

11th April 2019

By email:

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Dear Claire

GMC response to the proposed Culpable Homicide (Scotland) Bill

Thank you for the opportunity to respond to this proposed Bill. I'd also like to thank you for taking the time to meet with my colleagues in February alongside Leslie Hamilton, Chair of the Independent Review of Gross Negligence Manslaughter and Culpable Homicide. They very much valued the opportunity to discuss your proposed Bill with you, as well as bringing you up to speed with the work of the Review.

As you know, the General Medical Council (GMC) is an independent organisation that helps to protect patients and improve medical education and practice across the UK.

- We decide which doctors are qualified to work here and we oversee UK medical education and training
- We set the standards that doctors need to follow, and make sure that they continue to meet these standards throughout their careers
- We take action to prevent a doctor from putting the safety of patients, or the public's confidence in doctors, at risk.

While regulation of the medical profession is reserved to Westminster, the GMC operates within the legal and legislative structures of the different jurisdictions of the UK.

As outlined in your recent meeting with Leslie Hamilton, which was supported by GMC colleagues, in 2018 we commissioned an independent review into how gross negligence and culpable homicide are applied to medical practice. As part of this work, a Scottish Task and Finish Group led by Iain Wallace was tasked with advising the Review on the key questions as they relate to the healthcare system in Scotland and Scottish law relating to culpable homicide. I include the terms of

reference as an annex to this letter. The Terms of Reference for the UK-wide working group can be found on the GMC website* .

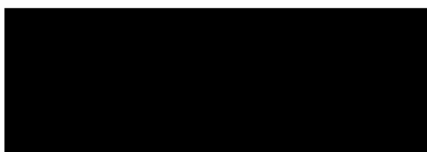
As the GMC would not want to pre-judge the findings of this independent review, we would recommend that you consider its findings and recommendations when it is published. We expect the report to be published later this spring.

More broadly, the GMC is fully supportive of doctors working in a system and culture where they can be open with colleagues and patients, and learn from medical errors. Specifically, in 2015, alongside the Nursing and Midwifery Council, we published joint guidance† outlining a professional duty of candour which covers every doctor, nurse and midwife in the UK. The guidance sets out what being open and honest about mistakes means in practice, whose responsibility it is to explain and record what has gone wrong, and on reporting errors at work to help promote a learning culture.

Once again, we welcome the opportunity we have had to engage with you on this proposed Bill, and as this legislation develops, we would welcome further consideration of the impact of any unintended consequences on the medical profession and doctors' confidence in reporting and learning from medical errors.

I hope you find this brief response helpful to your continued work on the proposed Bill, and should you have any questions please do not hesitate to get in touch with me.

Yours sincerely



Nicola Cotter
Head of Scotland Office

* <https://www.gmc-uk.org/-/media/documents/terms-of-reference-for-gnm-review-pdf-73991039.pdf>

† <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/candour---openness-and-honesty-when-things-go-wrong>

Annex A – Terms of Reference for GNM and CH Review Scotland Task and Finish Group

Culpable Homicide Task and Finish Sub-Group:

Purpose

Having regard to the Terms of Reference for the gross negligence manslaughter/culpable homicide review (GNM/CH) led by Mr Leslie Hamilton (formerly by Dame Clare Marx), to advise the Review on the *Key Questions* as they apply in the context of the healthcare system in Scotland and Scottish law relating to CH.

Key Questions

- With regard to the questions in the Review *Call for Written Evidence*, how do these issues apply in the context of Scottish healthcare settings and the application of the law in Scotland?
- To what extent is there a consistency of approach across these issues in Scotland and, if there is consistency, how is this achieved?
- How does the approach taken in Scotland address the issue of individual v corporate responsibility where there has been a fatal incident in a healthcare setting?
- What are the benefits and drawbacks of the approach taken in Scotland?
- What other issues should the GNM/CH Working Group take into account in relation to the investigation and potential prosecution of doctors involved in fatal incidents in healthcare settings in Scotland??

Composition and Membership of the Task and Finish Group

The composition of the T&F Group will be for the Chair to determine, having regard to the need for the Group to advise the Review on issues applicable to the healthcare system in Scotland and Scottish law.

Members of the T&F Group will be appointed by the Chair to ensure it contains the relevant knowledge, experience and expertise to inform the Review's work. Members will not be appointed to represent the interests or perspectives of particular constituencies, organisations or stakeholder groups, but to help the Working Group understand the issues and evidence particular to the Scottish context.

The T&F Group will be chaired by Dr Iain Wallace, who is also a member of the GNM/CH Working Group.

Relationship to the GNM/CH Working Group

The T&F Group will report to the GNM/CH Working Group through Dr Wallace.

If the T&F Group requires additional resource, research or other information carrying cost implications for the Review, agreement should first be obtained from the Chair via the Review Secretariat.

The GNM/CH Review Group will provide Secretariat support for the T&F Group.

The T&F Group members will have the opportunity to participate in the stakeholder seminars to be held in Scotland.

Working methods

The T&F Group is expected to hold up to 3 meetings (but the total number of meetings will be subject to change).

Outputs

The T&F Group will provide the GNM/CH Working Group with a written report setting out its conclusions on the key questions by November 2018.