

## **GUIDANCE ON REVALIDATION FOR MEDICO-LEGAL DOCTORS**

### **Preamble**

Revalidation is a GMC requirement. Exactly how the requirement is met is dependent on a number of factors. Primarily these relate to your speciality (psychiatry) and the particular circumstances of your job. There is absolutely no reason why you cannot revalidate if you are doing exclusively medico-legal work and it is now clear that you will not realistically be able to do this work for any period of time unless you have a licence to practise. This is primarily because the medical defence organisations require this, but also because from a purely pragmatic point of view failure to be licensed will quickly erode your competitive edge as solicitors will almost certainly come to require this in much the same way as they have latched onto Section 12(2) approval as a prerequisite for criminal reports.

Similarly, there are also good professional reasons for considering that those members who only do Tribunal work or medico-legal reports should also be licensed. So, for the purposes of this document we are deliberately interpreting the word 'practice' in a wider context than just clinical practice. Similarly we are deliberately extending concepts the GMC associates with 'patients' to the person whom the doctor interviews for the purposes of preparing a medico-legal report.

Because of the particular circumstances of medico-legal work, the doctor has a dual responsibility, to the person being interviewed and also to the instructor and others involved in the Court or Tribunal process. It is therefore important that any feedback you choose to present takes this into account.

Whilst the GMC has given all doctors a licence to start with, all of us will only be able to continue to have this if we revalidate. The time for revalidation is soon; exactly how soon depends to some extent on yourself, as you may be able to opt in to the process through one of the routes below or you may find that the GMC contacts you a little further along the way. It makes sense to prepare now and with a little common sense and goodwill it should not be an onerous process.

Ultimately revalidation is between each individual doctor and the GMC but the Royal College of Psychiatrists is well aware of the particular circumstances of medico-legal doctors and will support them in every way which it can. In the first instance, this guide should help you access the support you need but the Private and Independent Practice Special Interest Group (PIPSIG) and the Psychiatrists' Support Service (PSS) of the College are both available if you feel you need extra help or guidance. The Independent Doctors Federation (IDF) may also provide a possible resource.

## Thinking through the process

In very basic terms revalidation can be thought of in two parts. The first part is robust appraisal and the second part is the gathering of supporting information and its presentation. Although this may seem very obvious, it is fundamental to the process.

Information will be given below about what information you will need to gather. The categories are based on GMC requirements and are therefore not negotiable, but the nature of the information and the way in which it is gathered reflects both the nature of psychiatry in general and the particular circumstances of your role and can be done with some flexibility.

Thus what the doctor needs to consider is what he or she needs in order to practise safely and effectively as a medico-legal doctor/expert witness and what the appraiser should be doing is comparing your practice with that of other doctors in the same or a similar role. If you have other medical roles, you will need to evidence your competence in them in parallel, but this document focuses on the particular issues facing doctors who do wholly or mainly medico-legal work.

Because gathering information can take some time – it is supposed to be gathered across the space of an appraisal cycle, about one year – the time to start collecting information is now! You should not plan to enter the revalidation process unless you are confident that you will have gathered sufficient evidence by the time it is due and you should definitely not wait until the GMC calls you for revalidation before starting your preparation for appraisal as you are likely to have no more than 4 months' warning! By then, wherever this is in the next 3 years, an annual robust appraisal will be expected.

## How doctors can meet the GMC's requirements for revalidation in the first cycle

The first cycle starts in April 2012 and the minimum requirements for readiness below are taken straight from the GMC website. In future the number of prescribed activities should take place over a five year cycle but it makes sense to think in terms of a yearly cycle so as not to leave everything till the last moment. The italics have been added.

In order to be ready to have a revalidation recommendation made about them, doctors will have to fulfil the following criteria:

- The doctor must be participating in an annual appraisal process which has Good Medical Practice as its focus and which covers all of *their* medical practice. The appraiser must have received recent training in appraisal to include aspects of revalidation.
- The doctor must have completed at least one appraisal, with Good Medical Practice as its focus, which has been signed off by the doctor and their appraiser.

- The doctor must have demonstrated, through appraisal, that they have collected and reflected on the 6 items of information as outlined in the GMC's guidance. Next to each we have appended specific information you need to consider, specific to medico-legal work:
  - **Continuing professional development** – This should include regular updates in witness skills, new protocols, relevant case law and CPD events on medico-legal topics in general.
  - **Quality improvement activity** – This can include reflections on improvements gained by reading other experts' reports, meetings of experts and preparation of joint statements as well as the effects of testing your evidence in conference or court. Case based discussions (see below) with other experts around medico-legal issues are also included here.
  - **Significant events** – Possible events could include missing a critical alternative or contrary opinion which is exposed in the conference or court stage of the examination of evidence. It could equally refer to events during the interview such as the interviewee walking out and refusing to return.
  - **Feedback from colleagues** – This must include feedback from lawyers (ideally including judges) but if you work with other professionals or staff their views must also be included.
  - **Feedback from *patients*** - We are interpreting this here as the person whom the doctor interviews for the purposes of preparing a medico-legal report and, in the same way that the GMC form asks for feedback immediately after a consultation, we are recommending you do this here too (in other words the feedback examines the style of the interview and not any opinions expressed in the report).
  - **Review of complaints and compliments** – Any letters received from solicitors and barristers or comments made by judges which are available in writing should be included here, together with any reflections or actions taken as a consequence.

In practical terms this means that the appraisal will take place approximately one year from 'now' and if successful will lead to revalidation.

### **The GMC principles**

If you always bear in mind the GMC principles you should be able to evidence your competency in all the relevant domains (the bits in bold below) and attributes (the subheadings below). Where the term 'patient' is used, medico-legal doctors should, insofar as this is possible, extrapolate this to the person whom the doctor interviews for the purposes of preparing a medico-legal report.

We have added, in italics, some comments to flesh these out, with particular relevance to medico-legal practice:

### **1. Knowledge, skills and performance:**

- Maintain professional performance – *Treating the person whom the doctor interviews in the same manner no matter who the instructing party is and likewise writing the same report, always bearing in mind your overriding duty to the Court where this is pertinent.*
- Apply knowledge & experience to practice – *which includes clinical, medico-legal and good business practice.*
- Ensure all documentation (including clinical records) formally recording your work is clear, accurate and legible – *Medico-legal documentation needs to be kept securely for a minimum of 6 years in physical or electronic form in reasonably security and the practitioner needs to be registered as a Data Controller by the Information Commissioner's Office.*

### **2. Safety and quality:**

- Contribute to and comply with systems to protect patients – *which includes anyone who visits your premises and your staff.*
- Respond to risks and safety – *which includes being aware of best practice in health and safety if you are responsible for premises and staff.*
- Protect patients and colleagues from any risk posed by your health - *Including winding down sufficiently in advance of 'old age' in order to transfer cases in a timely fashion/refuse cases which are likely to run beyond retirement/anticipated health deterioration.*

### **3. Communication, partnership and teamwork:**

- Communicate effectively – *including with staff, lawyers, the people you interview and their relatives and carers.*
- Work constructively with colleagues and delegate efficiently – *including staff you employ, trainees or junior staff who assist you and colleagues, such as psychologists, who may carry out particular tests or investigations. Also colleagues to whom you refer for expert opinions or who ask you for yours.*

- Establish and maintain partnerships with patients – *Although one of the key differences in medico-legal work is the absence of any advocate role vis a vis the people you see, there may be cases where you wish to bring people’s attention to a serious health need, for example ensuring that the general practitioner or private doctor is informed of any significant recommendation for treatment or a comment on past or current treatments.*

*Also it is important to maintain as good a relationship as possible with the person you interview, however negative your report’s findings, as in many cases you will be asked to see people again.*

#### **4. Maintaining trust:**

- Show respect for patients – *No matter how much we may deplore the actions of some of the people we interview, it is clearly important to maintain a professional detachment in all dealings with them and the lawyers involved in their case.*
- Treat patients and colleagues fairly and without discrimination – *We are often called upon to write reports which are deeply critical of the behaviour of the people we interview. It is therefore doubly important that we treat them totally fairly. We also are privy to medical notes written by colleagues and we may not always approve of their actions, particularly in cases of alleged negligence by mental health professionals. Again it is important to remember GMC guidelines about not bringing the profession into disrepute.*
- Act with honesty and integrity – *Quite apart from the obvious issue about honesty in charging, sometimes the correct thing to do is to turn down the opportunity to earn money for a variety of higher professional or ethical reasons. Sometimes this may mean not acting for the party and sometimes it may mean acting pro bono.*

#### **Collecting Information**

The details of the information to be gathered will be referred to below. However before going into this it is worth thinking through some of the mechanisms available to do this. There are some tools which we have adapted for collecting feedback, but the process, as will be seen below, consists of much more and many people will already have support mechanisms in place but may not have thought of them in this way.

The first resource available to many psychiatrists will be the Peer Group. This is a College specific method originally designed to create a Personal Development Plan and ensure effective Continuing Professional Development but if you are already in a group there is no reason why the scope of its activities cannot be extended to other activities such as Case Based Discussions, Case Note Reviews, Audits and many other activities fitting in with revalidation.

A Peer Group does not have to consist of people in the same sub-speciality or working in the same establishment. Indeed your peers in reality are likely to be people working in the same medico-legal arena who understand your special needs. For many people in the CEWFC, therefore, their natural peers are likely to be in the consortium already!

Furthermore a group can consist of anything from 3 members and meetings do not need to be overly frequent – with careful planning much can be covered in 2 or 3 meetings a year.

If you are not already in a Peer Group you are strongly advised to form one now; the CEWFC, your Regional Advisor or the College may be able to assist you in finding other suitable group members if you are stuck but only you are responsible for creating your group. Data needs to be gathered but it can be in paper or electronic form.

Remember that any information must relate to the 12 month period prior to the appraisal. The more organised your information is, the more your appraiser will have confidence in the process you have adopted even if some simply does not exist. Team-based information may also meet the requirements where no individualised information is available for quality improvement activities, significant events or complaints and compliments - as long as you provide written evidence that you have reflected on what this information means for your individual practice.

**So, this is what you need to collect:**

1. Evidence of Continuing Professional Development (CPD). From a College point of view this means 50 hours of CPD 5 hours of which can be professional (such as a peer group discussing a matter of mutual interest) and 5 of which can be 'clinical' (observing a colleague's medico-legal practice is likely to be something which your Peer Group should approve under this heading). The old concept of internal and external CPD no longer exists. Don't fret if you cannot hit the numbers in the first year as the cycle is over 5 years. Try and utilise the clinical and professional options in a sensible way and make sure your remaining academic hours are related, as far as possible, to your personal development plan or needs. There are many courses and conferences aimed at medico-legal doctors. Make sure you get certificates of attendance but if you cannot, at least keep programmes, or make sure you sign attendance registers and keep a note of what you did on which day or how you reflected on this. Anything is better than nothing!
2. You will need to provide something equating to a review of significant events. If there are no events it is wise to include a note in a section with this heading noting the absence of any and reasons, if any. Under no circumstances should you fail to disclose incidents as failure to disclose may become a probity issue.

3. You will need to provide a review of complaints and compliments. Again, if there are none include a note to this effect. There may be good reasons, from a medico-legal perspective why these are not forthcoming; if you feel this to be the case, you may explain.
4. You will need to provide evidence of regular participation in quality improvement activities that demonstrates that you review and evaluate the quality of your work. One example would be disclosure of a serious incident with evidence that you have reflected on this and, where appropriate, formed a written action plan to address the matter. An audit, conducted by yourself or done by others on your behalf, covering your work alone or that of a number of colleagues, is another option.

It does not need to be onerous and could be based on soft data such as a timeliness of appointments, content of reports, or some aspect of the interview process. Case based discussions with suitably redacted details are a particularly good tool for medico-legal doctors as they can be done in Peer Groups and even in Family cases, it should be possible to have a meaningful discussion without breaching legal confidentiality. Some sort of randomisation should be demonstrable to ensure you are not perceived as 'cherry-picking'. Make sure that any discussion is recorded in a form which is meaningful to you – don't worry too much about searching for 'the right form', although the Keith Rix has developed one which we are sending in association with this paper which you might like to use. Ask a member of your peer group to sign it. Case note reviews, similarly evidenced are another tool you can use. Evidence of basic necessities, such as a set of contemporaneous notes and a copy of the report being in the file, should be sought and 'signed for'. There are some sample forms in the College Guidance CR172 which can be adapted for medico-legal use.

5. You will need to produce some evidence of feedback. This is understandably a big concern for some colleagues. Firstly if you see very few patients in clinical practice, make sure nearly every one of them is given a form to fill in so you can achieve a reasonable response rate. We recommend using the GMC form or that which forms part of the Royal College of Psychiatrists 360 degree appraisal system. Forms exist which can be used with the person whom the doctor interviews for the purposes of preparing a medico-legal report. We suggest that, if possible this should be given to them after the appointment by a neutral party such as a receptionist, but if you work alone you or your secretary/PA can do this as long as you it is emphasised that the process is anonymous. If your appointment letter explains that they will be asked to fill this in before they leave this will become part of the process and you should achieve a goodly return. If the people you see are likely to need help filling in a form you will need to give consideration to how this can be achieved. Feedback forms especially for lawyers are available. Alternatively you can use the GMC form for colleagues or the College 360 service, although neither is adapted for use with lawyers. However, there is no limit as to who could be considered a colleague in this respect so you should think widely and include medical and lay colleagues as well. Lastly do make sure you fill in the GMC self-assessment form.

Feedback must have been undertaken no earlier than five years prior to the first revalidation recommendation and be relevant to your current range of work, which includes your medico-legal practice. Feedback from clients and colleagues that does not fully meet the criteria set by the GMC may also be included but must be focused on you, your practice and the quality of care you deliver and gathered in a way that promotes objectivity and maintains confidentiality.

## **Appraisal and Revalidation**

The required format for this is based on the GMC Good Medical Practice Framework. Your appraiser must have been trained in this new type of appraisal. The old type, sometimes referred to as a 'cosy chat with a colleague' and sometimes done mutually is definitely passé. The appraisal must occur annually, with an output linked to a personal development plan. The most important focus of this is reflection and learning.

When you have identified your Responsible Officer, they will need to be aware of and in agreement with your appraisal process. Revalidation occurs every 5 years and, in future, will depend on having undergone 5 successful 'modern' appraisals. The first revalidation, if in year 1 (2013-14), though, only requires one 'modern' appraisal.

## **Who Does the Appraisal and Revalidation?**

If you are employed by one NHS hospital, your designated body is that NHS organisation even if you are only employed for one session. Otherwise, the designated body that you are connected to will depend on the number of organisations that you practise in and where you spend most of your practice and the basis on which you are employed, such as whether you have a contract of employment or practising privileges or another type of contract.

Please speak to your employer, if you have one, if you are unsure about your employment status or whether they will do your appraisal. By now everyone should be pretty clear about this. Generally the responsibility lies with the 'lead' employer and they will need to look at your entire practice including all your private and medico-legal work so you will need to be prepared to present evidence to their appraiser.

If you work entirely independently you have a limited number of options. **Please note that the College cannot do your appraisal for you.** You may apply for practising privileges at a private psychiatric hospital if this would lead to you being able to have appraisals there, but remember this is neither guaranteed nor a quick process in many cases, so if you are thinking about doing this you need to factor time into the equation.



A good choice for many doctors whether in medico-legal practice or independent private practice is to join the **Independent Doctors Federation** (IDF) - [www.idf.uk.net](http://www.idf.uk.net). Check out their website for details of subscription rates. You may choose to have a psychiatrist as your appraiser, but you may also choose someone from a different specialty.

If you have not had an appraisal in the last year you will be expected to have one within a year of joining. The IDF charges around £500 for an appraisal. They also have a Responsible Officer who can revalidate you thereafter.

The Medical Support Union – [www.medsu.org](http://www.medsu.org) - is another useful resource to be aware of if you are in independent medico-legal or private practice. It is a designated body and can provide appraisals and revalidation. It has two levels of subscription depending on what level of service you want. Have a look at their website for more details.

The GMC is proposing creating special ROs who can revalidate doctors who have no other RO.

**Remember that you will, in all events, still be responsible for organising the collection of evidence.**

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(with contributions from Ellen Wilkinson and Keith Rix)

Modified August 2013