

Council
20 May 2021

Academy of Medical Royal Colleges 'Acting as an Expert or Professional Witness – guidance for healthcare professionals'

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| Classification | Public |
| Purpose | For decision |
| Issue | Agreeing that the Academy of Medical Royal Colleges 'Acting as an Expert or Professional Witness – guidance for healthcare professionals' is consistent with our own standards and guidance. |
| Recommendations | To agree that the advice set out in the Academy of Medical Royal Colleges 'Acting as an Expert or Professional Witness - guidance for healthcare professionals', is consistent with our own standards and guidance. |
| Financial and resourcing implications | The running of Stakeholder Reference groups had some limited costs which were met from current budgets. |
| Equality and diversity implications | The Expert Witness working group identified that equality, diversity and inclusion (EDI) training for experts is not referenced within the Academy's guidance. The working group has recommended that EDI training should be undertaken by all osteopathic expert witnesses instructed by the GOSc. |
| Communications implications | The decision to support the Academy's guidance will be communicated to stakeholders via the usual communication channels. |
| Annexes | None |
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Key messages from this paper:

- This paper summarises the approach taken to evaluating whether the Academy of Medical Royal Colleges 'Acting as an Expert or Professional Witness - guidance for healthcare professionals' is consistent with our own standards and guidance and the Policy and Education Committee decision that this is the case.
- Further planned work to review our guidance, including that in relation to osteopaths undertaking adjunctive therapies is outlined.
- Council is asked to agree that the Academy of Medical Royal Colleges guidance for healthcare professionals', is consistent with our own standards and guidance, and for this to be communicated as appropriate.

Background

1. In March 2014, the GOsC published a Professional Conduct Committee (PCC) Practice Note setting out the requirements for expert witnesses reporting to the PCC. This covers the duties of an expert witness and the requirements for the format of their written reports.
2. In May 2019, the Academy of Medical Royal Colleges (AoMRC) produced its expert witness guidance. This is available at: <https://www.aomrc.org.uk/reports-guidance/acting-as-an-expert-or-professional-witness-guidance-for-healthcare-professionals/>. The guidance has at present been supported by seven of the ten health professional regulators.
3. Our Business Plan 2019-20 stated that we would update and develop expert witness competences and eligible pool of expert witnesses (working with other relevant bodies and stakeholders). This work stream also featured in our Business Plan for 2020-21.
4. In October 2019, the Policy Advisory Committee (now the Policy and Education Committee) considered the background to this work stream, which arose from the recommendations of the Williams review into gross negligence manslaughter in healthcare. The Williams Review report published in 2018 responded to the issues raised through the case of Dr Bawa-Garba and focussed on three key areas:
 - information on and understanding of gross negligence manslaughter and the processes which apply to possible cases of gross negligence manslaughter involving healthcare professionals;
 - reflective learning; and
 - lessons for healthcare professional regulators.

5. We informed the Committee of our work with the other health professional regulators to consider the wider implications for health regulators from the Williams Review. This included, for example, the joint statement about the benefits of reflective learning published by all health professional regulators in June 2019. See <https://www.osteopathy.org.uk/news-and-resources/news/regulators-unite-to-support-reflective-practitioners/> for further information.
6. A particular theme in the Williams review related to the quality of expert evidence. The following recommendations were made in relation to the role of expert witnesses:
 - 'The Academy of Medical Royal Colleges, working with professional regulators, healthcare professional bodies and other relevant parties, should lead work to promote and deliver high standards and training for healthcare professionals providing an expert opinion or appearing as expert witnesses. These standards should set out what, in the Academy's opinion, constitutes appropriate clinical experience expected of healthcare professionals operating in such roles.
 - Healthcare professionals providing an expert opinion or appearing as an expert witness should have relevant clinical experience and, ideally, be in current clinical practice in the area under consideration.
 - Additionally, they should understand the legal requirements associated with being an expert witness (including the requirement to provide an objective and unbiased opinion).
 - Healthcare professionals should be supported and encouraged to provide an expert opinion where it is appropriate for them to do so.
 - Healthcare professional bodies, including Royal Colleges and professional regulators, should encourage professionals to undertake training to become expert witnesses, and employing organisations should be prepared to release staff when they are acting as expert witnesses.
 - Professional representative bodies and regulators should recognise acting as an expert witness as part of a healthcare professional's revalidation or continuous professional development (CPD) process.'
7. In March 2020, the Committee approved the terms of reference for an Expert Witness working group. The terms of reference set out that the group will advise the GOsC on the production of guidance for expert witnesses, including:
 - a. whether the GOsC should endorse or support the Academy's guidance;
 - b. whether there is a requirement for additional guidance specific to the osteopathic context.

Discussion

8. The Expert Witness working group met on 24 September 2020 to consider the Academy's guidance and advise the GOsC about whether to support it. The majority of the group received the guidance positively and did not consider that it raised insurmountable challenges for expert witnesses in an osteopathic context. Key areas discussed included:
 - The guidance is broad and flexible enough to be tailored to the nuances of the osteopathic profession.
 - Several members indicated that they were in favour of standardisation and professionalising the role of expert witnesses.
 - If the GOsC diverged from the majority of other healthcare professional regulators by not supporting the guidance, it would be necessary to have clear and robust reasons for this and consideration should be given to how the decision would be perceived by the GOsC's stakeholders.
 - The GOsC was advised to consider developing its own guidance to address some of the areas not covered by the Academy guidance.
 - Some questioned whether the scope of the guidance was too wide and whether the profession as a whole is in a place to commit to the training requirements set out in the guidance.
 - A question was also raised about what constitutes expertise in the osteopathic context given that some areas of professional practice are less well supported by clinical evidence than others.
 - The group were agreed that the requirement for expert witnesses to undergo appropriate training, as set out in the guidance, is of fundamental importance.
 - The group were also agreed that what the PCC requires of an expert witness should be carefully considered.
 - It was identified that the guidance does not make it an explicit expectation for expert witnesses to have a commitment to equality and diversity. It also makes no mention of training requirements around this. The GOsC was advised to consider this as part of our own guidance for experts.
9. The outcomes of the Stakeholder Reference Group Meeting outlined above were reported to the Policy and Education Committee at its meeting in October 2020. The following points were made and responded to:
 - a. **Quality of expert witnesses:** It was noted that recruitment of experts had not taken place for some time and it was acknowledged that the current

pool of Expert Witnesses needed to be refreshed. Training for Expert Witness is an activity which is outsourced to specialist trainers due to the specific obligations and requirements experts must meet. It was acknowledged that training in GOsC processes for Expert Witnesses is to be developed.

- b. **Equality and Diversity:** It was suggested that the equality and diversity element should be built on and strengthened going further than what has been set out in the AoRMC Guidance. It was noted that this had been an area highlighted in discussion in terms of training and would be considered further.
 - c. **Understanding of osteopathic practice:** It was pointed out that members of the medical royal colleges will have more objective expertise within their specialist areas, and this might be difficult to match within the osteopathic profession. As highlighted, expert witnesses will require suitable training which include an awareness understanding of osteopathic concepts and approaches to treatment.
10. The Committee agreed that the advice set out in the Academy of Medical Royal Colleges 'Acting as an Expert or Professional Witness – guidance for healthcare professionals', is consistent with our own standards and guidance, and to a review of the GOsC's existing guidance and further engagement with the expert witness working group on this.
 11. A review of the existing guidance is planned, which includes related work in relation to osteopaths practising adjunctive therapies. A paper on this was presented to the [Policy Advisory Committee in March 2020](#), along with [draft guidance](#). A proposal for further dissemination of this draft guidance is to be reported to the Committee for approval in June 2021, before a final draft is reported to Council to approval formal consultation later in the year.
 12. In the meantime, Council is asked to agree that the advice set out in the Academy of Medical Royal Colleges 'Acting as an Expert or Professional Witness - guidance for healthcare professionals', is consistent with our own standards and guidance.

Recommendations:

1. To agree that the advice set out in the Academy of Medical Royal Colleges 'Acting as an Expert or Professional Witness - guidance for healthcare professionals', is consistent with our own standards and guidance.