**Guidance for GMC experts**

**Section 6: Data protection, confidentiality, freedom of information and disclosure**

**Data Protection**

6.1 We have a legal obligation to comply with data protection legislation. We have a [Data Protection Policy](#), which sets out the principles we follow in our work. The Policy applies to all areas of our work and applies to all our staff, associates and contractors.

6.2 We expect you to comply with this Policy whenever you act in your capacity as an expert witness for us.

6.3 We regularly update the Policy and when this happens, we will let you know so that you can read the new version.

6.4 If you become aware of a data protection breach, either by you or someone else, you must let us know as soon as possible and provide full details so we can take any necessary action. If we become aware of a breach that involves work you have done for us, we may need further details from you.

**Confidentiality**

6.5 Our fitness to practise investigations are confidential to the complainant, the doctor under investigation and us. The documents and information we send to you are confidential.

6.6 You must maintain your duty of confidentiality during and on completion of a case where we have instructed you. Your duty of confidentiality also continues where we are no longer sending expert instructions to you.

6.7 You must keep any details about a case confidential, even if we decide not to instruct you on a case or we stop instructing you. We will provide you with details of a case to see if you can prepare an expert report. If you are not able to prepare a report you must still keep these details confidential.
Freedom of Information

6.8 We are subject to the Freedom of Information Act 2000 (FOIA). We may be subject to a FOIA request in relation to the services you provide to us. We apply our discretion under the FOIA in deciding whether information is to be disclosed, published or is exempt from disclosure.

6.9 Please notify us immediately if you receive a request under FOIA, and do not respond directly to the requestor.

Disclosure - what you should do

6.10 You should only disclose information about a case to a third party if we ask you to do so, in accordance with our policies and guidance. Sometimes we may ask you to do this if we need to arrange a meeting between you and another expert or we need you to communicate directly with another expert to agree a joint report.

6.11 You should let us know if the doctor, their representative, the complainant or anyone else contacts you. Please do not respond directly.

6.12 You should not disclose information or personal data relating to the business of the GMC. This includes technical processes, designs, finances, examinations of the GMC, or any of its respective suppliers, agents, distributors, partner organisations or members.

Disclosure required by another party

6.13 If you are required to disclose any confidential information by law, you must co-operate with us regarding the manner of such disclosure. You must also co-operate with any legal action we may take to challenge the lawfulness of any such requirement.

6.14 If a court orders us to disclose any information about your services, we will need to disclose this. If possible, we will let you know.

Information in the public domain

6.15 Any information relating to you or your services that is already in the public domain is not subject to our disclosure rules, unless the information has entered the public domain through a breach of confidentiality.
Disclosure - what we do

The doctor

6.16 We will need to disclose your finalised expert report to the doctor under investigation and their representatives. Your name will normally be visible but we will redact your contact details. On occasions we may also need to disclose previous drafts of your report and your correspondence with us.

6.17 The doctor and their representatives may disclose your report to others assisting them, such as an expert or barrister they have instructed.

6.18 We do not usually disclose our instructions to you, unless your report does not include an accurate summary of them. Section 3 of this guidance relates to the format and content of your report.

The complainant and patients

6.19 We will usually disclose your expert report and your name where requested under Article 15 of the General Data Protection Regulation (GDPR) where a case has closed to:

- the complainant (or their representative)
- a patient referred to in the report.

6.20 We will seek your views on disclosure before doing so and will endeavour to take them into account. We would not normally disclose your contact details. If you have any objections to your name or report being disclosed in this way, please let us know before you provide your report.

Other parties

6.21 We will disclose your report to others assisting with our investigation, such as the barrister we instruct.

6.22 We may need to disclose your expert report and/or the letter of instruction to a third party under the GDPR or the FOIA. Usually, we will only disclose copies of these documents where the case has concluded. In exceptional cases, we may decide to disclose copies while the investigation is ongoing.

6.23 We will usually disclose your report on request to relatives of a patient referred to in your report if the patient is deceased. We will do this without seeking your consent. Your name and contact details will be removed. If you have any objections to your report being disclosed in this way, please let us know before you provide your report.
Subcontractors and secretaries

6.24 If you use a third party subcontractor, including administrative or secretarial assistance, in your capacity as a GMC expert, you should ensure that they:

- observe the same duty of confidentiality as above
- are fully aware of their duty of confidentiality and accept their responsibilities under data protection legislation
- declare any actual or potential conflict of interest which could arise. Further guidance of conflicts of interest appears in Section 2 of this guidance.

6.25 You must let us know in advance:

- if you intend to engage a subcontractor
- the purpose of the engagement
- the identity of the subcontractor.

Please note you do not need to let us know this information in relation to any administrative or secretarial assistance you may use.

6.26 Subcontractors must not use or disclose any confidential information or personal data as described above except for the purposes of assisting you in the delivery of expert evidence.