

Guidelines for the provision of Clinical Reviewers to support Health & Justice deaths in custody investigations



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Publications Gateway Reference: 08475

Document Purpose	Guidance
Document Name	Guidelines for the provision of Clinical Reviewers to support Health & Justice deaths in custody investigations
Author	NHS England Health and Justice
Publication Date	21 September 2018
Target Audience	Medical Directors, Directors of Nursing, Directors of Adult SSs, NHS England Regional Directors, NHS England Directors of Commissioning Operations, Communications Leads
Additional Circulation List	
Description	This document provides NHS England regional Health and Justice Commissioning Teams with guidance to ensure compliance with Standing Financial Instructions, procurement processes, good governance and assurance of the Clinical Reviewers. The document encompasses the process by which the Health and Justice Commissioning Teams should, procure, commission, appoint and engage with Clinical Reviewers.
Cross Reference	Guidelines for Health & Justice Clinical Reviewers
Superseded Docs (if applicable)	N/A
Action Required	N/A
Timing / Deadlines (if applicable)	N/A
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Document Status	This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of this document are not controlled. As a controlled document, this document should not be saved onto local or network drives but should always be accessed from the intranet.

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Version number: FINAL

First published: September 2018

Updated: (only if this is applicable)

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2 Introduction

- 2.1 This document provides all the essential information and documents required by NHS England to enable the Health and Justice Commissioning Teams to appoint, procure, commission and engage with Clinical Reviewers' in order to fulfil their requirement to provide a clinical review report in support of the Prison Probation Ombudsman (PPO) investigation into a death in custody.
- 2.2 NHS England has created this guide to be utilised by the Health and Justice Commissioning Team to appoint clinical reviewers and clinical review services.
- 2.3 This document is split into sections that address the different models and requirements depending on which method is opted by regions.

3 Purpose of document

- 3.1 NHS England is responsible for direct commissioning of services beyond the remit of Clinical Commissioning Groups. NHS England Health and Justice Commissioners, commission primary care, secondary care, mental health, substance misuse, podiatry, ophthalmology and dentistry for people in secure and detained settings.
- 3.2 This document forms part of a suite of policies and procedures to support commissioners to commission clinical reviews and reviewers. The document encompasses the process by which the Health and Justice Commissioning Teams should, procure commission, appoint and engage with Clinical Reviewers' to ensure compliance with NHS England and nationally mandated processes.
- 3.3 The purpose of this guidance paper is to provide NHS England Health and Justice Commissioning Teams with guidance to ensure compliance, good governance and assurance of the Clinical Reviewers.
- 3.4 Clinical Reviewers' are healthcare professionals, either General Practitioners (GPs) or registered nurses, who are engaged by NHS England to undertake the clinical review of death in custody. Clinical Reviewers' may be commissioned by NHS England as either independent contractors or through a third party provider. All Clinical Reviewers' should work within a framework of clinical governance that develops their knowledge and skills and assures the organisation that the standards to which they work are both consistent and fair and meet any regulatory requirements.
- 3.5 NHS England is committed to improving health outcomes and ensuring equality of access and non-discrimination, irrespective of age, gender, disability (including learning disability), stated or assumed gender identity, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation. In carrying out its functions, NHS England will have due regard to the different needs of protected equality groups, in line with the Equality Act 2010.

This document is compliant with the NHS Constitution and the Human Rights Act 1998.

The term “Clinical Reviewer” in this document means all those who perform clinical reviews in support of the Prison and Probation Ombudsman investigation.

4 Background

- 4.1 The Prison and Probation Ombudsman (PPO) is appointed by the Secretary of State for Justice and is remitted to investigate the circumstances surrounding the deaths in prison, Immigration Removal Centres, approved premises and courts.
- 4.2 The Secretary of State for Health has agreed that NHS England will take the lead responsibility for arranging an independent investigation of the clinical care provided, including whether referrals to secondary healthcare were made appropriately. This responsibility has been delegated to the NHS England Health and Justice Commissioning Teams.
- 4.3 The purpose of the clinical review is to assess the healthcare the deceased received whilst in custody and the review will form part of the PPO investigation and subsequent PPO report.
- 4.4 Clinical Reviewers’ must be appropriately experienced, registered health professionals with clear competency levels and expertise to enable them to complete the review.
- 4.5 Clinical reviewers’ support PPO to investigate all deaths under Article 2 (Right to life) of Human Rights Act 1998. During 2016/17 there were approximately 80 Clinical Reviewers’ who undertook clinical review investigations into 354 deaths in custody.

5 Roles and responsibilities

5.1 NHS England

NHS England is responsible for the commissioning of healthcare in the justice system which is managed at Regional level by nine teams, in the North of England, Midlands and East, and South of England, and one team in London. The nine teams report to their respective Regional Directors of Commissioning, via a VSM.

The nine commissioning teams are supported by the Central Support Team, led by the Director of Health & Justice, Armed Forces and Sexual Assault Referral Centres (SARCs), within Specialised Commissioning.

The roles and responsibilities of all key teams involved in the selection, engagement and commissioning of a clinical review service are outlined below.

5.1.1 National Health and Justice Team

- Develop national policy and guidelines
- Delegate healthcare budgets
- Manage and engage with national departments and key national stakeholders
- Provide guidance on models of commissioning
- Agree national performance frameworks with partners
- Ensure that services meet national targets on quality and cost.
- Engage with inspectorate and regulatory bodies
- Manage national contingencies and risks
- National performance monitoring

5.1.2 Regional Health & Justice Commissioning Teams

NHS England Health & Justice Team will take the lead in commissioning and oversight of investigations into the clinical issues relating to deaths in custody and responsible for the below:

- Implement national policy and strategic vision
- Agree localised commissioning specifications and standards
- Allocate finances to specific services and contracts
- Undertake service reviews
- Ensure best practice is shared and adopted across the country
- Providing compliance to NHS England policies and governance/assurance in completing clinical reviews.
- Assure and monitor healthcare provider responses and action plans to address any recommendations made by PPO

5.2 Prison Probation Ombudsman

The role of the PPO, as an independent body, is to investigate the deaths of any prisoners or detainees in custody of:

- Prisons
- Young Offenders Institutions
- Secure Training Centres
- Immigration Removal Centres
- Probation Approved Premises
- Court cells (when the person has been remanded or sentenced)

5.2.1 The purpose of this investigation is to ensure that the State meets its obligations under the Human Rights Act (1998) and specifically Article 2 and the Right to Life. This article states that there should be an independent and

effective investigation into all deaths caused by the State (through use of force or failure to protect life). Article 2 also states that the investigation should be reasonably prompt, open to public scrutiny and involve the next of kin of the deceased.

6 Requirements

- 6.1 The current Clinical Reviewer service is commissioned by the nine NHS England Health and Justice Regional Commissioning Teams using one of two models; direct appointment to a bank of reviewers by the Regional Health and Justice Commissioning Teams or through a Regional contract with a third party provider. This section will provide detail on the policy and process requirements that the NHS England Health and Justice Regional teams are required to comply with whilst fulfilling the requirement to provide a clinical review following all deaths in custody.
- 6.2 This subset of reviewers do not acquire the same rights and protection as NHS England employees as they are deemed as off-payroll workers (however they are exempt from the NHS England Off Payroll Worker Policy). The emerging Medical Off-Payroll Worker Policy will provide a process for evaluating medical roles within NHS England and supporting policies and processes for engagement.
- 6.3 NHS England Health and Justice Commissioning teams appointing clinical reviewers independently or by procurement of third party provider must adhere to the following policies and guidelines:
- [NHS England Professional Registration Policy, 2016](#)
 - [NHS England Information Governance Policy, 2016](#)
 - NHS England Framework Agreement for the Provision of Services
 - [IR35 employment status check](#)
 - Requirement to complete professional qualification/registration (GMC/RMN/RGN)
 - [NHS England Procurement Policy, 2016](#)
 - [NHS England Standing Financial Instructions, 2016](#)
 - [NHS England Standards of Business Conduct Policy, 2017](#)
 - [NHS England Bring Your Own Device Policy, 2015](#)
- 6.4 The nine Regional commissioning teams have expressed the following two preferred arrangements for the provision of a clinical review service.
- a) Clinical Reviewers' appointed from a pre-approved bank of reviewers using a letter of agreement with the Regional Health and Justice Commissioning teams
- Or**
- b) Procurement of a third party provider to provide the service

6.5 Clinical reviewers should be aware of their duties under the Equalities Act 2010 and the Public Sector Equalities Duty to pay due regard to those identified in the Act and Duty.

7 Clinical Reviewers appointed from a locally approved bank of reviewers

7.1 Health and Justice Commissioning Teams will advertise the requirement for the role of clinical reviewer through a variety of sources, such as:

- Word of mouth through existing clinical networks
- Current clinical reviewer recommendation
- 'Advertising' through communication with healthcare providers
- Approaching other NHS England clinical advisors roles

When advertising the role and appointing clinical reviewers who work within the criminal justice system consideration must be given to current and potential future conflict of interest.

7.2 Job description and specification

Regions must use the attached job description and specification (**Appendix A**) or alternatively demonstrate there is equivalent process and standard followed to appoint clinical reviewers to the bank.

Guidance on completing a clinical review can be found in the accompanying document "**Guidelines for Health & Justice Clinical Reviewers**".

It has been recognised that implementing the above job description and specification on 1 April 2018 will have impact on clinical reviewer resource for some Health and Justice Commissioning teams. Therefore, it is agreed that a phased implementation to 1 April 2019 should take place with a detailed plan and timescales outlined. Decisions regarding individual clinical reviewers who do not meet the role criteria set out in the attached job description and job specification can be made locally between the health and justice commissioner and the clinical reviewer

7.3 The definition of clinical practice to support the requirement for a clinical reviewer to be in current clinical practice or within 2 years of leaving clinical practice is:

Doctor – is on the GMC register and holds a licence to practice

Nurse – is registered with the NMC and working in a clinical setting which involves direct contact with patients.

i. Engagement/recruitment process

Each region will be required to conduct an interview and selection process prior to appointing a clinical reviewer, this can be localised per region and should consist of:

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- Letter of expression of interest with current curriculum vitae
- An interview style discussion (face to face, teleconference, etc.) to cover CV, expertise, experience and qualifications appropriate for the role

The interview process should be carried out by a panel including roles such as Head of Health and Justice Commissioning, Health and Justice Quality Manager, Deputy Director of Nursing/Deputy Medical Director.

The decision to appoint a clinical reviewer will be assessed on the criteria and requirements specified within the job description and specification, and overall interview scoring criteria agreed by the panel.

The decision of all interview feedback will be recorded in accordance to NHS England HR and recruitment policies.

Recruitment of clinical reviewers must be a fair and open process and reasonable adjustments should be made for applicants who would require them.

ii. Pre-Engagement Screening

Ultimately, the responsibility for assuring pre engagement screening checks lies with the Health and Justice Commissioning Team when appointing clinical reviewer:

- Check professional registration details annually
- Check professional indemnity cover
- Obtain a copy of most recent appraisal
- Agree payment terms
- Agree start date and letter of agreement end date

iii. Post-Appointment

- Ensure access to a secure e-mail service for receipt and dispatch of confidential documents (for example NHS Mail or equivalent); to be arranged by NHS England Regional Health and Justice Commissioning Teams.
- Set up on Oracle ISFE as a supplier and obtain a purchase order for invoicing and payments.
- Undertake all necessary checks required for compliance with sections 4.2.1, 4.2.2 and 4.2.3 of the [NHS England Bring Your Own Device Policy](#) (January 2015).
- Ensure that annual appraisal and revalidation includes recognition of the clinical reviewer role carried out in the appraisal year and includes feedback and reflection.

iv. Letter of Engagement

Health and Justice Commissioning teams appointing clinical reviewers must use the approved Letter of Engagement (Appendix B). This will outline that Clinical

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Reviewers are independent contractors and therefore do not have any employment rights with NHS England.

The Letter of Engagement must be read in conjunction with Guidelines for Health & Justice Clinical Reviewers in England.

The letter of engagement for appointing each clinical reviewer will specify the duration of 2 months subject to on-going review and compliance with NHS England clinical review report standards as stipulated in Quality Assurance Template.

Clinical reviewer wishing to resign or terminate their role may do so in writing formally giving 2 months' notice/sufficient notice, informing Health and Justice Commissioning team of their resignation and termination of role.

Health and Justice Commissioning Team can terminate engagement/agreement with clinical reviewer and must provide 2 months' notice to the clinical reviewer. The Health and Justice Commissioning team can terminate engagement/agreement immediately should there be concerns on performance and quality of report issues.

When a notice of termination has been received the clinical reviewer must complete any outstanding reports prior to leaving unless it is an immediate termination due to performance and /or quality concerns.

The following are all subsections of the Letter of Engagement and must be included:

v. Indemnity Cover

NHS England requires clinical reviewers to obtain indemnity cover, as stipulated in the Letter of Engagement, from their professional union or medical defence organisation in respect of any claims made against them whilst performing the clinical reviewer role.

It is the responsibility of the clinical reviewer to contact their current indemnity cover provider and inform them that are commencing this type of work. The Regional Health and Justice Commissioners will need to be provided with evidence that the clinical reviewer has the necessary cover and arrangements in place.

If the clinical reviewer is retired from clinical practice and/or does not hold a license to practice the Regional Health and Justice Commissioning Team need to satisfy themselves that the necessary indemnity cover is in place.

vi. Payment Framework

The following pay rates are suggested for use and align with other nationally recognised clinical investigation type roles.

PHSO payment rates for the Clinical Advisor role is £69,216 - £82,466 per annum pro rata which currently aligns with Agenda for Change band 8D.

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National Clinical Assessment Services (NCAS) (NHS Resolution) pay their bank of assessors £450 per day. They do not state how long a working day is.

Using both the above roles and rates of pay, the suggested payment framework (excluding expenses) for an NHS England Clinical Reviewer is:

Role of Clinical Reviewer	Hourly Rate	Daily rate (based on standard NHS 7.5 hours)	Report rate (based on average time taken to produce a report)
GP/Nurse	£40 – £60	£300 - £500	Level 1 - £750 - £1000 Level 2 - £1000 - £2000 Level 3 – to be agreed on a case by case basis

The final rate to be paid is to be agreed at a local level between the clinical reviewer and the local Health and Justice Commissioning Team. The payment terms should be outlined in the Letter of Agreement.

All expenses occurred in carrying out the role will be paid in accordance with the NHS England Travel and Expenses policy and guidelines with the exception of attendance at coroners court which can be reclaimed through the local coroner's office.

Coroners Allowances, Fees and Expenses Regulations 2013 can be found at: http://www.legislation.gov.uk/ukxi/2013/1615/pdfs/ukxi_20131615_en.pdf

vii. Arranging for payment

Once a clinical reviewer has been accepted onto the Regional commissioner's bank of reviewers they will need to be set up as a supplier on the Oracle Integrated Single Finance Environment (ISFE) system following the guidance provided on the NHS England SharePoint page:

<https://nhsengland.sharepoint.com/TeamCentre/Finance/FinancialControl/p/Pages/Central-supplier-set-up.aspx>

When requesting the supplier be added to ISFE, a copy of their Letter of Agreement with NHS England will need to be attached and in the "notes to buyer" box, state that this is a "Clinical Advisor". If you do not note that this is a clinical advisor or attach the contract with the individual/company SBS will not raise the purchase order and will come back to query with you.

Once the clinical reviewer is set up as a supplier ISFE a purchase order will need to be raised against the supplier. (Nb. Because the clinical reviewer role is classed as a clinical advisor there is no requirement for a business case to be created).

Once a purchase order has been raised invoicing and payments can be processed as per the current NHS England process.

viii. Confidentiality

In the course of fulfilling the role of the Clinical Reviewer will have knowledge, or access to, information which is confidential to NHS England, practices, individual performers and members of staff. Confidential information must not be disclosed to any unauthorised persons.

A statement regarding confidentiality is included in the Letter of Engagement at Appendix X.

ix. Information Governance

Clinical Reviewer must comply with NHS England Information Governance (IG) policies and ensure compliance with appropriate data protection legislation including the EU GDPR and the Data Protection Act 2018. IG requirements are outlined in the Letter of Engagement.

The Regional Health and Justice Commissioning Teams must ensure that the clinical reviewer complies with the necessary sections of the NHS England [Bring Your Own Device Policy](#) (January 2015) and any subsequent versions. This includes the requirement for Health and Justice Commissioners to ensure that:

:

- On an annual basis, each Clinical Reviewer is provided with the latest NHS England IG handbook and signs to say they have read it and will comply with it (section 4.2.1).
- Any personal electronic equipment used by the clinical reviewer in carrying out his/her role complies with sections 4.2.1, 4.2.2 and 4.2.3.

x. Safeguarding

The GMC published *Good medical practice*¹, core ethical guidance for doctors, which sets out the principles and values on which good practice and is used to inform the education, training and practice of all doctors in the UK. The Good Medical Practice document was published alongside the Good Medical Practice Framework. Though Safeguarding is not mentioned specifically within these documents the guidance outlines the requirements of professional development compliance and statutory obligations generally.

The NMC require all registered nurses to undertake revalidation every three years to raise awareness and uphold [The Code and professional standards of practice](#). As with the Good Medical Practice document safeguarding is not mentioned specifically within these documents the guidance outlines the requirements of professional development compliance and statutory obligations generally.

¹ http://www.gmc-uk.org/guidance/good_medical_practice.asp

For clinical reviewers who are still in clinical practice or who work within a healthcare organisation, proof/evidence that they have up-to-date safeguarding trainings part of their main employment will be required (**see attached** free on-line training packages where clinical reviewers do not have access to any safeguarding training *Appendix 2*).

xi. Appraisal and revalidation

Responsibility for oversight of the clinical reviewer will rest with the Commissioning Regions to govern and manage in accordance to NHS England policies and guidelines listed in section 7 and any additional guidelines provided by NHS England.

Regional commissioning team must ensure that clinical review role carried out in the appraisal year is included within the clinical reviewers' annual appraisal and incorporates all feedback (report quality assurance documents) and reflection.

xii. IR35

It is the responsibility of each Regional Health and Justice Commissioning team to undertake an *employment status for tax* check, for their bank of clinical reviewers, using the HMRC tool. The current tool can be found at:
<https://www.gov.uk/guidance/check-employment-status-for-tax>

NHS England has developed a process and some associated guidance relating to IR35:
<https://nhsengland.sharepoint.com/TeamCentre/TCO/People/Pages/Temp-HRMC.aspx>

The outcome of this employment status check will determine whether the clinical reviewer role for that Regional team is deemed as either off pay-roll worker or on pay-roll worked and will need to be shared with the Regional Finance and People and OD teams and any required action taken.

An electronic copy of the outcomes should be held on records as evidence that the check has been undertaken.

It is the responsibility of the Regional Health and Justice Commissioning Team to ensure that the clinical reviewer role be assessed against any amendments or revision made to IR35 requirements.

Some Regional Health and Justice Commissioning Teams engage with their clinical reviewers for other work additional to the clinical review role. In this case, the Clinical Reviewer must inform HMRC of the additional role and review their own employment status for tax

xiii. Criminal Records Checks

NHS Employers provides Clinical Records Checks Standards. The Clinical Reviewer role has been checked for clinical records check eligibility using the NHS Employers [Eligibility Check Tool](#). Due to the fact that they will not have access to patients as a part of the normal role there is no requirement for a clinical records check prior to appointment.

8. Procurement of a third party provider

All procurement and commercial activity should be undertaken in line with the NHS England Procurement Policy 2016 and Standard Financial Instructions 2016.

Regions may wish to undertake a market engagement exercise to test the market with a range of providers to test the market and levels of interest in this service provision. Each commissioning team will have arrangements in place with their local Commissioning Support Units to support this engagement process.

The commissioning teams should consider procurement on a Regional or larger geographical footprint. If regions wish to collaborate and undertake market engagement and/or procurement on a national footprint then one region will need to be identified as the responsible commissioner for leading and holding the contract.

Standing Financial Instructions

All spend by NHS England MUST comply with the NHS England Standing Financial Instructions which provides guidance on how to procure goods and services in accordance with the procurement rules, Cabinet Office and Department of Health requirements; the rules governing single tender actions and retrospective tenders; and the processes behind contract variations, extensions and signing.

NHS England's Standing Financial Instructions can be found at:

<https://nhsengland.sharepoint.com/Documents/PoliciesandProcedure/Standing%20Financial%20Instructions.pdf#search=standing%20financial%20instructions>

Procurement Policy

All procurement and commercial activity should be undertaken in line with the NHS England Procurement Policy. This [policy](#) outlines the steps and stages involved in undertaking any commercial and procurement activity and must be followed. It also incorporates the new NHS England [Procurement protocol](#) –'no contract, no purchase order, no payment'. The Procurement Policy is aligned with [NHS England's Standing Financial Instructions](#) .

Conflict of interest

A conflict of interest is a set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of

delivering, commissioning, or assuring tax payer funded health and care services is, or could be, impaired or influenced by another interest they hold.

Standards of Business Conduct Policy

[NHS England Standards of Business Conduct Policy](#), describes the standards and public service values which underpin the work of the NHS and best practice which all colleagues must follow.

Service Specification

The service specification for Third party provider procurement must include all the sections described above but will be the responsibility of the third party provider to assure the Regional Health and Justice Commissioning teams through an agreed contract management process.

Appendix 1 – Consultation

The following teams have been consulted and liaised with in order to complete this document.

NHS England, Head of People Strategy, People and Organisation Development, Transformation and Corporate Operations

NHS England, Head of People Business Partners, People and Organisation Development, Transformation and Corporate Operations

NHS England, Senior Governance Manager – Transformation and Corporate Operations Directorate

NHS England, Commercial Assurance Manager, Commercial Team

NHS England, Head of Commercial and Procurement, Commercial Team

NHS England, Head of Information Governance and National Health & Justice IG Lead, Midlands & East (East)

NHS England, Head of Workforce Systems, People and Organisation Development Transformation and Corporate Operations

NHS England, Regional Medical Directors

NHS England, Regional Medical Director (Midlands and East)

NHS England, Director of Primary Care Commissioning

NHS Resolution

Health and Justice Commissioning Team - North Region

Health and Justice Commissioning Team - Midlands and East Region

Health and Justice Commissioning Team - South Region

Health and Justice Commissioning Team - London Region

Prison Probation Ombudsman

Appendix 2 – Safeguarding Training

The following free on-line training packages can be used where clinical reviewers do not have access to any safeguarding training:

Children and Young Peoples Safeguarding Training

Provider	Product	Levels Covered	Cost	How to Access
Royal College of General Practitioners (RCGP)	This toolkit, produced by the Royal College of General Practitioners (RCGP) and the NSPCC is intended to support GPs in the UK who wish to increase their awareness and skills regarding child protection. Produced in 2007 and revised in 2009 and 2011.	Levels 1-3	Free	Safeguarding Children and Young People - A Toolkit for General Practice 2011
E Learning for Healthcare	Safeguarding Children and Young People	Levels 1-3	Free	e - Learning for Healthcare - Safeguarding Children and Young People

Adult Safeguarding Training

Provider	Product	Levels Covered	Cost	How to Access
E Learning for Healthcare	An interactive learning resource to support all health and social care staff in protecting vulnerable adults from abusive environments.	Levels 1-3	Free	e - Learning for Health Safeguarding Adults
SCIE Social Care Institute for Excellence	Safeguarding Adult Resources Training and Consultancy	Levels 1-3	Free Contact SCIE	SCIE Safeguarding Adult Learning Resources SCIE Training and Consultancy
Skills for Health	UK Core Skills Training Framework		Free	UK Core Skills Training Framework
Age UK	Range of courses – not limited to but including Safeguarding	1-3	Contact details in document	Age UK Care Courses