

31 January 2020

High Court Family Division
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The President of the Family Division Working Group on Medical Experts in the Family Courts: *Draft report*

Dear Mr Justice Williams,

- 1** Thank you for the opportunity to submit our views on your consultation on the President's draft report on medical experts in the Family Division.
- 2** The General Medical Council (GMC) is an independent statutory organisation, accountable to Parliament with an overarching statutory objective to protect patients and improve medical education and practice across the UK. Specifically, we are required under the Medical Act (1983) to:
 - Decide which doctors are qualified to work in the UK and hold a register.
 - Oversee UK medical education and training.
 - Set the standards that doctors need to follow, and ensure that they continue to meet these standards throughout their careers
 - Take action to protect patients, or the public's confidence in the profession.
- 3** In addition to delivering our statutory objective through our functions, we also support doctors and work with the system to provide good safe care for patients.

General comments

- 4 We note that the working group's draft report and recommendations arose out of concern over difficulties in obtaining suitable medical expert witnesses in the family courts. Two other recent reports have also touched on problems associated with medical expert reports and witnesses in court proceedings: The *Independent review of gross negligence manslaughter and culpable homicide* (2019) and *Gross negligence manslaughter in healthcare – a rapid policy review* (2018). While the focus of these reports was not specifically on the shortage of experts, they do emphasise concerns about the difficulty of accessing good experts in relevant fields and the measures needed to support high quality expert opinion. You may find some of recommendations contained in these reports relevant to the working group's deliberations.

- 5 With regard to the draft report, we note the concerns raised by healthcare professionals regarding unfair criticism, both from the Judiciary and the media (which may lead to a referral to and potentially an investigation by the GMC) as a reason why doctors are deterred from acting as medical experts in court. However, where possible, in these instances if a doctor is referred to us, we will open a provisional enquiry. Provisional enquiries help us decide whether to open an investigation in response to a complaint. These enquiries involve us gathering one or two discrete and easily obtainable pieces of information to help us to quickly assess risk and to avoid unnecessary investigation.

- 6 We also recognise that some experts may require additional training and support and we support those recommendations that touch on enhancing training opportunities for those acting as an expert witness. As part of the recommendations concerning training and guidance, it may be helpful to note our guidance to doctors about [Acting as a witness in legal proceedings](#). This sets out what we expect from doctors who intend to act in court proceedings and explains how these principles can be used in practice. It states that doctors acting as an expert witness must:
 - Make sure they understand exactly what questions they are being asked to answer.

 - Only give expert testimony and opinions about issues that are within their professional competence or about which they have relevant knowledge including, for example, knowledge of the standards and nature of practice at the time of the incident or events that are the subject of the proceedings.

 - Give an objective, unbiased opinion and be able to state the facts or assumptions on which it is based. If there is a range of opinion on an issue, they should summarise the range of opinion and explain how they arrived at their own view.

- If are asked to give an opinion about a person without the opportunity to consult with or examine them, they should explain any limits this may place on their opinion. They should be able to justify the decision to provide their opinion.
 - If, at any stage, they change their view on any relevant matter, they have a duty to make sure those instructing them, the other party and the judge are made aware of this without delay.
 - They must respect the skills and contributions of other professionals giving expert evidence, and not allow their behaviour to affect their professional opinion.
- 7** We would also like to highlight that the Academy of Medical Royal Colleges has produced [guidance about acting as a professional expert or witness](#). Aimed specifically at clinical professionals who act as an expert witness in courts or tribunals, it reflects our guidance and details the standards, training and behaviour expected when acting as an expert witness.
- 8** It may be helpful to reflect this guidance in the President’s report as a useful tool for doctors, the Family Division and the legal profession in achieving good practice. We have provided our views on specific recommendations below.

Response to specific recommendations

Beyond these general comments, there is only one specific recommendation on which it may be helpful for us to comment:

Recommendation 16: A vehicle for Inter-disciplinary training, mentoring and feedback should be developed to deliver:

- i Training programmes for legal and medical professionals on issues relating to expert witnesses**
- ii To develop and implement mentoring schemes for medical experts whether they are within the medical profession or ideally with an element of inter-disciplinary mentoring**
- iii A vehicle for feedback from the legal profession, in particular the Judiciary to experts ranging from simple notification of the outcome of a case through to constructive criticism to aid professional development as well as informal ‘complaints’ as an intermediate level response to any identified failings in the provision of expert evidence which do not warrant referral to the GMC**
- iv There should be a proper budget for such training**

- 9** We welcome initiatives where doctors are supported with training and mentoring and can reflect and learn. We therefore support this recommendation. In relation to (iii) it is helpful for medical experts to receive feedback on their performance and, where appropriate, constructive criticism to aid professional development. However, as implied by (iii), where there are serious or persistent failures by a medical expert to follow our guidance we would expect the matter to be referred to us to consider.
- 10** I hope that these comments will be useful. Please let me know if you would find it helpful to discuss any of these matters. In any event, I look forward to seeing your published report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anthony Omo', with a large, stylized initial 'A' and 'O'.

Anthony Omo
General Counsel and Director, Fitness to Practise
GMC