

WHAT CONSTITUTES A MEDICAL, MEDICALLY RELATED or COSMETIC PROCEDURE?

Purpose

This JCCP paper is intended to identify a range of relevant issues for discussion and to raise new questions to inform further dialogue relating to the above question. It is not, at this stage, intended to present a final determination.

JCCP Position

The JCCP advises that it is important for practitioners to understand that cosmetic procedures being performed by healthcare professionals are not automatically designated as being either 'medical' or 'medically-related' in nature, in fact many such procedures fall outwith this definition and may be regarded as being 'cosmetic' in nature. Therefore for a procedure to be regarded as being 'medical' ,or 'medically related', there must be a clearly defined, discernible and intended 'medical' evidenced benefit for the patient. The JCCP is of the opinion that if the practitioner is able to determine that they have applied a full diagnostic physical and psychological/emotional assessment of the patient's presenting condition and can justify that the provision of the proposed treatment would assist the patient to prevent and/or reduce the physical and/or psychological and psychosocial symptoms and effects associated with that condition, then the practitioner could justify that the treatment is 'medically related'.

Legal position

English law regarding what is a 'medical' rather than a 'cosmetic' consultation and treatment has been tested in the area of the HMRC's ruling regarding VAT exemptions in the area of aesthetic medicine. This provides one specific determination to inform this discussion.

1. Current VAT law allows for a medical exemption to VAT being added onto services. (The reason for this is to allow for equitable access to Healthcare for members of the public by ensuring that no unreasonable financial barriers are imposed that might inhibit patient access to regulated health care professionals when there is 'medically' diagnosed benefit. It is in the public interest therefore that patients seek healthcare from those qualified and registered to do so for both 'medical' and 'medically' related treatment requirements and procedures.
2. The European Court of Justice (ECJ) viewed 'Healthcare' as broad in its definition, to include prevention, diagnosis, physical health, psychological, emotional and psychosocial health and wellbeing etc.
3. There are two specific criteria which must be filled in order for a cosmetic treatment to qualify for VAT exemption: The person delivering the care must be a Registered Health Care Practitioner and the purpose of the service must have a therapeutic/medical benefit for the patient within the broader definition set out above.
4. The ECJ considered the question of cosmetic services and stated that 'Purely Cosmetic Services' are not exempt from VAT whereas, should there be a specific diagnosed medical benefit then that whole service would be exempt. This determination set out a clear 'binary' distinction between '**Purely**

Cosmetic' and 'Medical' treatments/procedures but did not address the potential existence of a third category – 'medically related'.

5. The ECJ stated also that in determining if the purpose is 'medical' or purely 'cosmetic' then only the Health Care Professional could make that determination. Such determinations must therefore be made on a case by case basis. In the medical records one could expect to find a purpose statement and a treatment plan that would set out the reasons for the treatment and the medical benefit.

6. Simply performing a proper history and examination, which has medical benefit for the patient, is not enough to prove that the purpose of the subsequent treatment is clinical/medical. If you perform a medical consultation which has a demonstrated and evidenced health benefit then that service, if deemed to be 'medical' and is charged for separately, then the medical component of that treatment would be exempt from VAT (as set down by HMRC vs Laserase 1st tier VAT Tribunal 2008).

However to prove that a service or treatment is medical and not purely cosmetic a practitioner needs also to show that the presenting reason for referral or 'complaint' has a specific clinical/medical element to it (i.e. physical, psychological, preventative, curative, etc.) **and that the purpose in performing the subsequent treatment** is in response directly to the presenting concern or condition and that the proposed treatment forms part of a clinically constructed treatment plan. It is important to document this in the clinical/medical record as part of the clinicians' duty to care for the patient and as required by the clinician's Professional Statutory Regulator and by their Code of Practice.

Definition of a Healthcare Professional in UK

A healthcare professional is a person associated with either a specialty or a discipline and who is qualified and registered by one of the designated Government Professional Statutory Regulatory Bodies to provide a healthcare service to a patient. For the purposes of aesthetic 'medical' treatments, the PSRB must have first affirmed their intention to regulate their members for these procedures.

A healthcare professional must be able to demonstrate that they have undertaken sufficient training and are proficient to undertake any specific treatment/procedure that they intend to perform prior to doing so. Additionally the healthcare professional should undertake a full and holistic assessment of the patient to inform the formulation of a written diagnosis and produce a written care treatment plan that identifies also the benefits/risks of the treatment. Details of the patient's personal expectations of the outcomes of the procedure should also be documented. In this way the healthcare professional should use this information to make the case that a particular treatment is for medical purposes. The level of training and documentation must be proportionate to the treatment undertaken. The Healthcare Professional can only demonstrate that a treatment is 'medical' if it falls within their defined scope of legal, professional and ethical practice.

For example, a potential life changing plastic surgical procedure would require more detailed assessment and documentation than, for example 'skin tag' removal. Similarly the length of the required 'cooling off' period provided prior to the commencement of any procedure should be proportionate to the risks associated with the procedure in accordance with "Good Medical Practice" as cited within GMC guidance and as stated in the JCCP/CPSA Code of Practice (2020). For aesthetic practice the expected standard of a professionally constructed clinical/medical record would also include assessing and examining a patient's concerns and reasons for seeking a procedure and include a psychological/emotional assessment. This assessment should include screening for anxiety, Body Dysmorphic Disorder or for any

other form of presenting mental health/psychological condition. Further, it should also include assessment of personality traits which may or may not fall within the diagnosis of a 'mental health condition'. Lack or loss of confidence, emotional vulnerability and feelings of low self-esteem, particularly when associated with 'impulsivity', are key considerations.

December 2020