

28 March 2018

Williams Review into Gross Negligence Manslaughter in Healthcare

The response from the Institute of Biomedical Science

The Institute of Biomedical Science (the Institute) is the UK professional body for biomedical science. It has 20,000 members, the majority of which are Health and Care Professions Council (HCPC) regulated biomedical scientists employed in NHS laboratories and NHS contracted laboratories, with the remainder in research, industry and higher education. In its capacity as a standard setting organisation, a licensed body with the Science Council for the award of Chartered Scientist, Registered Scientist and Registered Science Technician and also an HCPC approved education provider, the Institute welcomes the opportunity to contribute to this review of gross negligence manslaughter in healthcare.

The Institute was one of the first health professional bodies to introduce a continuing professional development (CPD) scheme for its members. Biomedical scientists have an established culture of CPD and reflection that is reinforced by, and is a requirement of, both our statutory regulation and also voluntary registration for those individuals who are on a Science Council register.

The Institute would welcome clear guidance on the differentiation between gross negligence manslaughter (GNM) and negligence as this is territory largely unfamiliar to our profession. While biomedical scientists are not a primarily patient facing profession, nearly 8,000,000 pathology tests are performed each year and therefore present a higher risk potential than may initially be thought.

In relation to regulation, it would be helpful if the review considered the responsibility of both the employer and the regulator. The review of regulation that closed earlier this year, made clear the desire to place responsibility back on the employer, in the first place, to attempt to resolve competence and performance issues rather than using the regulator as a dispute resolution service. While competence and capability may be more peripheral to the core issue of GNM, a history of performance and capability may be a significant part of a GNM case and the actions taken by the employer could be significant.

In respect of this review, our greatest concern is any reaction that could compromise or jeopardise the value of and trust in reflective practice. Our CPD scheme has been in operation for almost 30 years and we are acutely aware of the significant culture change that has been needed for this to become an accepted norm of good professional practice in healthcare. Reflection is now an important part of professional development for biomedical scientists.

The ability to reflect on one's practice and experience, and to learn from it, is a core aspect of professionalism and it is therefore vital that biomedical scientists continue to do this without fear of reprisal. It is accepted that evidence of reflection need not always be written but written evidence supports the fact that the reflective process has indeed taken place, and often the act of physically recording the reflection will help individuals to focus their thoughts on the process. There needs to be a way to ensure that this documented reflection cannot be used against the healthcare professional and we would like to question whether there is a way to give this legally privileged status to protect the professional. A system that discourages the recording of the reflective process is more likely to present greater risks to the public rather than reduce them.

The HCPC Standards of Conduct, Performance and Ethics make clear that it is the responsibility of all biomedical scientists to be open and honest when things go wrong and to report concerns when things go wrong. Indeed, a duty of candour is a requirement for all healthcare staff. The threat of the reflective process being used in a negative way may promote a lack of candour. One of the key outcomes of the Francis Report of 2013, which examined the causes of the failings in care at Mid Staffordshire NHS Foundation Trust, was for "openness, transparency and candour throughout the health care system (including a statutory duty of candour)", fundamental standards for health care providers. To introduce a system that discourages reflection for fear of prosecution would be a seriously retrograde step and undermine the recommendations of the Francis Report.

In order for our established culture of professional reflection and candour to continue and provide the foundation for better and safer practice it is essential that the trust and confidence of health care professionals is not eroded in favour of defensive practice. This could be achieved by the formal recognition that all reflective practice is personal and subjective (self-judgemental) and not an admission of culpability.