

Home Office consultation, Statutory guidance to police on firearms licensing

Response from the British Medical Association (BMA) and the Royal College of General Practitioners (RCGP)

Q.1 to Q.4: Are you responding as an individual or behalf of a business or other organisation?

This is the formal response of the BMA and the RCGP to the Home Office consultation on statutory guidance to police on firearms licensing. We note that the Home Office has placed a word limit of 150 words for each section. The BMA and the RCGP have worked collaboratively with the Home Office and other key stakeholders to improve the system for firearms licensing with the core aim of improving safety for the public whilst also recognising the professional and resource implications for doctors.

We strongly agree that the key priority is to ensure that the highest standards are maintained in the firearms licensing process. We support the overall Government approach to this area that gun ownership is a privilege and not a right. Firearms must only be in the hands of the most safe and responsible people. We believe that the detailed wording within the statutory guidance document is critical and although we have tried to keep to the set word count limit where possible there are some areas where we feel it is necessary to provide additional information, particularly in relation to question 9 on medical checks. You will see that in relation to this question we have proposed a significant number of changes that we believe would be helpful to ensure that the guidance can be effectively implemented at a local level by police authorities. Our priority is to provide a response in sufficient detail that the perspectives of frontline GPs can be fully recognised, particularly as this consultation is in relation to statutory guidance (for Chief Officers of police authorities).

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

The RCGP is the professional membership body for family doctors in the UK and overseas. It is committed to improving patient care, clinical standards and GP training. Its objectives, in concern for care for patients, are to shape the future of general practice, ensure GP education meets the changing needs of primary care throughout the UK, grow and support a strong, engaged membership and to be the voice of the GP.

Medical Arrangements

Q6: To what extent do you agree that the new arrangement for medical checks will improve public safety?

We tend to agree but we would like to draw attention to our proposed changes as outlined in response to question 9.

Q7: To what extent do you agree that the police should not proceed to issue a firearm or shotgun certificate unless they have received the relevant information from the applicant's GP?

We agree with the Government's proposed approach on this area.

Q8: To what extent do you agree that the new arrangements for medical checks represent an effective and efficient approach to ensure the police have the medical information they need before making a decision on the application?

We tend to disagree based on the current draft wording but would draw attention again to our proposed changes as outlined in response to question 9.

Q9: Do you have any other comments on the new arrangements for medical checks?

We note that the draft statutory guidance refers to the non-statutory Home Office guide. We would be concerned if the statutory guidance gave the Home Office guide full legal standing when there are some aspects of the guide that we would like some urgent reassurances on. We believe that there is a need for any future updates of the Home Office guide to be carried out in consultation with key stakeholders, including the BMA and the RCGP. For example, section 11.28 of the Home Office guide states:

‘...the applicant to give consent to the sharing of factual medical information between their General Practitioner (GP) and the police, both during the application process and following grant of the certificate while it remains valid.’

We appreciate that this is the position outlined in the application forms under Schedule 1 of the 2017 and 2019 Firearms (Amendment) Rules, but there is nothing to indicate if these sections have been reviewed following recent changes under the GDPR (General Data Protection Regulation). We would welcome a formal view from the Information Commissioner’s Office (ICO) on whether consent obtained at the beginning of a five-year period complies with the GDPR. It is our understanding that the GDPR sets a higher standard for consent than the Data Protection Act.

Several sections need significant redrafting to ensure they comply with and reflect the law and the professional standards set for doctors by their regulator, the GMC (General Medical Council), for example, sections 2.25 and 2.39 to 2.41. We would welcome the opportunity to help with any redrafting of these sections.

The BMA and the RCGP believe that the sections need to make clear that the legal and professional grounds for information sharing depend on the circumstances of each case - for example, whether a firearms applicant or license holder has capacity or not; whether s/he poses a risk to him/herself and/or others. Depending on these circumstances, grounds to share relevant information may include:

- with the individual’s consent;
- on public interest grounds; or
- in some rare circumstances, if it is legally required.

We have outlined in Appendix 1 some suggested changes (marked in bold) to the current wording within the draft statutory guidance document

Detailed information can be found in the GMC’s (General Medical Council) guidance on confidentiality at www.gmc-uk.org/

In addition, guidance on information sharing and suicide prevention for healthcare professionals (endorsed by, amongst others, the GMC, Royal College of Psychiatrists (RCPsych), and Royal College of General Practitioners (RCGP)) can be found [using this link](#)

Q10: Considering the draft guidance other than the new medical arrangements, are there any additional checks or processes that should be included in the statutory guidance to improve public safety?

No. Our comments primarily relate to medical arrangements. We would agree with the comments made by the Home Office when the consultation was launched that there is a need to bring greater consistency to how firearms licences are issued. It is essential that any proposed way forward tightens up the licensing system without creating unreasonable demands.

Q11: Is there anything further that can be added to the guidance to achieve a more consistent approach between forces regarding their firearms licensing functions?

Yes, we would draw attention to our comments and proposed changes as outlined in response to question 9.

Q12: To what extent do you agree that the draft guidance properly balances the interests of certificate holders and the need to preserve public safety?

We tend to disagree.

Q13: Do you have any other comments on the draft guidance?

Our core priority on firearms licensing continues to be public safety, whilst at the same time also ensuring that a system is in place that is transparent and fair to GPs in particular, and doctors in general.

We note the comments in page 5 of the consultation that significant variation has arisen in England and Wales in relation to the response from GPs to police requests for medical checks. The consultation acknowledges that there is also inconsistency in how the police react if they do not receive the medical information requested. Some forces proceed to grant the certificate, while others do not grant certificates unless they have received a response from the GP. Since 2016 the practice in Scotland has been that police require sight of medical information in all cases before a certificate is granted.

The BMA advice to the profession has been that the proper regulation of firearms is in the public interest and it is important that they respond to an initial police letter requesting information. The BMA provides guidance to GPs on firearms licensing on the BMA web site. This includes sample letters for responding to police requests. The BMA and RCGP have worked to improve the system for firearms licensing with the core aim of improving safety for the public whilst also recognising the professional and resource implications for doctors.

Following detailed work with Home Office officials and a meeting with the former Minister of State for Policing the BMA recently signed a Memorandum of Understanding (MOU) with the Home Office and the National Police Chiefs Council acknowledging that doctors can only ever act with reasonable endeavours and that the legal responsibility for monitoring firearms holders always rests with the police. The MOU also highlights that GPs are encouraged to place a firearms flag on GP records, to alert the GP if a patient begins to suffer from a relevant medical condition while the firearms licence is valid. This allows GPs to enter flags on patient records without the potential legal liability that GPs had previously feared, thereby providing a clearer way forward for police and GPs to cooperate constructively and within the scope of the law to improve public safety. The MOU is now a core

reference document for the profession and police on the expectations for firearms licensing and we would welcome the MOU being strongly referenced within the statutory guidance.

The BMA and the RCGP are keen to work towards a unified, consistent, funded and transparent national system for the licensing of firearms certificate holders. Within this BMA and RCGP have developed a standardised form which applicants could present to their general practitioner and be forwarded to the police authorities. Our assessment is that this would significantly assist decision making, provide a unified approach across Great Britain and make the development of software changes to clinical IT systems more feasible.

We feel that after the initial difficulties experienced in 2015/16 when new guidance was introduced there is now a more stable environment with the majority of GPs following the current BMA guidance. We would be concerned in case any new guidance resulted in an increase in disagreements between GPs and police authorities. With the proposed changes outlined earlier in this response we believe that the statutory guidance can be implemented effectively and we would be keen to reflect any changes in an updated BMA guidance document.

Q14: Are any costs likely to arise as a result of the new medical guidance that are not taken into account in the impact assessment?

Yes. Any system will need to be fully funded to ensure that the processes are robust and retain the confidence of the public as well as the stakeholders involved with licensing including GPs.

Q15 Are any benefits likely to arise as a result of the new medical guidance that are not taken into account in the impact assessment?

No

Suggested changes to the current wording within the draft statutory guidance document

Please note that **suggested BMA and RCGP changes to the statutory guidance are shown in bold**

Information sharing between the GP and police

From sections 2.25 to 2.29, the BMA and the RCGP suggest the following changes to the wording as highlighted in bold:

'2.25 The application form requires the applicant to declare relevant medical conditions. The police may approach the applicant's GP to obtain **relevant** medical information both during the application process and at any time during the period of validity of the certificate if there are concerns about the applicant's continued fitness to possess firearms. **Depending on the circumstances of each case, the GP may disclose information:**

- **with the individual's consent;**
- **on public interest grounds; or**
- **in some rare circumstances, if it is legally required. ~~The GP may seek the applicant's consent before disclosing their medical information.~~**

Detailed information on the grounds for disclosing information can be found in the GMC's (General Medical Council) guidance on confidentiality at www.gmc-uk.org/. The GMC is the regulator for doctors.

Medical information required by the police

'**2.26** When a person applies for a firearm or shotgun certificate the police will ask the applicant's GP to:

- (i) confirm whether or not the applicant is or has been treated for any relevant medical condition which could affect their ability to possess a firearm safely; and
- (ii) place a firearm reminder code on the applicant's patient record and confirm that they have done so.

[The BMA and the RCGP notes that *the MDDU raised concerns regarding paragraph 2.26(i) in their response to the Government consultation. They have emphasised that certain conditions may not be treatable (e.g. personality disorders or some forms of dementia), therefore to limit inquiries to treated conditions alone would potentially miss serious, relevant medical conditions*]

'**2.27** GPs should not be asked to give general access to an applicant's medical record **as this may result in GPs being in breach of the GDPR (General Data Protection Regulation) and Data Protection Act 2018 (DPA)**. Nor should they be asked to either endorse or oppose applications. Responsibility for the decision about whether a person is suitable to be granted a certificate lies with the police, not the GP.

Relevant medical conditions

'2.28 Relevant medical conditions that could be relevant, depending on the individual patient's circumstances, include:

- (i) Acute Stress Reaction or an acute reaction to the stress ~~caused by a trauma;~~
- (ii) suicidal thoughts or self-harm;
- (iii) depression or anxiety;
- (iv) dementia;
- (v) mania, bipolar disorder or a psychotic illness;
- (vi) a personality disorder;
- (vii) a neurological condition: for example, Multiple Sclerosis, Parkinson's or Huntington's diseases, or epilepsy;
- (viii) alcohol or drug abuse; **and**
- (ix) **any physical condition that would make the handling of a firearm unsafe.**

This list is not intended to be exhaustive. GPs should consider any other mental or physical condition which may affect the individual's safe possession of firearms or shotguns. See also sections 3.35-3.27 when a patient has been subject to the provisions of the Mental Health Act 1983 and/or the Mental Health (Care and Treatment) (Scotland) Act 2003.'

Payment of a fee

2.29 In any case where the GP requests that a fee be paid in advance of responding to the police request for information **as part of the formal firearms application process**, this is a matter between the applicant and his or her GP. It is not an issue that the police should become involved in.'

BMA additional commentary regarding contractual obligations and fees

Although public safety issues are the priority for firearms licensing we would reiterate that this work is not part of a doctors NHS terms and conditions of service and along with other reports they are asked to complete (e.g. Driver and Vehicle Licensing Agency, insurance companies etc) GPs are under no contractual obligation contractually to undertake this work.

Notwithstanding those doctors choosing to exercise their right to conscientiously object, for those requests that have ethical, public interest or regulatory obligations, we strongly advise doctors to undertake the work, or make arrangements with another doctor (where appropriate).

The BMA are restricted by UK competition law in agreeing or suggesting a specific fee for this work and therefore doctors are required to charge their own fee that is both reasonable and reflective of the costs they bear. We provide guidance to doctors on what to consider when charging fees and we hope in the future to increase the level of detail and resources for members on this.

The BMA and the RCGP also believes the guidance should refer to conditions and 'treatment' that may affect safety in the 'future'.

Access to whole records

At 2.34, under GPs who have a conscientious objection to firearms, it notes ‘..the applicant should discuss with the police whether it would be acceptable to obtain a copy of their medical information from the GP practice for consideration by the force medical officer or by a private GP.’

The BMA has previously received advice from the Information Commissioner’s Office (ICO) that this would be unacceptable. In short an ‘enforced subject access’ may breach provisions of section 184 of the Data Protection Act 2018 (the DPA).

This section is also at odds with draft section 2.27 ‘GPs should not be asked to give general access to applicant’s medical record’.

Flagging

From **sections 2.39 to 2.41**, we also suggest the following changes highlighted in bold. We would welcome a review of these sections by the GMC and the ICO:

Firearms reminder on the patient’s record

‘2.39 The purpose of having a marker on the applicant’s medical record is to provide a reminder to the GP ~~to~~ **that s/he may need to** notify the police if a person begins to suffer from a relevant medical condition, **or a relevant condition worsens significantly**, during the validity of their firearm or shotgun certificate or registration as an RFD. This is added to the patient’s record by the GP on a best endeavours basis, to reduce the risk that such developments are not reported to the police.

‘2.40 There is no requirement for a GP to monitor or assess a patient who currently holds a firearms certificate, **but doctors should consider notifying the police if they become aware that relevant aspects of a license holder’s circumstances have changed. Doctors owe a duty of confidentiality to their patients, but they also have a wider duty to protect and promote the health of patients and the public.**¹ Depending on the circumstances of each case, the GP may disclose information to the police:

- with the individual’s consent;
- on public interest grounds; or
- in some rare circumstances, if it is legally required. ~~The GP may seek the applicant’s consent before disclosing their medical information.~~

Detailed information on the grounds for disclosing information can be found in the GMC’s (General Medical Council) guidance on confidentiality at www.gmc-uk.org/. The GMC is the regulator for doctors.

~~there is a duty for a doctor to disclose information they believe the patient may present a risk of causing death or serious harm to themselves or others.~~

2.41 Where a GP considers that a particular individual, with or without capacity, holding a firearm may expose others to a risk of death or serious harm, the GP must consider disclosing relevant information to the police on public interest grounds.

¹ GMC. *Confidentiality: good practice in handling patient information* (2017). Para 60 www.gmc-uk.org/-/media/documents/confidentiality-good-practice-in-handling-patient-information---english-0417_pdf-70080105.pdf

2.42 Where a GP considers that an individual lacks capacity and is a serious risk to him/herself, the GP must consider disclosing relevant information to the police in his or her best interests and/or on public interest grounds.

Guidance² on information sharing and suicide prevention for healthcare professionals (endorsed, amongst other, by the GMC, Royal College of Psychiatrists (RCPsych), and Royal College of General Practitioners (RCGP)) notes that:

‘In cases where these discussions [about a patient’s wishes around information sharing] have not happened in advance, a practitioner may need to assess whether the person, at least at that time, lacks the capacity to consent to information about their suicide risk being shared...a person is not to be treated as unable to make a decision merely because they make an unwise decision. However, if a person is at imminent risk of suicide there may well be sufficient doubts about their mental capacity at that time.

...If the purpose of the disclosure is to prevent a person who lacks capacity from serious harm, there is an expectation that practitioners will disclose relevant confidential information, if it is considered to be in the person’s best interest to do so.’

2.43 Where a GP considers that an individual with capacity holding a firearm may expose him/herself to a serious risk of injury or death (but not others), there may also be grounds to disclose to the police on public interest grounds.

Guidance³ on information sharing and suicide prevention for healthcare professionals (endorsed, amongst other, by the GMC, Royal College of Psychiatrists (RCPsych), and Royal College of General Practitioners (RCGP)) notes that:

‘Disclosure may be in the public interest because of the far-reaching impact that a suicide can have on others. For example the method of suicide could cause potential serious harm to others. The practitioner will need to make a judgement about whether the benefits to an individual or society in disclosing information without consent outweigh both the individual’s and the public interest in keeping it confidential. Determining where to draw the line is a matter for professional judgement in each individual case.’

2.44 In these circumstances, the individual may be notified of the disclosure (unless this discussion may expose the doctor to a risk of serious harm or it is contrary to the best interests of a patient who lacks capacity) but consent will not be sought. To initially seek consent in these circumstances when there is no ‘genuine choice’ is considered an inappropriate use of ‘consent’ by the ICO.⁴

In other circumstances, where there may be a relevant change in an individual’s circumstances, but they do not meet the threshold for a public interest disclosure, GPs should encourage the license holder to surrender their license. GPs should also consider

² Department of Health. *Information sharing and suicide prevention: consensus statement* (2014). Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/271792/Consensus_statement_on_information_sharing.pdf

³ Department of Health. *Information sharing and suicide prevention: consensus statement* (2014). Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/271792/Consensus_statement_on_information_sharing.pdf

⁴ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/consent/when-is-consent-appropriate/#when5>

sharing relevant information with the police with the individual's contemporaneous consent.

~~'2.421 The police are open to receiving relevant information from GPs, at any time, about an individual who possesses a firearm or is applying to do so. It is open to a GP to approach the police at any time in order to pass on relevant information of possible concern about an individual, whether a patient or not, who possesses firearms or is applying to do so. The GP would have to be satisfied that their public duty to express their concerns outweighs the normal requirements of patient confidentiality. It is good practice for the GP to inform the patient of their intention to provide information when a change in circumstances requires it.'~~

Obtaining medical records of partners or other family members

Section 2.49 notes that 'Chief officers may also consider obtaining medical records of partners or other family members, to assess whether there has been previous abuse'.

We would welcome further discussion on section 2.49, including clarification of:

- the legal basis that the Home Office is expecting this information to be shared on;
- how the Home Office is expecting a GP to manage this request in conjunction with the patient whose records are being accessed; and
- what the Home Office mean by 'obtaining medical records' – for example, relevant parts or the whole medical record? Adults and/or children's records?

Assessment of medical suitability

At 3.33 it notes 'Chief Officers should reach their own conclusions as to the significance of the medical information supplied based on their own knowledge and experience. While they may wish to seek advice from the force medical officer or an independent approved medical practitioner in cases where the medical information supplied is difficult to understand, or where its significance in terms of the possession of firearms is unclear, they should not consult specialists or consultants unnecessarily.'

We believe that chief officers should be encouraged to seek expert medical advice rather than rely on 'their own knowledge and experience'.