

9 October 2014

To: All Panellists
Legal Assessors

Cc: Panel Secretaries

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Expert Witnesses Guidance

Further to discussions at the Case Management Working group - which includes members of the General Medical Council Legal Team and Medical Defence Organisations - we have produced an Expert Witness Guidance protocol.

We hope that this protocol will provide useful guidance of the MPTS expectations of expert witnesses and will assist expert witnesses when preparing documentation which may be presented to panels.

Please see below the protocol which will come into force at the end of October.

If you have any questions please contact us.

Kind regards

Panel Development Team

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Expert Witnesses

Protocol for the Instruction of Experts to give evidence in Medical Practitioner Tribunal Service Fitness to Practise proceedings ¹

1. Aims of Protocol

- a. This protocol offers guidance to experts and those instructing them as to what is expected of them in Medical Practitioner Tribunal Service ('Tribunal') Fitness to Practise proceedings.
- b. Doctors who act as a witness in Tribunal proceedings should also follow guidance issued by the General Medical Council including 'Good medical practice' and 'Acting as a witness in legal proceedings'.

2. Duties of Experts

- a. It is the duty of experts to help the Tribunal on matters within their expertise. This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.
- b. It is also the duty of experts to assist the Tribunal to enable them to deal with cases proportionately, expeditiously and fairly.
- c. Experts should:
 - Provide opinions which are independent and relate to matters within their expertise.
 - Indicate where particular questions or issues fall outside their expertise.
 - Confine their opinions to matters material to the issues under consideration.
 - Take into account all material facts before them at the time they give their opinion.

¹ This protocol is intended for expert witnesses only and is not intended to replace any separate guidance specifically provided for performance assessors.

- Indicate if an opinion is provisional, qualified, or that further information is required.
- Inform those instructing them of any change in their opinion (s) on any material matter and the reason (s) for it.

3. Content of Experts' Reports

- a. Experts' reports (a template is at Annex A) should contain:
 - A statement that they understand their duty to the Tribunal and have complied, and will continue to comply, with it;
 - A statement of truth in the terms set out in Annex B;
 - Details of the expert's qualifications commensurate with the nature and complexity of the case;
 - Where tests of a scientific or technical nature have been carried out:
 - The methodology used; and
 - By whom the tests were undertaken and under whose supervision, summarising their respective qualifications and experience.
- b. Where experts rely on literature or other material and cite opinions of others without having verified them, they must give details of those opinions relied on.
- c. When addressing questions of fact and opinion, experts should keep them separate and discreet.
- d. Experts should state those facts (whether assumed or otherwise) upon which their opinions are based. They should distinguish clearly between those facts which the expert knows to be true and those facts which they assume.
- e. Where there are material facts in dispute experts should express separate opinions on each hypothesis put forward.

- f.** If there is a range of opinion based on published sources, experts should explain those sources and, where appropriate, state the qualifications of the originator(s) of the opinions from which they differ, particularly if such opinions represent a well-established school of thought. Where there is no available source for the range of opinion, experts may need to express opinions on what they believe to be the range which other experts would arrive at if asked.
- g.** Where opinions or assertions are made, clear and cogent reasons should be expressed.
- h.** A summary of conclusions, at the end of the report should be provided.

4. Discussions between Experts

- a.** The Case Manager has powers under r16(6) of the GMC (Fitness to Practise) Rules 2014 to direct discussions between experts. Parties may also agree that discussions take place between their experts.
- b.** The purpose of discussions between experts should be, wherever possible, to:
 - Identify and discuss the expert issues in the proceedings;
 - Reach agreed opinions on those issues, and, if that is not possible, to narrow the issues in the case;
 - Identify those issues on which they agree and disagree to summarise their reasons for disagreement on any issue.
- c.** Discussions between experts may take place by an exchange of letters, telephone or face to face (including by video conferencing).
- d.** The parties, their representatives and experts should co-operate to produce an agenda for any discussion between experts. The primary responsibility for the preparation of the agenda lies with the GMC's representative.

- e. At the conclusion of any discussion between experts, a statement should be prepared setting out:
 - A list of issues that have been agreed including, in each instance, the basis of agreement;
 - A list of issues that have not been agreed, including, in each instance, the basis of disagreement;
 - A list of any further issues that have arisen that were not included in the original agenda for discussion.

- f. The statement should be agreed and signed by all the parties to the discussion as soon as practically possible.

5. Attendance of Experts at the Tribunal

- a. Experts instructed in cases have an obligation to attend the Tribunal if required.
- b. Those instructing experts should:
 - Ascertain the availability of experts before hearing dates are fixed;
 - Keep experts updated with timetables (including the dates and times experts are to attend) and the location of the Tribunal;
 - Give consideration, where appropriate, to experts giving evidence via a video-link;
 - Inform experts immediately if the hearing dates are postponed/adjourned.
- c. Those setting dates will have proper regard to the availability of the experts.

Annexe A: Expert report template

Instructed expert should set out his/her report using the headings and sub headings below (underlined sections and bold sub-headings)

Part 1 – Introduction

Summary of Instructions

- This section should cover the following:
 - Date instructions received
 - Date of agreed deadline for report
 - The 'Issues to address' section of the Letter of Instruction sent.

List of documents received

- This section should list all of the documents provided and enclosed with the Letter of Instruction, including any of the following, where relevant:
 - Any documentation reviewed electronically
 - Any documentation provided to you since the Letter of Instruction was sent

Confirmation of no conflict of interest

- This section should include your further confirmation that there is no conflict of interest in preparing your report, as stated to the party instructing prior to receipt of instruction
- [NOTE – if you have made the party instructing aware of any potential issues regarding conflict of interest, but which the party instructing has confirmed since that you may still receive instruction - this should be detailed here also]

Part 2 - Background

Factual background of events

- Set out a summary of the facts of the case
- Provide a chronology of the relevant events/incidents in this case and link this to your review of the documentation provided – using the following format:
 - '[01/01/2012] – Patient A GP records – Consultation takes place – [detail what is noted at this consultation]

- [05/01/2012 – Patient A Hospital records/scan images – Patient A undergoes MRI scan – [detail findings of MRI scan from your consideration/what is noted]’
- Etc
- [NOTE – when providing chronology of events, please ensure to highlight any disputed facts or conflicts of events throughout.

Part 3 – Opinion

- For this section, you should provide your opinion in accordance with each separate Issue to Address as outlined in the Letter of Instruction, for example:
 - 1) ‘Please address the following aspects of care provided by Dr XX for Patient A, with specific regard to whether Dr XX:
 - a) adequately and appropriately considered the patient’s medical history;
[Address Issue 1a)]
 - b) carried out an adequate and appropriate assessment of the patient, in light of his/her presenting condition;
[Address Issue 1b)]’

Etc....
- If you are asked to answer each Issue to Address in relation to each separate consultation/instance of treatment that takes place and/or for multiple patients, you should ensure that each consultation and/or instance of treatment is addressed separately in this section and for each patient separately, for example:

‘Consultation on 1 January 2012’

 - 2) Please address the following aspects of care provided by Dr XX separately for each of the Patients in question (Patient A-B), with specific regard to whether Dr XX:
 - a) adequately and appropriately considered the patient’s medical history;

[Address Issue 1a) in relation to the consultation that took place on 1 January 2012 with Patient A]

[Address Issue 1a) in relation to the consultation that took place on 1 January 2012 with Patient B]

- b) carried out an adequate and appropriate assessment of the patient, in light of his/her presenting condition;

[Address Issue 1b) in relation to the consultation that took place on 1 January 2012 with Patient A']

[Address Issue 1b) in relation to the consultation that took place on 1 January 2012 with Patient B']

Etc....

- In this section, you should also ensure to highlight clearly and separately where your opinion is based on:
 - 3) disputed facts/opinion expressed in the materials provided;
 - 4) any assumptions if there are omissions in the materials provided;
- If your opinion is based on disputed facts and/or omissions in evidence, you must also ensure to include any alternative opinions and separate this section clearly – using the following format:
 - 5) Please address the following aspects of care provided by Dr XX to Patient A, with specific regard to whether Dr XX:
 - a) adequately and appropriately considered the patient's medical history;

Paragraph 1 – [Address Issue 1a) – based on facts as presented by the Complainant]

Paragraph 2 - Address Issue 1a) – based on facts as presented by Dr XX]

- Additionally, where you identify evidential gaps which prevent you from addressing a particular issue – you should note this clearly and detail what additional material should be acquired which would enable you to give your opinion – using the following format:
 - 6) Please address the following aspects of care provided by Dr XX to Patient A, with specific regard to whether Dr XX:
 - a) adequately and appropriately considered the patient’s medical history;

Address Issue 1a) – highlight any omission in the documents that limits your ability to address the issue - and detail, if possible, what additional documents are required to answer this issue]
- Where you evidence your opinion using academic literature or other externally-sourced materials you should refer to them within the body of your opinion under each issue to address, using footnotes.

Part 4 – Conclusion

- This section should bring together the opinions as expressed in Part 3 and should be set out as follows:
 - What the expert would expect to have been the appropriate action/treatment (the expected standard)
 - How the action/treatment in dispute fell below this expected standard in line with the Issues to Address under Part 3, for example:
 - Treatment below the expected standard in this case included:
 - Failure to consider Patient A's medical history;
 - Failure to perform a full examination;
 - Treatment seriously below the standard expected in this case included:
 - Failure to consider a differential diagnosis of heart disease.
 - Why the expert has reached the conclusion that they have.

Part 5 – Statement of Truth

- This section should quote the wording as set out in 'Statement of Truth' as set out in paragraph 3 of the Protocol, and include your signature at the bottom.

[Documents to append to your report]

- The following documents should be appended to your final report:
 - Your current Curriculum Vitae;
 - A summary of your recent experience in this field in relation to the subject matter on which this particular report is based;
 - Copies of all academic material or external material relied upon to provide opinion and quoted in the body of your report; including:
 - Author;
 - Date;
 - Relevant page number²

² References rather than full sources may be provided for the panel, the instructing party will indicate if full academic sources are required.

Annex B: Statement of truth

Your report must be verified by a declaration in this form:

'I understand that my primary duty in written reports and giving evidence is to the Fitness to Practice Panel rather than to the party who engaged me'

- i. I have endeavoured in my report and in my opinion to be accurate and to have covered all relevant issues concerning the matter as stated which I have been asked to address.
- ii. I have endeavoured to include in my report those matters of which I have knowledge or of which I have been made aware that might adversely affect the validity of my opinion.
- iii. I have indicated the sources of all information that I have used.
- iv. I have not, without forming an independent view, included or excluded anything that has been suggested to me by others (in particular my instructing lawyers).
- v. I will notify those instructing me immediately and confirm it in writing if, for any reasons, my existing report requires any correction or clarification.
- vi. I understand that:-
 - a. my report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under Oath or Affirmation;
 - b. I may be cross examined on my report by a cross examiner assisted by an expert;
- vii. I confirm that I have not entered into any arrangements where the amount of payment of my fees is in anyway dependent on the outcome of the case.

I confirm that, insofar as the facts stated in my report are within my own knowledge, I have made clear which they are and I believe them to be true and that the opinions I have expressed represent my true and complete professional opinion.

Signed:

Name:

Dated: