

PUBLIC RECORD

Dates: 04/03/2021

Medical Practitioner's name: Dr Stefania COSTA ZACCARELLI

GMC reference number: 4296920

Primary medical qualification: State Exam 1992 Universita degli Studi di Modena e Reggio Emilia

Type of case	Outcome on impairment
Review - Deficient professional performance	Impaired

Summary of outcome
Conditions, 18 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Ms Sharmistha Michaels
Lay Tribunal Member:	Ms Wanda Rossiter
Medical Tribunal Member:	Dr Ranjana Rani
Tribunal Clerk:	Ms Racheal Gill

Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's representative:	n/a
GMC Representative:	Mr Richard Holland, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Impairment - 04/03/2021

1. The Tribunal has convened to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Costa-Zaccarelli's fitness to practise is currently impaired by reason of deficient professional performance, and whether the practitioner has failed to comply with any requirement imposed upon her as a condition of registration.

Background

2. Dr Costa Zaccarelli was assessed as a Consultant Community Paediatrician. She qualified in 1992 with a Degree in Medicine and Surgery from the University of Modena in Italy. Dr Costa Zaccarelli gained a CCST in General Paediatrics in 1992 at the University of Modena and gained entry onto the GMC specialists register (paediatrics) in 2004. She subsequently worked in a series of Staff Grade roles in Community Paediatrics before being employed as a Consultant in Community Paediatrics in 2010. In March 2017 Dr Costa Zaccarelli underwent a GMC Performance Assessment following concerns raised about her clinical practice.

3. Dr Costa Zaccarelli attended a Medical Practitioner's Tribunal which concluded on 28 February 2018 ('the February 2018 Tribunal'), and faced the following allegations:

1. Between 8 and 10 March 2017 you underwent a General Medical Council assessment of the standard of your professional performance.

Admitted and found proved

2. Your professional performance was unacceptable in the following areas:

a. Maintaining Professional Performance;

Admitted and found proved

b. Assessment.

Admitted and found proved

c. Clinical Management.

Admitted and found proved

d. Relationship with Patients.

Admitted and found proved

4. The February 2018 Tribunal found the allegations proved, finding that the assessment had been carried out fairly and that the decisions of the assessors were correct at the time. The February 2018 Tribunal went on to determine that the findings of the assessors constituted deficient professional performance and that Dr Costa Zaccarelli's practice was impaired by reason of deficient professional performance. The February 2018 Tribunal noted that Dr Costa Zaccarelli had not yet remedied the concerns in the assessment. The February 2018 Tribunal determined that the imposition of conditions for 36 months on Dr Costa Zaccarelli's practice was a proportionate sanction. It determined that this sanction was necessary to protect patients but would also afford Dr Costa Zaccarelli the opportunity to gain insight, find employment, work through her personal development plan with supervision and support, build her knowledge and skills to address her deficiencies, and undertake a Performance Assessment before a review hearing is held.

5. The February 2018 Tribunal also suggested that a reviewing Tribunal would be assisted if Dr Costa Zaccarelli provided:

- A reflective statement which demonstrates she has developed full insight into her deficient professional performance;
- Report(s) from her Educational Supervisor;
- Report(s) from her Clinical Supervisor/Workplace Reporter;
- Performance Assessment Report;
- Evidence of Continuing Professional Development;
- Any other information that she considers will assist the review Tribunal.

Today's Review Hearing

6. This is the first review of Dr Costa Zaccarelli's case. She was present but not represented at this hearing.

The Evidence

7. Dr Costa Zaccarelli gave oral evidence at the hearing. In addition to this the Tribunal had regard to the documentation, which included (but is not limited to) the following:

- MPT Record of Determination of the hearing, dated 1 March 2018;
- Emails and letters from GMC to Dr Costa Zaccarelli, various dates between March 2018 and February 2021;
- Letter from Medical Defence Union to the GMC, dated 2 October 2019;
- Notice of Hearing from MPTS to Dr Costa Zaccarelli and acknowledgment from Dr Costa Zaccarelli dated 28 January 2021;
- Email from Dr Costa Zaccarelli dated 3 February 2021 attaching:
 - Reflective Statement
 - Letter from Interact Medical Ltd regarding Dr Costa Zaccarelli
 - Email from Dr Costa Zaccarelli dated 3 February attaching:
 - Comments on Continuing Professional Development

Submissions

On behalf of the GMC

8. Mr Holland referred the Tribunal to the history of Dr Costa Zaccarelli's case explaining the circumstances that led to the GMC directing a performance assessment in 2018. He referred the Tribunal to the 2018 Tribunal's determination on impairment and sanction.

9. Mr Holland focused his submissions on paragraph 163 and 164 c and d of the Sanctions Guidance (November 2020):

164 In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit to resume practice – either unrestricted or with conditions or further conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):

a [...]

b [...]

c they have maintained their skills and knowledge
d patients will not be placed at risk by resumption of practice or by the imposition of conditional registration

10. Mr Holland accepted that Dr Costa Zaccarelli has made efforts to get back into employment and had been struggling to do so and he submitted that while clinical unemployment may not be her fault, the fact remained that Dr Costa Zaccarelli has not been working in a clinical setting for nearly 5 years. He submitted that Dr Costa Zaccarelli's skills that were deficient were likely to have become worse and skills that were once adequate may have also worsened through lack of use.

11. Furthermore, Mr Holland accepted that Dr Costa Zaccarelli had had personal difficulties which have perhaps caused her less opportunity to try and apply for lower staff grade jobs. However, he submitted that in any case Dr Costa Zaccarelli had not worked in clinical attachments, which would be no doubt useful as a chance for her to get back into work in a clinical setting and maintain her skills and knowledge.

12. Overall Mr Holland submitted that Dr Costa Zaccarelli has not kept up her skills through other CPD activities and although she has continued to read journals, she has not pursued any opportunities beyond that such as online courses and conferences via remote links and further reflective statements. Mr Holland submitted that in light of the ongoing concerns from the previous Tribunal and the lack of any clinical attachment to address those concerns, Dr Costa Zaccarelli's fitness to practise remains impaired.

Dr Costa Zaccarelli's submissions

13. Dr Costa Zaccarelli accepted that her fitness to practice was currently impaired but submitted that clinical attachments have been very difficult to find and more so due to the global pandemic. Furthermore, she submitted that she had lost motivation and that lack of resources had meant she had been unable to undertake CPD and that some clinical attachments were not easily accessible due to her GMC conditions.

The Relevant Legal Principles

14. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone, with no legal burden or standard of proof on either party. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that she would be safe to return to unrestricted practise.

15. This Tribunal must determine whether Dr Costa Zaccarelli's fitness to practise is impaired today, taking into account Dr Costa Zaccarelli's performance at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

16. Whilst the Tribunal has borne in mind the submissions made, in so doing, the Tribunal has had regard to the fact that its primary responsibility is to ensure the health, safety and wellbeing of the public, the promotion and maintenance of public confidence in the profession, and the promotion and maintenance of proper standards of conduct and behaviour.

The Tribunal's Determination on Impairment

Deficient Professional Performance

17. The Tribunal considered whether Dr Costa Zaccarelli's fitness to practise is currently impaired by reason of her deficient professional performance. In reaching its decision, it has taken account of Dr Costa Zaccarelli's oral evidence, and all the documentary evidence presented to it.

18. The Tribunal noted Dr Costa Zaccarelli's oral evidence that she has had difficulty obtaining employment due to the restrictive nature of her conditions and has therefore been unable to work in a medical capacity for the last three years. It noted that in her oral evidence, Dr Costa Zaccarelli told the Tribunal that she had undertaken reading, however she had not recorded her learning in a formal way. The Tribunal noted that it had before it no objective evidence in which Dr Costa Zaccarelli could demonstrate any CPD she had undertaken. Dr Costa Zaccarelli had accepted that her lack of commitment towards keeping her skills and knowledge up to date and highlighted her personal difficulties over the 3 years. As such, the Tribunal was concerned that she had not maintained her medical skills or knowledge and were of the view that she had not shown a lack of effort and commitment.

19. Dr Costa Zaccarelli informed the Tribunal that caring responsibilities and financial constraints have prevented her from attending courses to maintain her medical skills. Whilst the Tribunal accepted these difficulties, the fact remained that Dr Costa Zaccarelli has not provided a significant portion of the evidence that the February 2018 Tribunal indicated would be useful to a future reviewing Tribunal. There is little evidence in relation to her insight or remediation and how she has kept her skills and knowledge up to date during her period of conditions. It had sight of Dr Costa Zaccarelli's reflective statement, which

demonstrated some insight into her clinical deficiencies. Furthermore, it noted that from the outset of this hearing Dr Costa Zaccarelli has accepted that her fitness to practise is impaired. However, in light of all the evidence presented to the it, the Tribunal found that the overall evidence of insight to be insufficient.

20. The Tribunal reminded itself that the onus is on Dr Costa Zaccarelli to demonstrate that she is fit to practise, and she has not done so.

21. Overall, the Tribunal considered that whilst Dr Costa Zaccarelli has blamed the fact she cannot secure work due to the GMC conditions, there appears to have been insufficient structured reflection on the deficiencies previously identified. It determined that whilst Dr Costa Zaccarelli had some insight, it remains limited. The Tribunal has therefore determined that Dr Costa Zaccarelli fitness to practise is impaired by reason of deficient professional performance.

Determination on Sanction - 04/03/2021

22. Having determined that Dr Costa Zaccarelli's fitness to practise is impaired by reason of deficient professional performance, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to Dr Costa Zaccarelli's registration.

The Evidence

23. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing where relevant in reaching a decision on what action, if any, it should take with regard to Dr Costa Zaccarelli's registration.

Submissions

On behalf of the GMC

24. Mr Holland submitted the appropriate and proportionate sanction to impose on Dr Costa Zaccarelli's registration is conditions. He referred the Tribunal to the Sanctions Guidance, November 2020 ('the SG'), namely the paragraphs relating to conditional registration. He submitted that there is evidence Dr Costa Zaccarelli is likely to comply with conditions and that she is likely to respond positively.

25. Mr Holland submitted that Dr Costa Zaccarelli has accepted that she has failed to sufficiently address the concerns regarding her clinical deficiencies and has explained the reasons for this failure. He submitted that Dr Costa Zaccarelli now has the headspace and time to remedy some of her clinical deficiencies and should be afforded the opportunity to do so.

26. Mr Holland submitted that the Tribunal might be able to signpost Dr Costa Zaccarelli to appropriate work that would be helpful to her return to clinical practice. Mr Holland submitted that this would provide Dr Costa Zaccarelli with another opportunity to remedy the deficiencies found three years ago.

27. Mr Holland submitted that when considering which conditions to impose, the Tribunal should bear in mind that Dr Costa Zaccarelli has not been able to obtain medical employment. He submitted that direct supervision is appropriate in this case as it was recommended by the performance assessors in the original performance assessment. He submitted that the conditions to impose are ultimately a matter for the Tribunal.

Dr Costa Zaccarelli submissions

28. Dr Costa Zaccarelli accepted that a reasonable and proportionate sanction would be one of conditions on her registration and proposed to the Tribunal that the current level of direct supervision could be made more flexible or loosened. Additionally, she submitted she would want to have Dr A as her mentor or education supervisor.

The Tribunal's Determination

29. The Tribunal accepted the advice of the Legally Qualified Chair ('LQC'). It reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision on sanction is a matter for the Tribunal exercising its own independent judgment.

30. In reaching its decision, the Tribunal has given careful consideration to relevant sections of both the SG and Good Medical Practice ('GMP'). It has borne in mind that the main reason for imposing sanctions is to protect the public, pursuant to the overarching objective set out in section 1 of the Medical Act 1983 (as amended). The Tribunal was mindful that sanctions are not imposed to punish or discipline doctors, but they may have a punitive effect.

31. Throughout its deliberations, the Tribunal considered the overarching objective. The Tribunal has borne in mind that in deciding what sanction, if any, to impose, it should

consider all the sanctions available, starting with the least restrictive. The Tribunal has had regard to the principle of proportionality, weighing the interests of the public against those of Dr Costa Zaccarelli

No Action

32. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Costa Zaccarelli's case, the Tribunal first considered whether to take no action. The Tribunal considered, amongst others, paragraphs 68-70 of the SG which highlight that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

33. The Tribunal determined that there are no exceptional circumstances in this case. The Tribunal has already identified that Dr Costa Zaccarelli has demonstrated insufficient insight or evidence of remediation. It therefore has determined that taking no action would be neither appropriate, proportionate, nor in the public interest.

Conditions

34. The Tribunal then considered whether imposing an order of conditions on Dr Costa Zaccarelli's registration would be appropriate. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

35. The Tribunal considered that the above paragraphs were of clear application to this case. It considered whether the sanction of conditions would be sufficient to meet the needs of patient safety, maintaining proper standards within the profession and upholding public confidence in the profession.

36. The Tribunal was concerned that Dr Costa Zaccarelli has not provided it with limited evidence of insight into her deficient professional performance. The Tribunal considered that the element of risk to patient safety could be managed, and would be best managed, by the imposition of strict conditions over a significant period that would ensure Dr Costa Zaccarelli would continue to develop her remediation and insight.

37. The Tribunal noted that Dr Costa Zaccarelli's registration was already subject to conditions. It considered that whilst Dr Costa Zaccarelli was not currently working in a medical setting, and Dr Costa Zaccarelli had made submissions that the conditions imposed had stopped her from securing employment, they did allow for Dr Costa Zaccarelli to practise safely.

38. The Tribunal noted Dr Costa Zaccarelli's submission that the specific condition which had made it difficult for her to secure medical employment was the condition requiring her to be directly supervised however she provided limited evidence of trying to secure a clinical or non-clinical job. The Tribunal considered whether to amend this condition. However, balancing its duty to protect the public against the interests of the doctor, it determined that there was no other suitable condition which could adequately ensure patient safety in its place.

39. The Tribunal has concluded that the following conditions set out below are to be imposed on Dr Costa Zaccarelli's registration. 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 13
- 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
- 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 the deficiencies in the following areas of her practice:
- Maintaining professional performance
 - Relationships with patients
 - Clinical Management
 - Assessment
- 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 She must undertake an assessment of her performance, if requested by the GMC.
- 8 She must personally ensure her performance assessment report 28 April 2017 is shared with:
 - 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 organisation listed at i) – 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 the correct person, she must contact the GMC for advice before working for that organisation.
 - c the approval lead of her regional Section 12 tribunal (if applicable) - or Scottish equivalent

- d 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)
 - e her workplace reporter and educational supervisor [and clinical supervisor].
- 9 She must get the approval of the GMC before working in a non-NHS post or setting.
- 10 a She must be directly supervised in all of her posts by a clinical supervisor, as defined in the *Glossary for undertakings and conditions*. Her clinical supervisor must be approved 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.
- 11 She must not work in any locum post or fixed term contract of less than 3 months duration.
- 12 She must have a mentor who is approved by her responsible officer (or their nominated deputy).
- 13 She must personally ensure the following persons are notified of the conditions listed at 1 to 12:
- 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.
- c the approval lead of her regional Section 12 approval tribunal (if applicable) - or Scottish equivalent
- d 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).

Suspension

40. The Tribunal recognised the seriousness of Dr Costa Zaccarelli's deficient professional performance, which was significant. Nevertheless, the Tribunal is satisfied that the direct supervision and constant review of her clinical practice is sufficient to protect patients. The Tribunal bore in mind that should Dr Costa Zaccarelli fail to demonstrate insight into her deficiencies and to improve her clinical practice, that suspension would be open to the Tribunal reviewing her case.

Length of the Order

41. In considering the length of the conditions imposed on Dr Costa Zaccarelli's registration, the Tribunal had regard to its earlier findings and the guidance set out in the SG. Furthermore, the Tribunal took into account the importance of balancing patient safety, the public interest and Dr Costa Zaccarelli's desire to get back to work. The Tribunal concluded that it is appropriate and proportionate to impose conditions on Dr Costa Zaccarelli's registration for a period of 18 months. The Tribunal considered that this was the minimum period to allow Dr Costa Zaccarelli to continue addressing her insight, whilst giving her the

time to demonstrate that she can return to work at the level expected of a medical practitioner at her stage of training.

Review Hearing Directed

42. The Tribunal determined to direct a review of Dr Costa Zaccarelli's case. A review hearing will convene shortly before the end of the period of conditional registration. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Costa Zaccarelli to demonstrate how she has taken steps to remediate her deficient professional performance. It considered that a future Tribunal reviewing this matter would be assisted by:

- A reflective statement which demonstrates she has developed full insight into her deficient professional performance
- Report(s) from any of her Supervisors
- Performance Assessment Report
- Evidence of Continuing Professional Development
- Up to date Appraisal report
- Any other information that she considers will assist the review Tribunal

This is not intended to be an exhaustive list, and Dr Costa Zaccarelli may provide any other information he considers will assist her and another Tribunal at a review hearing.

43. The Tribunal would suggest that Dr Costa Zaccarelli to take active steps to apply to both clinical and non-clinical attachments within hospitals and may wish to apply for roles in a lower grade, so as to build her clinical knowledge and skills.

44. Dr Costa Zaccarelli can request an early review.

45. The tribunal have directed to impose conditions on Dr Costa Zaccarelli registration for a period of 18 months. The MPTS will send Dr Costa Zaccarelli a letter informing Dr Costa Zaccarelli of her right of appeal and when the direction and the new sanction will come into effect. The current order of conditions will remain in place during the appeal period.

Confirmed

Date 04 March 2021

Ms Sharmistha Michaels, Chair