



Law Society
of Scotland

Consultation Response

**Remote consultations and prescribing by telephone,
video-link or online**

February 2020



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Health and Medical Law sub-committee welcomes the opportunity to consider and respond to the General Medical Council's consultation: *Remote consultations and prescribing by telephone, video-link or online*.

Recent years have seen significant increases in the scale of remote consultations and prescribing and we believe that these technology-based solutions have, where used appropriately, an important role in our healthcare system (for instance, assisting with provision in more remote communities). Patient safety is paramount and our response highlights several areas in which risks may need to be managed, for instance, around multiple morbidities. Patient safety is paramount, and we would not want to see the development of a twin track system, where there were less safeguards for technology-based solutions.

Topic 1: Evidence of risks associated with remote prescribing

1a Risks associated with remote prescribing

We would note the following concerns in relation to remote prescribing:

Does the online provider offer access to UK-based GPs who are registered with the regulator of the medical profession, the General Medical Council?

Does the online provider offer access to UK-based patients?

The indemnity offered by certain Medical Defence Organisations may not extend to overseas work. Doctors should ensure they know the location of the patient. Clinicians should also consider the geographical location of their patient when prescribing remotely, for example, to an online pharmacy. Regulatory requirements for medicines differ between countries.

Does the online provider guarantee the patient's confidentiality?

There are also security issues to consider, as medical confidentiality must be properly protected during remote consultations. An encryption process may be in operation when users log on, but there may be other security risks, and clinicians should seek expert IT advice before using this technology for consultations, so that safeguards, as far as they are possible, may be put in place.

Is the online provider following GDPR in retaining any recordings as sensitive personal information?

1b Risk of patient harm in remote consultations compared to face to face consultations

We would note the following concerns in relation to the risk of patient harm in remote consultations compared to face to face consultations:

Should a patient be required to electronically sign a declaration regarding current diagnoses/medications?

Doctors are required to adequately assess the patient's condition and the GMC states they must be confident they can justify the prescription.

Issues such as lack of access to patient records can be problematic, especially in dealing with patients unfamiliar to the doctor involved. Can doctors rely on a patient to accurately recount their own history without access to notes, especially in complex cases? Being unable to examine the patient means that a significant source of objective, valuable information is removed; therefore the reliability of information that can be accessed becomes more important.

Doctors must bear in mind that, as the remote prescriber, they retain responsibility for the appropriateness of the prescription and any potential consequences of it, whether or not they have personally spoken to the patient. Without some form of declaration, the clinician may open themselves to criticism.

In the event of loss of connection, what obligation is on the clinician?

GMC guidance indicates that, 'you must take prompt action if you think that patient safety, dignity or comfort is or may be seriously compromised.' In the event of loss of connection, a clinician may have serious concerns regarding a patient but be unable to establish further contact. What obligation remains with the clinician?

Does the clinician have right of access to a recording?

In a technological environment, clinicians may be reassured regarding limited note-taking under the premise that the consultation has been recorded. Clear guidance should be provided to confirm that clinical records should be kept to the same standard as other consultations. This is even more vital when there is an inability to examine the patient.

Topic 2: Dialogue between doctors and patients

We would note the following concerns in relation to dialogue between doctors and patients:

Capacity

Some systems may make an assessment of capacity very risky, for example relying on online questionnaires. It is important for clinicians to be vigilant about the system they are using and whether it is entirely fit for purpose, especially if the patient has multiple healthcare needs. Can the clinician assess how well the patient understands the information they are providing to the patient and, how well the patient can follow the clinician's advice?

Replacing clinical practice with algorithms/questionnaires.

Some systems for remote consulting use online forms based on algorithms in order to direct diagnostic questioning. Such systems present numerous inherent risks such as a lack of "relevant negatives" – clinicians only see what is on the form. There is also increased potential for misunderstanding in regard to how the patient is interpreting questions, and barriers within the system to seek further clarification.

Doctors should also be aware that Medical Defence Organisations may not indemnify remote consultations consisting of questionnaires/text-based consults or non-real-time consults.

Topic 3: Sharing information with other healthcare professionals

3a Minor clarification of our guidance on patients objecting to information being shared with healthcare professionals

The amendment appears reasonable.

Topic 4: Additional safeguards we may need to put in place

4a Additional safeguards

We would note the following concerns which may give rise to the need for additional safeguard:

Lack of visual examination

Even with good picture quality, observation of skin conditions, for example, is likely in most cases to be much better at face-to-face than remote consultations, and examination beyond superficial observation will be impossible. The key issue for doctors will be to recognise when this mode of consultation is not sufficient to properly assess the patient and address the problem, and to arrange a face-to-face consultation instead.

Patients with co-morbidities

Patients with multiple morbidities are at greater risk – both in terms of accessing accurate up-to-date information about their condition (e.g. blood test results and current medication) and properly managing complicated illnesses. If in doubt, these patients should be directed to see their own GP. If there are problems arising from the advice or treatment, a clinician should be able to justify their actions.

4b Guidance for doctors on prescribing medicines that are addictive and/or carry a risk of death if taken in inappropriate or unsafe quantities

We have no comments to make in relation to this topic.

Topic 5: Feedback based on operational experience

We have no comments to make in relation to this topic.

Equality, diversity and inclusion

We have no comments to make in relation to this topic.



For further information, please contact:

Jennifer Paton

Policy Team

Law Society of Scotland

DD: 0131 476 8139

JenniferPaton@lawscot.org.uk