her returning to practise and Dr Barton had announced her retirement.

We do not consider that the facts of the case or the GMC's statements at the time justify any suggestion now by the GMC that it was relevant to their subsequently seeking their own power of appeal or that they would have appealed the case themselves at the time.

There are undoubtedly lessons to be learned from the events at Gosport for all our organisations.

I am copying this letter to Charlie Massey.

A handwritten signature in black ink that reads "Harry Cayton". The signature is written in a cursive, flowing style.

Harry Cayton CBE
Chief Executive

CC: Charlie Massey, Chief Executive, General Medical Council

22 October 2018

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Chair
Professor Terence Stephenson

Chief Executive and Registrar
Charlie Massey

Dear Sarah

Thank you for the opportunity to give evidence to the Health and Social Care Committee on Tuesday. I thought it would be helpful to write to you to follow up.

I have seen Harry Cayton's letter to you of 17 October regarding the case of Dr Jane Barton. Clearly our accounts on the matter differ in parts. I have no wish to prolong the debate on this case. The purpose of me raising it was in no way meant to criticise the PSA or CHRE. Rather, it was to illustrate a general point that prior to us gaining the right of appeal there were a number of cases that I believe the GMC would have pursued an appeal in, either to protect patient safety or to maintain public confidence in the profession, or both.

Furthermore, at least one other professional regulator, the Solicitors Regulatory Authority, does have the power to appeal the decisions of its tribunal. Outside of professional regulation, there are also a number of other examples, such as Social Security tribunals, where the investigative party to the case has the right to appeal a tribunal's decision.

The establishment of the Medical Practitioners Tribunal Service (MPTS) in 2012, to create a separation between the investigation and adjudication processes, is unique amongst healthcare regulators. So I do not think the argument for consistency across all of the healthcare regulators is applicable. Nor do I consider the fact the GMC funds the MPTS should prohibit us having the right of appeal: we also contribute to the funding of the PSA, and if anything the fact we appeal some MPT decisions can be seen as a clear signal that the separation of function is working.

I should make clear that the decision to appeal an MPT outcome is never one taken lightly. However, I firmly believe that our expertise, resources and our direct engagement with doctors make us best placed to be able to make a decision on whether to appeal an MPT outcome. Indeed, Sir Norman William's review points out that "the GMC has exercised its power proportionately more often than the PSA

(the GMC has appealed 25 MPTS decisions since 2015 while the PSA appealed 30 decisions across all nine regulators in the same time)".

To date, we have won 16 of the 18 cases we have appealed relating to a Doctor's Fitness to practise and that have concluded. Sir Norman's report goes on to state that: "The panel's view was that GMC's use of appeals is not excessive. Taken together with the high rate of successful appeals there can be no suggestion that the GMC has used its appeal power inappropriately. Indeed it can be argued that these successful appeals have improved patient safety."

The Jack Adcock/Dr Bawa-Garba case has generated extensive debate in the healthcare profession and the wider public. Whatever one's opinion is on the GMC appealing the MPT's decision not to erase Dr Bawa-Garba, I think it is extremely important to distinguish that consideration from an opinion on whether the GMC should have the right of appeal in general. That view should be based on whether the GMC having the power to appeal supports our statutory function to protect patient safety and uphold public confidence in the profession. I firmly believe that we followed the correct process in this and other cases we have appealed. We fully accept the Court of Appeal's judgment in this case. But that judgment did not criticise the GMC for making the original appeal.

I continue to believe there is a strong case for the GMC to retain its right of appeal. However as I said in evidence on Tuesday, I respect the Government's intention to legislate to remove it in light of Sir Norman's recommendation. Ahead of legislation coming into force, and following Tuesday's session with the committee, we will work with PSA on the Sir Norman's recommendation to review our process for appealing. We will also consider whether it would be lawful for us to stop exercising the power or indeed delegate it to the PSA, ahead of the legislation coming into force.

I am copying this letter to Harry Cayton.

A handwritten signature in cursive script that reads "Charlie Massey". The signature is written in dark ink and is positioned above the printed name.

Charlie Massey