

31 October 2022

Dr Dilshad Marikar - Consultant Paediatrician, West Suffolk Hospital

Dr Jane Bayreuther - Chair APEM, UH Southampton,

Dr Peter Heinz - Chair BAPEM, Addenbrooke's Hospital

Sent by email

Dear Drs Marikar, Bayreuther and Heinz

Thank you for your letter about the case of Dr Faye Hawkins who received a warning following a hearing before a medical practitioners tribunal (MPT). In this, you have raised a number of points including that systemic factors and the context of working in a pressured and busy paediatric environment were not sufficiently taken into account.

Where clinical concerns are raised, the significant pressure the profession continues to work under is fully recognised in our investigations and we are committed to continue to do all we can as a regulator to support the profession by working with employers.

You are probably aware that tribunals work independently from the GMC and each has three members, in this case a legally qualified chair and two doctors. In this case, each party sought advice from paediatrician experts. Notwithstanding two joint expert witness meetings, the experts were not able to agree about the standards to be applied to a reasonably competent clinician (paragraph 48 of determination).

In their consideration of the facts, there was no rejection that viral gastroenteritis was the most likely diagnosis at presentation. However, there was a number of deficient elements of care that were admitted and found proven, or determined and found proven. These included

- insufficient consideration of the presenting symptoms (including red flags);
- lack of a record of important and relevant negative clinical findings;
- lack of formal clinical review prior to discharge; and
- inadequate safety netting advice on discharge.

Taking all these factors into account, the tribunal did not find Dr Hawkins' fitness to practise to be impaired. They considered a warning should be given – this is given in the interests of maintaining

good professional standards and maintaining public confidence in doctors – which are duties of the GMC that are not always recognised by registrants. It is worth noting that no sanction (following a finding of impairment) can be erased unless removed by the Court following an appeal and a warning can only be removed following a successful judicial review by the doctor.

You raise a concern that our guidance was not followed in terms of Dr Hawkins being referred to a MPT as her actions were not grossly negligent or reckless. It may be helpful to clarify the test that is applied in determining whether to refer a doctor to the MPTS. This is known as the ‘realistic prospect test’ and considers whether an allegation is serious enough to warrant action on the doctor’s registration and whether the allegation is capable of proof to the required standard, namely that it is more likely than not that the alleged event occurred. Although the death of a patient following discharge from medical care could be the result of behaviour that was grossly negligent or reckless, a doctor’s behaviour does not necessarily need to fall into this category to warrant consideration, as in this case, by a tribunal.

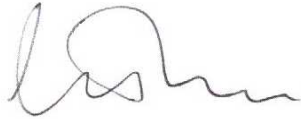
I also appreciate your concern that the perception that we do not take sufficient account of contextual factors may lead to defensive practice by doctors. We always consider the context and individual circumstances of a complaint and indeed, the wider system or environmental pressures beyond a doctor’s control. Paragraph 30 of our [guidance](#) on making decisions at the end of the investigation stage makes clear that mitigating circumstances will be considered by our decision makers and that these may relate to the environment in which a doctor was working. If impairment is found, in determining a sanction, tribunals also need to consider and balance any mitigating factors presented by the doctor at a hearing, which is set out in paragraph 24 of the [Sanctions guidance](#).

We are not complacent in this regard and will be updating our decision making guidance to reflect any changes from the *Good medical practice* consultation and as part of our work on regulatory reform. We are hoping to consult on that new guidance next year following the outcome of the current *Good medical practice* consultation.

We hope the above information helps to reassure you that we do give context appropriate consideration in our fitness to practise process. We are keen to work with the Royal Colleges and organisations representing doctors to help get this message, and the work we are doing, out to the profession.

We are hoping to convene a meeting of various groups who have been in contact with us on this issue and one of my GMC colleagues will be in touch soon to arrange this.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carrie MacEwen', with a stylized, cursive script.

Carrie MacEwen

cc: Charlie Massey - Chief Executive and Registrar, Anthony Omo - Director of Fitness to Practise and General Counsel