

GMC chief 'had no choice' over appealing manslaughter doctor case

By [Shaun Lintern](#) 6 February 2018

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- **GMC chief executive says he had no choice but to appeal Dr Bawa-Garba case to High Court**
- **Charlie Massey said systemic issues were taken into account by the courts**
- **He warned of inconsistent approaches to medical manslaughter cases by coroners and police**
- **Medical directors could “conceivably” face action if they don’t act on systemic concerns**
- **Doctors who are not open and transparent are putting themselves at greater risk**

The chief executive of the General Medical Council has said he believes he had no choice but to appeal the case of a doctor convicted of manslaughter to the High Court.

Charlie Massey said there was no alternative to appealing against the decision of a fitness to practise tribunal in the case of Hadiza Bawa-Garba, who was struck off the register by the High Court – but not the tribunal – last month. He said not doing so would create a new precedent for the panels to effectively overrule criminal courts.



Charlie Massey: 'I am worried by a lot of the chatter I see about doctors saying they will reflect less'

The case of Dr Bawa-Garba has caused widespread concern among clinicians who believe she was unfairly treated because there were widespread systemic issues at Leicester Hospital on the day she failed to recognise sepsis in six year old Jack Adcock who died in 2011. The tribunal cited these systemic issues as important context when it agreed to let her remain on the medical register despite her criminal conviction for manslaughter.

Following the outcry over the case, earlier today health and social care secretary Jeremy Hunt announced a [national review of the application of gross negligence manslaughter in healthcare](#), which will be led by former Royal College of Surgeons president Sir Norman Williams.

Speaking to *HSJ* before Mr Hunt made his statement, Mr Massey said it was his decision to appeal the case. He said: “I don’t believe I had a choice but to take the case to appeal because had I not done so it would have set a wider precedent in allowing tribunals to unpick the outcomes of a court process.

“The fundamental point that was made to me was that this was a case where a doctor had been convicted of gross negligence manslaughter; this was a case where that had been an appeal and the tribunal, which is a lower court, essentially reached a different view about the culpability about the doctor and in doing so went behind the criminal conviction.

“The tribunal had essentially placed itself above the law in reaching that decision.”

Mr Massey said he could not rerun the criminal case and was required to take its outcome as fact. But he added: “The judge said even taking account of the wider systemic issues – and there were wider systemic issues at play – the care of the doctor was truly exceptionally bad and there was a very high threshold that had to be accepted by the jury in terms of establishing a verdict of gross negligence manslaughter.

“I do not believe that Dr Bawa-Garba got out of bed that morning and intended to do harm to a patient.”

Asked whether he thought the law should change, he said it was a question for government but added: “I think it is a very difficult argument to win that doctors should somehow be above the law or [the law] should operate differently for doctors.”

However, he did express concerns about the inconsistency with which the law was applied.

“The world of healthcare is one where people die, and people die regardless of whether or not people make mistakes. Judgements about error and where the

criminal law applies become harder to make, where what doctors do day in and day out relates to really sick people. The sense I am picking up is there is a degree of inconsistency in how coroners may report deaths and how that drives police forces to decide to investigate.

“If the evidence shows there is that lack of consistency that obviously begs the question whether there are doctors being investigated where they shouldn’t be. That is a hypothesis I want to test,” Mr Massey said.

In the case of Dr Bawa-Garba, her consultant on the day Jack Adcock died did not face criminal charges. He has since allowed his GMC registration to lapse and moved to Ireland where he continues to practice.

Mr Massey told *HSJ* the GMC could only act in cases involving doctors who were on the register. When asked if a loophole needed closing, he said: “You raise an interesting question that we do need to look at. We always review all our policies including about when a doctor decides to take voluntary erasure. We will look at the question [of] does that allow a doctor to take a voluntary erasure to avoid what otherwise might lead to a fitness to practise process.”

He said it was “entirely conceivable” the GMC could take action against a medical director rather than a doctor if they had failed to act on concerns about systemic issues.

Mr Massey urged junior doctors to raise concerns and document when they had done so. He said: “Where a doctor raises a concern and they can document they have done so and they follow the duty of candour, if the mistake was not deliberate or reckless in most cases we won’t take action in that scenario.

“I am genuinely worried by a lot of the chatter I see out there about doctors saying they will reflect less and will make fewer notes of their reflection. I want to be really clear: the GMC as a matter of policy will never require doctors to submit their reflective notes as part of the process we go through.

“I recognise people will worry off the back of this case but I do believe being open about mistakes is the best way to protect themselves and demonstrate that they are fit to practise on an ongoing basis.”

- **Anonymous** #CommentAvatarLabelCommented on:7 February 2018 00:01
This is yet one more reason I'll be leaving the country immediately on completion of my specialty training in ~2 years', rather than work as a consultant in a country with this sort of regulator.

- **Anonymous** #CommentAvatarLabelCommented on: 6 February 2018 23:19
sorry to post anonymously but I need to give a personal opinion.
MPTS gave an opinion based on the evidence presented to them.
The jury reached an opinion based on different evidence presented to them and their
opinions of what Drs can do.
Massey is wrong on all counts. He should not dismiss the real concerns of Drs as
chatter.
He will not carry the trust of his registrants unless he starts to improve very quickly