



Royal College
of Surgeons

ADVANCING SURGICAL CARE



Invited review handbook

Professional and clinical standards division

Purpose of this document

The purpose of this document is to provide regulations and guidance for healthcare organisations commissioning invited reviews. It sets out the processes that will normally be followed by the Royal College of Surgeons (RCS) when undertaking invited reviews on behalf of the healthcare organisations that commission them.

The processes set out here may on occasion be varied, dependent on the individual circumstances that the RCS is invited to assist with. In such instances the RCS will confirm its approach with the organisation commissioning the review wherever possible so that it ensures that the invited review being provided can achieve the purposes that have been set.

This document is subject to regular review and updates. The latest version of it can be found on our website.

Introduction and background

The RCS is committed to enabling surgeons to achieve and maintain the highest standards of surgical practice and patient care.

The Invited Review Mechanism (IRM) was established in 1998 by the RCS and the specialty associations in response to the events in Bristol with the aim of assisting healthcare organisations to improve surgical standards.

The invited review service can be used across the NHS and independent sector in England, Scotland, Wales and Northern Ireland.

It is intended that this process is seen as giving a fair, independent professional review which will support, but not replace, a local healthcare organisation's existing local procedures for dealing with such matters (or the processes of any formal regulatory body).

Types of invited review

Generally speaking, the RCS is able to offer three types of invited review:

Service reviews assist healthcare organisations by providing independent expert advice on the way a surgical service is being delivered and how this might be improved.

Individual reviews assist healthcare organisations in identifying whether there is a problem to consider or case to be answered with regard to alleged unsatisfactory surgical practice of an individual surgeon.

Clinical record reviews provide an independent expert opinion on whether the management of a specific case or series of cases has met the required RCS/specialty association standards.

Governance

The invited review service is overseen by the Invited Reviews Oversight Group, made up of representatives from the RCS, the ten surgical specialty associations, the Faculty of Dental Surgery and RCS' Patient and Lay Group. This group oversees all invited review activity and the development of the service. Members of the group may also provide advice on the handling of requests for reviews and support reviewers in their role.

Regulations

The following regulations govern the invited review process and should be followed by all parties involved in an invited review.

Requesting a review

An invited review will be initiated when a formal request is made by a healthcare organisation. To do this, a review request form must be completed by the organisation's Chief Executive or Medical Director and returned to the Chair of the IRM with a covering letter.

The covering letter must include the following:

- » Details of the surgeon/surgeons/department or unit to be reviewed
- » Confirmation of acceptance of the review conditions (see below)

A surgeon or other staff member wishing to request an invited review can only do so by approaching their employer to request a review on their behalf.

The completed review request and any supporting documentation provided by the healthcare organisation will be considered by the Chair of the IRM and the relevant specialty member of the Invited Review Oversight Group, and a decision will be made as to whether an invited review is appropriate.¹

If it is decided that an RCS review is not appropriate, an explanation will be given and the RCS will try to assist by providing advice on a suitable alternative course of action.

Involvement of other regulatory or advisory bodies

The RCS will not normally undertake a review if the case is subject to 'live' investigation by another organisation, e.g. the Care Quality Commission (CQC), the General Medical Council (GMC) or the National Clinical Assessment Service (NCAS). This is unless it has been established by the RCS, the advisory or regulatory bodies concerned and/or the healthcare organisation commissioning the review that this is appropriate in the circumstances. For example, if the CQC is carrying out an inspection of a healthcare organisation and an invited review has previously been commissioned to support the healthcare organisation to better

¹ A nominated deputy will normally undertake this role where an actual or potential conflict of interest is identified.

understand the quality and safety of care in a particular surgical service. Another example is if the GMC is undertaking an investigation of an individual surgeon's practice and their employer has asked for an invited review to consider the quality of care being provided in the service they work for.

Indemnity

The healthcare organisation commissioning the invited review is required to indemnify the RCS, the association and the reviewers undertaking the review by signing a Deed of Indemnity. An invited review cannot take place until a signed copy of the Deed of Indemnity has been received by the RCS.

Review conditions

In addition to the requirements of the Deed of Indemnity there are several conditions attached to a review. By completing a review request form and commissioning a review, the healthcare organisation agrees that:

- a. All those directly involved – surgeons within the unit being reviewed (or the individual surgeon being reviewed in the case of an individual or clinical record review), and the staff who will be asked to attend interviews are to be fully informed in advance of the purpose of, and arrangements for, the review.
- b. Individuals interviewed as part of the review process may be accompanied and assisted by a third party (who may be a friend, colleague, medical defence society, BMA or legal representative) during the review and that the identity of this person will be declared in good time in advance of the site visit.
- c. The review will be carried out in an open, fair and structured manner. All relevant documents relied on by the healthcare organisation and given to the reviewers will also be made available to the surgeon(s) being reviewed and vice versa.
- d. The healthcare organisation commissioning the review remains responsible for patient safety within their organisation at all times throughout the review process. Where an invited review has been commissioned due to potential concerns about patient safety, the healthcare organisation is responsible for taking any necessary steps to protect patient safety while the invited review is being completed and the review team's view on the circumstances is being reached.
- e. Where concerns about patient safety are identified and reported to them by the invited review team, the healthcare organisation will consider and act on all the review team's recommendations. They will also ensure that when doing so all other places in which the surgeon(s) provides a surgical service are made aware of the review's recommendations to ensure that the safety of patients is maintained. The RCS, the association and/or the reviewers reserve to themselves the right to disclose in the public interest but still in confidence to a regulatory body, such as the General Medical Council, or the Care Quality Commission or any other appropriate recipient, the results of any investigation and/or of any advice or recommendation made by the RCS, the Associations and/or the Reviewers to the Trust.

- f. The final report must be made available to the surgeon(s) and others directly involved – as determined by the healthcare organisation – by the Chief Executive or Medical Director of the healthcare organisation commissioning the review (having considered any duty of confidentiality or other legal obligations that may apply).
- g. The healthcare organisation will ensure that where necessary it works with the RCS to meet any obligations that either organisation has under legislation relating to confidentiality or data protection (see appendices below).
- h. The healthcare organisation will pay the fee charged by the RCS (or any relevant cancellation charge – see the appendices below) for undertaking a review before the report is released. The healthcare organisation will also reimburse the reviewers financially for their time and the travel and subsistence expenses of the reviewers will be met by the healthcare organisation.

Guidance

The following guidance will normally be followed when managing an invited review. It is provided to ensure that all parties commissioning or participating in an invited review are clear on the approach that will normally be followed by the RCS and its review team when undertaking this work.

The invited review process

The review process, though not formal, must observe basic rules of fairness and openness. The reviewers must approach the task with a completely open mind. The information reviewed should be relevant to the issue in hand. The reviewers must not exclude relevant information.

The invited review team

Having received a review request, the RCS and specialty association will identify an appropriate review team based on specialty, sub specialty and location, who will be appointed to provide an independent and expert view on the circumstances under review.

The invited review team will normally comprise three people: two clinical reviewers who are surgeons, (one representing the RCS, one representing the relevant surgical specialty association and one lay reviewer). They will normally also be accompanied by an invited review manager (normally a member of RCS staff).

The RCS' invited review panel is made up of clinical and lay reviewers, recruited against set criteria. In some instances there may be reviews where the clinical expertise or surgical experience required necessitates the use of a reviewer who is not a member of the panel but identified by the RCS or specialty association for this purpose. All reviewers will receive a detailed briefing on their role.

Having been appointed to a specific review, a reviewer will also be asked to identify if they are aware of any conflict of interest that may disqualify them from undertaking the review. This will then be considered further by the Chair of the IRM – and the relevant specialty member of the

Invited Review Oversight Group where necessary – who will agree a proposed approach to the situation for further discussion with the healthcare organisation commissioning the review.

Other RCS representatives advised of the review

The local RCS appointed Regional Director (see the RCS' website for more details) will be informed in confidence of the name of the healthcare organisation where a review is taking place, and the specialty in which the review is taking place. The Regional Director may be able to provide advice and support to the Medical Director or Chief Executive during the review.

Terms of reference

The terms of reference setting out the scope for the review must be jointly agreed by the RCS, the Chief Executive/Medical Director of the healthcare organisation and the reviewers.

A template for terms of reference for use by the healthcare organisation will be provided by the RCS. The RCS or the invited review team may also suggest amendments to the proposed terms of reference received for consideration and agreement by the healthcare organisation.

The terms of reference must be shared by the healthcare organisation with the surgeon(s) being reviewed in advance of the visit.

As the terms of reference for the review must be jointly agreed between the RCS, the review team and the healthcare organisation commissioning the review, the review team will not accept any unilateral extension or alteration of the terms of reference for the review in advance of the visit. If, on arrival at the healthcare organisation to undertake a review, the reviewers believe the healthcare organisation has extended or significantly altered the terms of reference for the review, or if it becomes clear to the reviewers that the nature of the inquiry is materially different from that in the terms of reference, this will be highlighted to the healthcare organisation commissioning the review and considered further between all parties in advance of the review commencing.

The invited review team will not normally address or comment on issues that fall outside the terms of reference for a review. However, in the event that serious concerns are raised outside of the parameters agreed by the terms of reference but which relate to circumstances that the reviewers have reason to believe may have the potential to affect patient safety, or raise any matter that involves a reviewer fulfilling their professional duty as a registered medical practitioner, they will bring these to the attention of the Chief Executive or Medical Director during the course of the invited review visit and later in their report.

Surgeon consent for an individual review

In an individual review the surgeon under review is asked to confirm in writing to their Medical Director that they agree to participate in the review and that they have been fully informed by the healthcare organisation of its purpose and arrangements. This correspondence should also be copied to the RCS for information.

Supporting documentation

When agreeing the terms of reference for the review with the healthcare organisation, the reviewers will have the opportunity to request from the healthcare organisation any information they believe is necessary to further the review process.

The Chief Executive or Medical Director of the healthcare organisation should make available all relevant documentation requested relating to the terms of reference for the review, subject to compliance with its obligations on patient confidentiality and any other obligations of confidence and/or obligations under the Data Protection Act 1998.

It is also open for the surgeon(s) under review to provide any documentation relevant to the terms of reference that they wish the review team to consider. This information should be provided to the healthcare organisation who should then ensure that a copy of this is submitted to the RCS.

All relevant documents relating to the review must be received by the review team a minimum of two weeks before the visit date. The RCS and the review team reserve the right to postpone the review if the documentation is not received in sufficient time. The review team also reserves the right to discount any information received on the day of the visit which is not deemed relevant to the terms of reference.

Any documentation provided to any party by post should be sent by a secure means or if sent electronically should be password protected or encrypted.

The Chief Executive or Medical Director should make it clear to the reviewers whether the documentation made available to them during the course of a review should be returned to the healthcare organisation or destroyed at the end of the review. In the absence of such guidance, the RCS will destroy any documents they hold once the review report has been completed and issued to the healthcare organisation and the RCS has received formal confirmation that the healthcare organisation understands and accepts the report's conclusions and recommendations and is taking forward work to address them.

To ensure fair process, a full copy of the documentation given to the reviewers by the healthcare organisation should also be made available by the healthcare organisation to the surgeon(s) concerned in a timely manner, before any interview held to allow them (and their representatives) to review this.

Patient identifiable data

Any information provided identifying patients should, so far as possible, be anonymised. If it is not possible to anonymise information, the healthcare organisation should ensure that:

- » Patient confidentiality is maintained to the maximum extent possible and/or any necessary specific patient consent has been obtained.
- » Any obligations (either for the organisation or the individual surgeon) as data controller in any applicable case under the Data Protection Act 1998 have been taken into account.

The healthcare organisation may also wish to seek advice from their Caldecott Guardian or legal advisers where appropriate on this issue.

Clinical records

The healthcare organisation is asked to ensure that original clinical records which are to be considered as part of a review are retained on the healthcare organisation's premises at all times and must not be sent to the reviewers or to the RCS.

If a clinical record review is to form part of the invited review process, the number of records to be reviewed should be stated at the outset so that an accurate estimation of the time required to adequately review the records can be made. Where there are large volumes of clinical records to review, it may be necessary to extend the duration of the review visit. Copies of clinical records may be sent in advance to reviewers in some circumstances, but consideration must be given to patient consent, confidentiality, secure transportation and disposal.

Interviews

The RCS will provide the healthcare organisation with a template list of potential interviewees for the invited review visit. The healthcare organisation will update this as appropriate to ensure that the review's terms of reference can be met and advise the RCS of the final review visit timetable (see below) as soon as possible in advance of the invited review visit.

The RCS has prepared an information resource for staff who will be interviewed as part of the process by the reviewers. The Chief Executive or Medical Director of the healthcare organisation is asked to ensure that this is made available to relevant staff before the review takes place.

The reviewers will ensure, as far as is practical and taking due account of the need for confidentiality, that staff in the healthcare organisation who will be directly involved in the review fully understand the aims and objectives of it. The reviewers will also impress upon interviewees that the process is a confidential one and the information disclosed to interviewees is intended for a limited purpose and should not be disclosed to anyone else.

Prior to all interviews, the question of confidentiality should be raised by the reviewers with the interviewees. It will be made clear that information provided by interviewees during their interview is fundamental to the review and will be used in the report.

Any interviewee concerned about his/her interview will, as far as possible, be reassured that interviewee evidence will be reported in an amalgamated and anonymised format within the report wherever possible. In some circumstances (for example where serious allegations are made about the safety of patients or staff), information provided by interviewees may be attributed to them in the report. However, verbatim attributed comments will not normally be included in the final report unless this is essential and the interviewee has been advised accordingly.

Further guidance on issues of confidentiality can be found in the appendices below.

The Chief Executive or Medical Director is asked to ensure that, within the limits of practicality, interviews should take place in a comfortable and welcoming environment.

Interviewees should be advised that the invited review team's interview timetable may sometimes overrun but that, where possible, staff attending interviews will be advised when this has occurred.

Timetable for the review

The majority of invited review visits take two days to complete. Sufficient time will need to be scheduled into the timetable to review clinical records (where required) and other documentation which cannot be removed from the premises. If there are large numbers of personnel to be interviewed or documentation (including clinical records) to be studied, the review visit may take longer than two days.

A timetable for the review visit will be agreed by the healthcare organisation and the invited review team. The healthcare organisation is responsible for making the detailed arrangements for the visit when doing so, and the Chief Executive or Medical Director responsible are asked to bear in mind the sensitivities that will exist. For example, the healthcare organisation is advised where possible to have a waiting area for personnel who are to be seen by the reviewers and careful consideration should be given to the timetabling of the review.

It is suggested that the reviewers should arrange to meet the surgeon(s) being reviewed (and any accompanying person) early in the process. This meeting should ensure the surgeons have ample opportunity to present their views and discuss them with the reviewers.

In individual reviews the review team will also wherever possible meet with the surgeon being reviewed at the conclusion of the invited review visit, to advise them of their preliminary findings, conclusions and recommendations.

The documentation relied on in the report

Following the invited review visit, and to ensure that the review has been carried out in a fair and open manner, the RCS will write to the healthcare organisation – as well as to the surgeon under review in an individual review – to provide a full list of the documentation relied upon when producing the report. It will also set out a list of the interviews held during the invited review visit.

In an individual review, both the surgeon under review and the healthcare organisation commissioning the review will be asked to confirm that this list is ‘factually correct’ and that they are clear about the documentation relied upon by the review team and the personnel that have been interviewed.

Any comments received from the surgeon as part of this process will be taken into account by the review team as part of their process of finalising the report. If it is suggested that the surgeon has not had the opportunity to see all the documentation provided to the review team, the RCS will contact the healthcare organisation to ask them to confirm that all this documentation has been shared. Again any comments made by the surgeon as part of this process will be taken into account by the review team as part of their process of finalising the report.

In an invited service review the Medical Director of the healthcare organisation (or another appropriate senior manager) will be asked to complete this exercise and confirm that both the documentation list and the interviewee list provided are ‘factually correct’.

Patient safety concerns

If the review team identify any circumstances where an individual surgeon’s performance is unsatisfactory and patient safety may be at risk, appropriate recommendations will be made

in their report for consideration and action by the healthcare organisation commissioning the review. Where the matter concerned is urgent, immediate advice about the review team's view will be provided to the Medical Director of the healthcare organisation (or their nominated deputy) at the conclusion of the invited review visit. This advice will then be confirmed in writing by letter prior to the review team's production of their report, so that the healthcare organisation can take any recommended action as necessary to protect patients, staff and in some circumstances the surgeons themselves.

Where a report recommends that the healthcare organisation involves another advisory or regulatory body (e.g. NCAS, the CQC or the GMC), the draft report may be shared in confidence with that body to ensure the feasibility of the recommendation.

Status of Recommendations

It must be emphasised that the invited review arrangements are not regarded as an abrogation of, or a replacement for, the healthcare organisation's own decision making and disciplinary procedures which must strictly be applied according to their terms. Invited review reports are advisory and their recommendations are for consideration by the healthcare organisation commissioning the review. The healthcare organisation remains entirely responsible for all decisions or subsequent actions, upon which it is urged to seek appropriate legal advice.

The Deed of Indemnity does, however, state that the RCS, the Association and/or the reviewers reserve to themselves the right to disclose (in the public interest but still in confidence) to a regulatory body such as the General Medical Council, the Care Quality Commission or any other appropriate recipient, the results of the review and any advice or recommendations made to the healthcare organisation.

The RCS will make such a report to a regulatory body if there are concerns that the healthcare organisation has not taken appropriate action in response to its advice within what the review team and the RCS consider to be acceptable timescales, and where patient safety may be in jeopardy.

Once the final report has been forwarded to the healthcare organisation, it becomes their property and responsibility. The RCS, the association and the reviewers have no authority to release the report or comment on its contents to any third party. Reviewers will also be asked to ensure that they respect the confidentiality of reports at all times.

The healthcare organisation's attention is drawn, however, to the section below headed 'Openness and Transparency' and to the circumstances in which the RCS considers it necessary to disclose and give appropriate publicity to the circumstances relating to and the outcome of a review.

The completed report will be forwarded to the healthcare organisation by the RCS as soon as possible after the review. The RCS aims for this to happen within eight weeks of the invited review visit. Where it is not possible to meet this timescale, the RCS will inform the healthcare organisation and advise when the final report is likely to be received.

The RCS will not normally forward reports until payment for the review has been received.

Follow up

The healthcare organisation must on request provide feedback to the RCS on the progress made on implementing the recommendations from the report. The RCS will normally follow up actions taken with the healthcare organisation during the six months after the final report has been provided to them. In some cases it may be necessary for follow up to be undertaken over a longer period of time.

The purpose of this follow up is to request a progress report on the actions being taken to address the recommendations made or problem identified. When following up a review, the RCS would anticipate being able to establish that the report's recommendations have been agreed by the healthcare organisation and have either been addressed or an action plan has been put in place by the Medical Director to ensure that they will be addressed against an appropriate timeframe. If the healthcare organisation has decided against implementing the reviewers' recommendations, it should be prepared to explain fully its reasoning for so doing.

The RCS will normally conclude its 'active' involvement in the review having had it confirmed that this work has either taken place (or is continuing to take place) unless the review team or the RCS consider that an alternative approach is required on the basis of their understanding of the circumstances of the case.

Follow up visits may be arranged at the request of the healthcare organisation. Such visits will be subject to additional fees, and the RCS invited review office will be able to provide further information about this.

Service evaluation and learning

Following the submission of the final report, the healthcare organisation will be sent a request for feedback about the quality of the RCS's invited review service so that this feedback can then be used by the RCS to assure and improve the service's future development. The RCS may periodically publish a (suitably anonymised) amalgamated summary of this feedback.

In addition, the RCS will also periodically complete and then publish a (suitably anonymised) thematic analysis of the nature of the causes for concern that are identified about surgical practice through invited reviews so that this can both be learnt from and used to drive improvements to patient care.

Media and communication

The RCS will not normally enter into correspondence about reviews with any party other than the Chief Executive or Medical Director (or their nominated deputies). If the RCS is approached directly by any member of the healthcare organisation's staff regarding specific arrangements for the review, they will normally be advised to approach the Chief Executive or Medical Director in the first instance.

In the event of media interest, responses to press enquiries or the preparation of press releases should be handled jointly by the healthcare organisation and the RCS Communications Department unless, by prior agreement, it has been confirmed that either the healthcare organisation or the RCS will respond. The healthcare organisation is asked to nominate the person who may be contacted by the RCS Communications Department regarding any press enquiries that may arise in relation to the review. This information must be provided when the formal review request is made. For information, the preferred RCS policy when dealing with such press enquiries is to provide confirmation that a review is taking/has taken place, but to not normally disclose specific details of the review. In such circumstances the RCS will make contact with the healthcare organisation concerned and support them in their work to be open about the circumstances of the review that has taken place.

Openness and transparency

Where a healthcare organisation has commissioned an invited review of surgical activity in response to concerns about the quality of patient care, the RCS considers that the healthcare organisation should be open and transparent with patients, their relatives and the public about the review.

For example, where patient safety risks or other issues related to the quality of patient care have been identified, it is the RCS's expectation that the healthcare organisation commissioning a review should publicise and make available to the public a clear summary of the review that has taken place and the steps the healthcare organisation is taking to address the issues themselves and the recommendations applicable to them.

The healthcare organisation's summary should include clear information on:

- a. The reasons for the invited review
- b. Its terms of reference, conclusions and recommendations
- c. The actions taken by the healthcare organisation to address the issues identified by the review and the recommendations applicable to them

Duties of confidentiality to patients and staff

The specific information a healthcare organisation can make available about a review will vary from review to review depending on the circumstances involved. It is important that the healthcare organisation takes account of their legal responsibilities towards the confidentiality of their patients and staff. The RCS takes the view that healthcare organisations should not use patient confidentiality or data protection as blanket reasons to withhold information about a

review which has identified issues of patient safety or quality of care. Some of the legislation a healthcare organisation will need to consider when publishing information about invited reviews will include the Public Interest Disclosure Act 1998, the Data Protection Act 1998 and the law relating to patient confidentiality. The RCS would advise that the healthcare organisation concerned takes their own legal advice on these points where required.

Sharing information with regulators

In a situation where this is required, the primary responsibility for sharing information about a review resides with the healthcare organisation commissioning the review. However if the RCS is asked to confirm if a review has taken place it will do so. The RCS also reminds healthcare organisations that it reserves the right to disclose in the public interest but still in confidence information about the review to a regulator under the provisions of the Deed of Indemnity.

Duty of Candour

Throughout the invited review process the healthcare organisation will be responsible for meeting its responsibilities under the legislation enacted through the The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, and in particular for meeting the duty of candour that it has to patients as described by this legislation in relation to the circumstances considered by the invited review.

Appendix one

Fee schedule

Charges for invited reviews

The current charge for an individual or service review including a two-day review visit is £15,000 + VAT. This is to cover the RCS' administration costs associated with setting up the review, monitoring its progress and ensuring the satisfactory and timely completion of the report for onward transmission to the healthcare organisation. The charge for a review involving a longer review visit and the charges for all clinical record reviews will be established on a case by case basis.

Reviewer fees and expenses

In addition to the RCS fee, the healthcare organisation must reimburse each reviewer (or their employer) financially for their time at a rate of £500 per day of the site visit.

For clinical reviewers, the following will apply:

- » If the review is undertaken during the reviewer's NHS working commitments, the fee will be paid to the reviewer's employing Trust.
- » If the review is undertaken during the reviewer's private working commitments, the fee will be paid directly to the reviewer.

It is the responsibility of the reviewer or the reviewers' employing Trust to invoice the healthcare organisation for financial reimbursement at the agreed rate once the final report has been submitted to the healthcare organisation.

The travel and subsistence expenses of the reviewers must also be met by the healthcare organisation. It is recommended that expense claim forms and a copy of the healthcare organisation's rules relating to claims are given to the invited review team on the first day of the review.

Cancellation charges

In event of cancellation, the following charges will apply:

Stage of IRM process	Cancellation charges
Once request approved	£500 + VAT
From when the review documentation (formal letter including Deed of Indemnity etc) sent to Trust	£5000 + VAT
Within two weeks of the visit date	£7500 + VAT plus any travel expenses incurred by the review team
Postponement of visit date by the healthcare organisation ²	Any travel expenses incurred by the review team
Postponement of visit by RCS ³	Any travel expenses incurred by the review team plus £1000

2 A review can be postponed for a maximum of three months from the original review date, otherwise a £5000 + VAT cancellation fee will apply.

3 This will occur if the required documentation has not been received by the RCS, e.g. signed Deed of Indemnity, copy of the letter of confirmation from surgeon being reviewed, etc within 10 days of the review date.

Appendix two

Linked organisations

As part of the RCS's invited review activity, the RCS maintains close working relationships with the following bodies:

The National Clinical Assessment Service (NCAS)

www.ncas.nhs.uk

The General Medical Council (GMC)

www.gmc-uk.org

The Care Quality Commission (CQC)

www.cqc.org.uk

Further information about the RCS's relationships with each of these bodies can be provided on request.

Appendix three

Information management guidance

The Data Protection Act

When undertaking its invited review work, the RCS will ensure that it meets its responsibilities under the Data Protection Act 1998 (DPA), and in particular in relation to any 'subject access requests' that the RCS receives from any person whose personal data may be processed as part of the invited review process.

On receipt of such a request, the RCS will normally take the view that it is acting as a 'joint data controller' along with the healthcare organisation commissioning the review.

The DPA requires a 'data controller' to respond to a valid subject access request promptly, or within 40 calendar days. A reply should be provided to the data subject confirming whether the personal data is held or not and where it is. A copy of the information should be provided in permanent and intelligible form (unless an exemption applies).

Given their position as 'joint data controllers', the RCS will contact the healthcare organisation that has commissioned the review to identify which is the most appropriate party to take responsibility for complying with a request. In line with Information Commissioner Guidance this will be determined through both parties' consideration of the level of expertise, knowledge and control of processing media of the respective 'joint controllers'. In relation to requests received for personal data held by the RCS for the purposes of the invited review, the RCS will normally take an approach that sees the healthcare organisation commissioning the review as responsible for supplying any personal data that they provided to the RCS as the original data controller, whereas the RCS will be responsible for supplying any specific personal data that they have created for the purposes of completing their review. The specific approach taken may be varied, however, on the basis of the nature of the request received to ensure that the RCS can meet its legal obligations.

The Freedom of Information Act

The RCS is currently exempt from the requirements of the Freedom of Information Act 2000. Healthcare organisations are advised to consider their obligations under the act in relation to invited review reports. As invited review reports contain information about individuals (including the reviewers themselves) which is regarded as confidential, healthcare organisations should take their obligations of confidence very seriously and if appropriate observe the 'breach of confidence' exemption before making a decision to disclose, under FOIA.

If a healthcare organisation decides to disclose any confidential information relating to a review pursuant to an FOIA request, it is asked to notify the RCS as soon as possible to allow the RCS to make any appropriate representations to protect confidential information concerned.

Data retention in relation to invited reviews

There are no legal requirements regarding the minimum period of time the RCS and the reviewers should retain documents relating to invited reviews. The RCS will normally retain documents relating to a review for four years after which they will be confidentially destroyed.

The RCS will permanently retain a signed copy of the final report.

Appendix four

Confidentiality

Information in this appendix is provided to outline issues that may arise in relation to confidentiality. It is not meant to be comprehensive and does not purport to offer legal advice. The healthcare organisation concerned is encouraged to seek separate advice to ensure that its obligations to respect confidentiality and/or to observe the terms of the Data Protection Act 1998 are fully met.

It is likely – indeed, probably inevitable – that the healthcare organisation, through its employees, and possibly the surgeons under review, will disclose sensitive and confidential information to the reviewers. The test of when information is ‘confidential’ is simply whether it is in the public domain or readily accessible in the public domain. Using this test, it is highly likely that information about patients, their families, other members of staff, working relationships in the healthcare organisation and so on, will be confidential. It is imperative that when confidential information is disclosed to the reviewers, disclosure is authorised by the people concerned. In short, they must know that that information is going to be disclosed to the reviewers and they must understand that the information may appear in some form in the report. The reviewers are acutely aware of this issue and will, wherever possible, anonymise confidential information (and possibly put it into a confidential annex for strictly limited circulation). Nonetheless, this issue must be addressed in advance by the Chief Executive or Medical Director to avoid the possibility that confidential information is disclosed to the reviewers without consent, since that may expose both the healthcare organisation and the review team as recipients to legal action.

Information disclosed by a healthcare organisation (through its employees or officers) about a patient or a doctor, or by a patient or doctor relating to a patient’s treatment or, in the case of a doctor, relating to internal healthcare organisation issues is generally disclosed to other people in what the law recognises to be a ‘relationship of confidence’. Broadly this means that it should be used by the recipient for the purpose for which it was disclosed – patient management or personnel records. Any use or disclosure outside of the purpose for which it was originally disclosed is potentially a breach of confidence which can be restrained by legal action.

The primary responsibility for ensuring that confidential information disclosed to reviewers as part of an invited review is authorised to be disclosed and used for purposes of the review is that of the healthcare organisation concerned.

If information about patients or about the individual surgeon under review (or possibly about other staff) is disclosed to reviewers in circumstances which the reviewers or the RCS consider may be unauthorised, the reviewers may adopt one of the following approaches:

- i. Ask the healthcare organisation to confirm that the information disclosed is authorised for full and unrestricted disclosure (or to specify if any restrictions are imposed on its use and subsequent disclosure).
- ii. Ask the person disclosing the information to the reviewers to confirm (and if necessary provide proof of) his/her authority to disclose it.
- iii. Consider whether a redaction or anonymisation of any document would in the circumstances permit any such document to be used effectively.

Even if the healthcare organisation or individual is not specifically authorised to disclose information, there is an argument that the 'public interest' (meaning that it is in the public interest that some otherwise confidential information is disclosed to an appropriate recipient) can in some circumstances justify its disclosure to the reviewers. Good practice however is to draw attention to concerns by asking the healthcare organisation or individual concerned to deal with the reviewers' questions about the confidentiality of information so that they can be resolved early in the process.

Appendix five

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