

E-portfolios, reflections and the case of Dr Bawa-Garba

The General Medical Council's successful appeal against the Medical Practitioners Tribunal Service decision on the Dr Bawa-Garba case is disappointing, and its implications will understandably be of concern to the health-care community.

Dr Bawa-Garba was convicted of gross negligence manslaughter in 2015 following her role in the death of 6-year-old Jack Adcock in 2011. She was given a suspended sentence and was subsequently suspended from the medical register by the tribunal for 1 year. The General Medical Council appealed the tribunal's decision and sought agreement from the High Court to erase Dr Bawa-Garba from the medical register. The General Medical Council's appeal was supported by the High Court.

While the criminal courts dispense justice – including punishment – the regulator's role is to protect patients. When considering whether a doctor is fit and safe to practise every case must be assessed on its own merits and should not be solely determined by the criminal sanction handed down by the court. Gross negligence manslaughter cases are usually complex, involve systems failures, and are devastating for all concerned. A conviction should not automatically mean that a doctor who has fully remediated and demonstrated insight into his/her clinical failings is erased from the medical register.

This appeal decision may jeopardise an open, learning culture in health care at a time when the profession is already marred by low morale and fear.

Were reflections used as evidence?

One particular area of concern for doctors is the idea that reflections from Dr Bawa-Garba's e-portfolio were used against her. This was suggested in a past news report,

and has gained traction since the High Court judgement was handed down. It has naturally created much anxiety across the profession at a time when emotions are already running high. It has also sadly threatened to undermine the purpose of reflections.

The key questions are whether Dr Bawa-Garba's e-portfolio reflection statements were submitted and used against her at the 2015 criminal trial, and whether her duty consultant included any of her reflections in his witness evidence.

To tackle the first point – at no time during Dr Bawa-Garba's criminal trial was her e-portfolio reflection statement presented to the court or jury as evidence. A defence expert was provided with a range of confidential documents to help provide context for his report. These documents were not relevant to the facts upon which his opinion is based, and the e-portfolio reflection statement was not included within these documents. No reference was made to any reflections in his expert report.

On the second point involving the duty consultant – Dr Bawa-Garba met her duty consultant, Dr O'Riordan, after Jack's death to discuss the incident and learnings. Dr O'Riordan's own thoughts following this discussion formed part of his witness evidence. Attached to his evidence was a trainee encounter form not signed by Dr Bawa-Garba. This form is not part of Dr Bawa-Garba's e-portfolio reflections and did not include any admission of liability, or guilt pertaining to gross negligence manslaughter. Furthermore, this trainee encounter form was not referred to by either the Crown Prosecution Service or the defence in the hearing, and it was therefore not considered by the jury at the trial.

The fact that the e-portfolio reflection document did not feature at all in the 2015 trial has been confirmed by the prosecution QC, Andrew Thomas. The judgement from the trial also does not make any reference to post-event reflections or reflective documents from Dr Bawa-Garba. The court was clear

from the start that reflections were irrelevant to the facts of the case and that no weight should be given to any remarks documented after the event.

Use of reflective statements for non-training purposes

A further area of confusion is around the use of e-portfolio reflection statements in the fitness to practise hearing. The General Medical Council does not demand to see these in fitness to practise cases, but the doctor can choose to share them if he/she feels that these statements demonstrate insight. In Dr Bawa-Garba's case, some personal reflections – although not the e-portfolio statement – were shared with the panel to show her remediation efforts.

Only in exceptional circumstances could an e-portfolio be used for purposes other than training, and this is even less likely if the entries are anonymised and the doctor's consent is not provided. Of course, there are laws which allow any type of confidential information to be requested by the police or the General Medical Council, but in practice this rarely happens as it is accepted that the purpose of this document is for training, that it is not written to serve the purposes of a criminal investigation and would be of very little, if any evidential weight. Reflections can, however, be used to mitigate a sentence at the latter sentencing stages of a trial.

After reading the above, the fact that e-portfolio documents could in exceptional cases be obtained via court order will, understandably, still create some concern, although in Medical Protection Society's experience this has never been done as the police would have to convince a judge of the direct relevance of these documents to the investigation and facts. The fact that the duty consultant referred to his post-incident discussion with Dr Bawa-Garba in his witness statement – even though these were his own thoughts and her e-portfolio was not submitted – for some will also put a question mark over 'reflecting' in its wider sense and its confidentiality.

Dr Pallavi Bradshaw, Senior Medicolegal Adviser, Medical Protection Society Ltd, London SE1 9SG
(pallavi.bradshaw@medicalprotection.org)

Reflections in practice

I am a doctor myself and I understand these concerns. But it is important to also put things into perspective, consider the wider benefits of reflection, and the risks involved with not doing it.

Reflective practice has become synonymous with continuing professional development and is seen as an important part of training. Indeed all doctors are expected to undertake this exercise as part of the appraisal and revalidation process. Although the latter may be the driver for many, it has to be right that all doctors question assumptions, challenge the way they practice and the systems in which they work, and seek to improve patient safety. The concept for doctors is not new, with morbidity and mortality meetings and audits being long established.

Any doctor involved in an unexpected or unusual death would be asked to provide a statement for the local or coroner's investigation. As part of those processes the doctor would be expected to reflect and consider any lessons learnt. In those circumstances a doctor should seek advice from his/her medical defence organization who can advise on how to present that information.

Failing to reflect in these situations could cause real difficulties for a doctor when attempting to revalidate or when before the coroner. In the latter situation the coroner can in fact recommend that organizations or doctors need to demonstrate such reflections, and concern

about any failure to do so could lead to a referral to the General Medical Council or an obligation to self-refer.

Who are reflections for?

The fundamental question is for whose benefit we do reflections? From the discussions I have heard and been part of, some see reflections as a stick which can be used to beat doctors with, rather than a purely educational tool. This perception needs to be changed; reflection is not simply a tick-box exercise. As a doctor the advantages of such learning leads to improvements in one's own practice and can, despite the recent anxiety, assist a doctor who may be the subject of scrutiny.

Having advised and supported doctors for over a decade, I can confidently say that a doctor's reflections have only ever created problems where they have been deemed to be lacking. On the other hand the use of a doctor's reflections have often led to the discontinuance of disciplinary and General Medical Council action. They can form a fundamental part of the defence in fitness to practise hearings and can demonstrate remediation and current safe practice.

Doctors need to also realize that reflections do not necessarily mean that their actions in response to a situation were wrong; rather that in hindsight, things could have been done differently or better. Critiquing should also involve analysing when things have gone well, as this too can provide sources of learning and is something that we often forget to do.

KEY POINTS

- Some news reports around the use of e-portfolio reflective statements in Dr Bawa-Garba's criminal trial have naturally created anxiety and have undermined the purpose of reflections.
- It is important to put things into perspective, consider the wider benefits of reflection, and the risks involved with not doing it.
- Reflective practice is an important part of training – all doctors are expected to undertake this exercise as part of the appraisal and revalidation process.
- Doctors should be mindful not only of the General Medical Council's requirements but also that of statute under the duty of candour, which prescribes it an offence if this obligation is not discharged.

Ultimately, it is up to the individual as to whether and how he/she reflects and documents this in discussions with his/her responsible officer. That being said, one must be mindful not only of the General Medical Council requirements but also that of statute under the duty of candour, which prescribes it an offence if this obligation is not discharged. Additionally, there are contractual obligations as an employee.

It is absolutely right that as a profession we have these debates. They should be balanced and reflect the realities in order not to undermine the genuine good that reflective practice can do for patients and doctors. **BJHM**

Correspondence

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Professor Rob Miller, Editor-in-Chief, BJHM
c/o Rebecca Linssen, MA Healthcare
St Jude's Church, Dulwich Road, London SE24 0PB

Email: rebecca.linssen@markallengroup.com

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