“Why did I not I say something at the time?”

This article is a personal reflection on an observed incident while commuting and relates to the issue of data protection. Reflection has an important place within nursing practice, it is a requirement of revalidation process for nurses registration with the Nursing and Midwifery Council (NMC) (2015). Reflection enables the individual to critically analyse a situation, to consider the positive aspects or challenges that the situation posed and how any actions or inactions could be change, enhanced or improved if presented with the same scenario. (Royal College of Nursing (RCN) 2019).

I have chosen to utilise the Driscoll (1994) model of reflection as it is simple to use and provides a structured approach with which to explore the scenario, using the ‘What’ to outline the situation that occurred, ‘So What’ to explain how the scenario impacted upon me and the ‘Now What’ to discuss the implications and actions I have taken since to redress the situation.

‘What’

Not a regular commuter in August 2018 I was returning from a meeting in Birmingham. I found myself sardined in a carriage along with hundreds of other commuters. I was stood with little chance of moving, with a glass panel one side of me and people all around, not able to read or do anything other than observe my surroundings. My eyes roamed around at my fellow travellers, on a seat behind the glass my eyes were drawn to the person seated there, well not so much the person as the series of papers in his hand held together by black bulldog clips. He selected one putting the rest in the green canvas shoulder bag.

Suddenly I found myself looking at something familiar, a general practice style patient consultation print out. Visible upon it was the patient name, date of birth, NHS number, the name of a surgery and the consultation details. He proceeded to use a green highlighter pen on some of the lines and little yellow post it pieces were attached to other areas. Within the bundle there were letters on NHS headed paper too. It is not necessary to detail any of the finer details in this reflection as this would be a further breach of the patients confidentiality (NMC) 2015).

I eventually found a seat, thankful not to have to stand the whole way home and continued to observe the man from a distance. Suffice to say he continued to work for most of the journey on the papers that had been visible to me and therefore to other commuters. The only change being as he moved seats to a window seat and the vacant aisle seat quickly being occupied by a lady, who certainly had a surreptitious glance across on more than one occasion.

Getting a phone signal is not always easy on this train route but did post a brief message to friends on a social media site outlining what I had seen. I had a sense something was not right but at the end of a long day I was not sure what it was that was my main concern. My mind was going over the scenario and I was beginning to think about how could I identify this person with the records, the surgery was not one known to me. Neither did I recognise the man, so I texted myself details of his clothing, jewellery and other key things that could help identify him, not that I had any idea how this could be useful. I think I may have been hoping for some glimmer of knowledge to help identify his employer.

By the end of the journey I had thought of a non-confrontational way to approach him and discuss what I had seen and express my concerns about the breach of confidentiality. We both left the train at the end of the line and I was hoping he would be waiting for a lift outside the station. I scurried to the exit sadly to see him disappear on foot towards the town centre and without drawing attention to myself by shouting or endeavouring to run and catch the man I had missed my opportunity and have regretted my inaction ever since.

‘So What’

At the time I was shocked at what I was seeing, having worked in general practice for around thirty years, I could only think of the incredulity of what was before me. Part of me was saying “do something” but a more dominant force was saying do not be the creator of a scene on public transport. I told myself that it may not be all it seems, there could be a plausible reason for his actions. I was also conscious that had I said something I would be drawing more attention to those around me who may not have appreciated the significance or implications.

I started in my mind to speculate who this person was and came up with several ideas. It could be a health professional working on the documents for any number of reasons. It may have been a coroner working on documents highlighting things to include in a report perhaps. This man could have been a solicitor or their clerk or a police officer. Potentially it also could have been a parent or partner looking at the records legitimately but as there were several bundles of records in the man’s bag I concluded this was the least likely option.

I have replayed the situation numerous times in my head since, mostly adding to the questions I had, but also reprimanding myself for not having said something at the time. I have not been able to pin point what it was that did stop me or why did I not act at the time?

I then began to reflect on how I could compensate for my inaction in order to highlight to as many people as possible that doing this type of work in a public arena is not acceptable.

I have spoken to friends and colleagues, they have shared their horror at what I witnessed and considered if they would have had the courage to speak to the man themselves in the same situation. While all of the people I spoke agreed this represented a breach of patient confidentiality, one friend reminded me that it was a also breach of General Data Protection Regulations (GDPR) (European Parliament and Council (EPC) 2016; Information Commissioners Office (ICO) 2018).

Confidentiality is a fundamental right for all patients, something I am all to aware of as a healthcare professional, it has been a feature of The Code (NMC 2015) in all its guises over the years, as well as being within the terms and conditions of employment contracts. The expectation is that our medical records (paper or electronic) and all they contain are seen only by those who have a legitimate reason to access them.

In 2016 the EPC produced a document (EPC, 2016) that updated the previous regulation of 1995 (EPC, 1995) on “the protection of natural persons with regard to the processing of personal data and on the free movement of such data”. The intention of the GDPR being to harmonise data privacy laws across the whole of Europe. GDPR also gives more rights to individuals about how their own data is stored and utilised.

In the context of GDPR, personal data is described as any information that relates to an identified or identifiable living individual. These include the following examples, the list is not exhaustive:

* a name and surname;
* a home address;
* an email address such as name.surname@company.com;
* an identification card number;
* data held by a hospital or doctor, which could be a symbol that uniquely identifies a person.

My observations of the papers clearly exposed identifiable information from this list with the exception of an email address.

Each organisation that holds this type of personal data will have a person designated with overall responsibility, but each individual within the organisation is also responsible in their own right for ensuring information is safe and secure. In the primary care setting everyone should have either undertaken their training earlier this year or on employment if joining the organisation since 25th May 2018. This training is most likely to be an online instruction and assessment course.

I had undertaken GDPR training within the organisation I work for now, this training was not focussed upon health care and clinical information but the type of information relevant to the organisation. I feel that my thoughts at the time of the scenario had not processed the significance of the information before me until reminded by clinical healthcare colleagues.

I have considered the potential risk to my personal safety; had I spoken out on the crowded train I potentially could have been subjected to an adverse verbal or even physical response from the individual or any other commuter on the train. Had I approached the individual after leaving the train I could potentially have been at even greater personal risk as there were fewer people about. I recognise that I lacked courage to take action at the time but that this was also self-protective to avoid conflict.

‘Now what’

Having had feelings of guilt about not taking any action, one of my colleagues suggested writing my thoughts and feelings as a formal piece of reflection. I have undertaken this process as a step to reconcile my personal turmoil and guilt about not speaking out at the time.

After some deliberation I decided that I would try to take some action to highlight the implication of this breach of confidentiality and GDPR to as many people as possible as I was unlikely to be able to identify the individual or his employer.

The first thing I did was telephone the non-emergency police number and while the call handler listened and acknowledged my concerns they were not able to take further action without the persons name or that of the employers’. The call handler suggested contacting citizens advice service who like wise felt that there was nothing they could offer by way of support without more of the details.

I also telephoned my local Clinical Commissioning Group and while acknowledging that without the personalised details they could not take further action, they would however use my observed scenario in a general communication as a way of reminding all GP’s and staff that this sort of work activity in a public place was not acceptable.

This inspired me to think of many ways as I could, to maximise the number of people receiving the message that working on health records in a public place is not acceptable. I contacted NHS England, Care Quality Commission and the Solicitors Regulatory Authority; I suggested a general message be sent to all the organisations they represent to highlight that working on patient identifiable documents in a public place is not acceptable and a breach of GDPR. Unfortunately they were all unreceptive to this suggestion and only interested if I had the person or the employer name.

I made several attempts to contact the ICO but it took ten days before I was finally able to have an online chat with an ICO representative who as with all other organisations I had contacted before could take no action without knowing who the person was or who they worked for.

One friend had suggested that I could have taken a photograph of the pages on my phone, I guess that would have enabled me to contact the practice direct if not identify the person. The idea of taking a photograph had been considered at the time but, I chose not to, as I believe this would have made me complicit in breaching the both my professional code (NMC, 2015) and GDPR. Sadly, by the time the implications had fully resonated with me I could not recall the surgery or patients details. I believe that I had made an unconscious decision not to text them to myself, perhaps subconsciously appreciating this would the wrong thing to do and in itself would also breach confidentiality.

I had also considered a letter to the local newspaper, where the individual may potentially be identified by a reader or a letter to a national newspaper in order to raise awareness to a wider audience. Both of these ideas I rejected, as in reality, this was something that I should have acted upon at the time of the incident rather than after a period of reflection.

As a registered nurse I acknowledge that my inaction and failure to speak out at the time of the incident does not reflect the excellence of professional practice standard expected, but as the full implications of what I had observed were not appreciated by me until later I have considered how I can make amends for my inaction.

I eventually concluded that my pursuit to get the message to the widest distribution as possible was a fruitless task but that reflecting on the situation would help me reconcile my feelings of annoyance with myself.

I could however share my reflection and in so doing raise awareness among readers of a respected journal by publishing this account. This would be a small step to a wider audience and a reminder of the importance of not inadvertently revealing information in the public domain. As readers of this journal I suggest you consider using this article in practice meetings with all the team or in a group clinical supervision session to generate discussion and consider how you might react if presented with a similar situation.

I hope that by reading this it will prevent someone else lacking the courage, as I did, to challenge the situation at the point of identification. I know going forward I will not be reticent if I encounter the same or similar situation, the next time the person could be reading my records or those of my friends or family.

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