

# Reflective practice and gross negligence manslaughter

The collective imagination of the junior doctor workforce was captured by the case of Dr Hadiza Bawa-Garba, a paediatrics registrar given a 2-year suspended sentence for gross negligence manslaughter. Up and down the country, outrage and half-truths circulated in the doctors' mess. The rumour that the GMC had used Dr Bawa-Garba's written reflections against her was particularly difficult to dispel. It was not strictly true — Dr Bawa-Garba's portfolio reflections had not been used by either side — but nevertheless resulted in many doctors discovering that theoretically the GMC could use their own reflections against them.

## THE WILLIAMS REVIEW

The backlash that followed was at the top of the agenda in February 2018 when Jeremy Hunt commissioned a rapid review of medical gross negligence manslaughter, led by Professor Sir Norman Williams. The review, which released its report on 11 June, aimed to support the creation of a *'just and learning culture'*.<sup>1</sup> Although the report promises significant improvements to the investigation of gross negligence manslaughter, including the collaborative creation of an explanatory statement for this easily misunderstood area of law, and the removal of the GMC's power to appeal tribunal decisions on the status of junior doctors' reflections, many will be disappointed.

The review heard that, in a survey of 1000 junior doctors, 81% had changed their reflective style following the Bawa-Garba case.<sup>2</sup> The GMC and BMA argued that doctors' reflective practice should be protected by law, preventing it from being used against doctors in court, and thereby promoting frank engagement with this central aspect of training.<sup>2,3</sup>

The panel disagreed, arguing that justice demands that no evidence is withheld from the Crown Prosecution Service (CPS): *'Where any evidence is material to a case, it is right that it should be considered.'*<sup>1</sup>

*"When reflective style is defensive and events are recalled with a jury in mind, the exercise has been fundamentally undermined."*

However, in the interests of learning, the panel recommended that the GMC lose its right to access reflective practice (a right that it recently committed never to use).<sup>3</sup>

## RISK AVERSION

This is unlikely to reverse trainees' increasing reticence towards the portfolio. Even if the GMC cannot use written reflections in fitness to practise tribunals, the CPS can use reflections against a doctor who is being prosecuted. It is hard to envisage anybody risk averse enough to change their reflective style in view of the small risk of GMC involvement not doing the same in light of the smaller (but potentially much more severe) risk of CPS investigation. The report suggests that doctors' wariness of reflection is based on a *'misunderstanding of this power'*,<sup>1</sup> but this is unfair: an acute awareness of the potential consequences might make one wary of reflecting frankly on a case that had gone seriously wrong.

## ENCOURAGING HONEST ENGAGEMENT WITH REFLECTIVE PRACTICE

The panel have attempted to reassure junior doctors. They comment, *'it is possible to carry out reflection in a way that minimises the likelihood of it being used by either prosecuting authorities or professional regulators'* and note that *'reflective notes are far more likely to be used in support of an individual rather than against them.'*<sup>1</sup>

The problem with this is that it emphasises the potential use of reflection in court. The justification for denying the GMC the use of reflections was that reflection ought to focus on professional development. When reflective style is defensive and events are recalled with a jury in mind, the exercise has been fundamentally undermined. Such 'defensive reflection' serves neither justice nor education.

The outcry over the Bawa-Garba case arose from an underlying sense of constant threat, even permeating the apparent privacy of the portfolio.

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The Williams review tried to redeem the current system but its valiant efforts only perpetuate trainees' siege mindset.

A change in the law on gross negligence manslaughter, perhaps introducing a condition of 'intent' or 'recklessness' as advocated by the Medical Protection Society,<sup>4</sup> may be the only way to reassure junior doctors that the law is fair and thereby encourage honest engagement with reflective practice.

The damage to trainees' trust in the reflective process may not be beyond repair, but bold action is required to create a truly *'just and learning culture'*.

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DOI: <https://doi.org/10.3399/bjgp19X701561>

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