

## “Gross Negligence Manslaughter in Healthcare. Any need to panic?”

A Medico-Legal meeting held on 27<sup>th</sup> March 2019 at the Athenaeum

Mr. Geoffrey Glazer, member of the LCA Board and Chair for the evening, opened the meeting with a short introduction about the LCA and thanks to Mr. Peter Connor, Managing Director of Healthcode, which had kindly sponsored the meeting.

Professor Sir Norman Williams and Mr. Ian Stern QC gave a review of Gross Negligence Manslaughter (“GNM”) with their experiences acting as Chairman and Vice Chairman, respectively, on the Williams Report (commissioned by then Secretary of State for Health, Rt. Hon Jeremy Hunt MP). The Gross Negligence Manslaughter Report concluded that rather than a change in the law, the investigation process of possible GNM in a clinical context needed improving through a “consolidation of expertise” with a higher-level training for expert witnesses, CPS, police, coroners and local authorities. Both Sir Norman and Mr. Stern stressed the importance of these changes, which are fundamental to attaining consistency in decision-making and application of the law. There needs to be a fair and reasonable threshold regarding GNM, which is currently lacking. Amongst the other recommendations made by the report to the Secretary of State, was that the GMC power to demand a doctor’s reflective material should be modified (but reflection and remediation are still important issues for all doctors to follow) and that the GMC’s right to appeal decisions made by the Medical Practitioners Tribunal Service should be removed.

The third speaker, Mr. Richard Furniss, Barrister, gave his own personal insight into the investigation of GNM, as an assistant coroner. He outlined the manner in which a GNM claim is instigated, which may be by hospital detection, by a family member, by coroner or pathologist report or through a family appeal inquest. Mr. Furniss agreed that there is some overall lack of consistency in decision-making, but that criminal investigations and coroner’s inquests are determined on different bases. Whilst a jury in a criminal court determines GNM ‘beyond reasonable doubt’, a coroner’s inquest is fact-finding and determined by the jury on a ‘balance of probabilities’, and as such cases get referred to the CPS though very few actually lead to a legal action and far fewer to a conviction. Mr. Furniss agreed that the report would be helpful and give clarification on how GNM should be determined, as often application of legal tests relies on personal judgement.

*“People devoted to their profession should not be criminalised if things go wrong, particularly when dealing with high-risk work where patients do die”* – Mr. Bertie Leigh, Solicitor at Hempsons, condemned the public and prosecutors for putting doctors on such a high pedestal that any error will inevitably cause them to fall below the perception of acceptable practice. GNM should only be considered when doctors have gone outside of their care remit and have abandoned their principle professional duty of care to their patients. He suggested that lack of training or experience should not be criminalised as GNM, but should be dealt with by the GMC separately. Mr. Leigh reiterated that medicine is always dealing with high-risk cases and that the public should get to grips with that reality and the complexity of the hospital systems that support (or fail to support) doctors and patients.

A lively Q&A followed debating the extreme pressures healthcare professionals are put under by delays in investigations, ruined reputations and whether indeed doctors should be exempt from sanctions of manslaughter. The panel stressed that intention is not the test in GNM, but that the bar for GNM should be higher. Experts should look at cases with more scrutiny and that improved training would better inform investigations and help to indict those, like Shipman, who act outside their duty of care. The panel agreed that a proper framework laying down best practice with transparency, protection and increased and improved governance would help instil confidence in the public, doctors and other healthcare workers.