

## Outpatient Recovery and Transformation Programme

### Specialist Advice Services Medicolegal coverage and liability Frequently Asked Questions (FAQs)

#### Purpose of document

Following the introduction of Specialist Advice services (SA), clinicians both in primary care and secondary care have sought clarification on its medicolegal position in respect of a number of areas.

In response, this FAQ document has been created for clinicians and is intended to be used as a signposting document to support conversations around legal liability and clinical cover for the delivery of Specialist Advice services.

This document has been developed by NHS England with contributions from professional bodies and should be used in conjunction with the [Specialist Advice and Clinical Responsibility FAQs](#) which covers good clinical practice relating to SA, including delegation, clinical competency, diagnostic requests and turn-around times for reporting SA. Both documents are intended to be used by systems with established SA services in place.

#### What is Specialist Advice?

Specialist Advice (SA) is an umbrella term which encompasses Advice & Guidance (A&G) and Referral Assessment Services/triage (RAS) models. Specialist Advice and Guidance enables the sharing of relevant clinical information prior to or instead of a referral. The referring clinician seeks advice from a specialist to guide and help inform the decision as to whether a referral to an outpatient service is needed. More information on Specialist Advice can be found on [FutureNHS Outpatient Transformation Platform Specialist Advice](#) page.

Specialist advice may be provided by appropriately trained and commissioned specialists / experts. This includes both consultant and non-consultant led services in secondary, community or primary care providers, interface or intermediate services, and referral management systems. The requesting clinician is usually a GP; however, local arrangements may outline circumstances in which it would be appropriate for other healthcare professionals to submit a specialist advice request, providing appropriate governance structures are in place.

This document relates to SA provided under the governance of GP/Consultant-led clinical teams. In this document the terms 'Providing clinician' and 'Requesting clinician' will be used.

NHS England (NHSE) are committed to ensuring our patients receive safe and effective care in the right place at the right time and avoid unnecessary outpatient attendances where clinically appropriate. Shared decision making between the patient and the referrer should support optional, equitable and timely access to SA services and onward referral to the most appropriate Specialist provider. The appropriate and safe use of Specialist Advice, is a key part in the Elective Recovery Plan - [Delivery plan for tackling the COVID-19 backlog of elective care](#) released Feb 2022, and in the 2022/23 planning guidance - [NHS Operational Planning Guidance](#).

A list of further resources can be found at the end of this document (annex links).

For further information on specialist advice please contact:  
[england.referraloptimisation@nhs.net](mailto:england.referraloptimisation@nhs.net)

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## **Q1 What is the current NHSE guidance on clinical responsibility and Specialist Advice?**

The NHSE position is that all clinicians are responsible for providing specialist advice within the scope of their clinical competencies. SA involves communication and collaboration between clinical teams to support patient care in the most appropriate setting.

The NHS Constitution sets out rights for patients, public and staff. It outlines NHS commitments to patients and staff, and the responsibilities that the public, patients and staff owe to one another to ensure that the NHS operates fairly and effectively. Important legal rights are summarised in this Constitution. All NHS bodies and private and third sector providers supplying NHS services are required by law to take account of the constitution in their decisions and actions. [The NHS Constitution for England - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Joint guidance for e-RS has been developed by NHS Digital and the British Medical Association as a guide to e-RS [Joint guidance on the use of the NHS e-Referral Service 2018 - NHS Digital](#). This guidance focusses on referral pathways, and delegation of responsibility for making and receiving referral information, including referrals returned with advice. Information on delegation of clinical responsibility in e-RS is available on the NHS Digital website [clinical responsibility when delegating roles](#).

## **Q2 When does the requesting clinician's duty of care become engaged?**

When patients present to their requesting clinician and provide their history, the duty of care is engaged. The requesting clinician has a legal duty to provide a reasonable standard of care to their patients and act in a way that protects their safety. Patients have the right to receive care and treatment that is appropriate to them, meets their needs and reflects their preferences. [The NHS Constitution for England - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## **Q3 Does a referral/ request for Specialist Advice supersede and/or remove the duty of care of the requesting clinician?**

No, the fact that a requesting clinician has made a referral or sought SA from the providing clinician in a Trust does not remove the duty of care. Requesting clinicians will continue to have a duty of care towards the patient, and this includes taking appropriate action if their symptoms change and/or if new symptoms were to arise. For the symptoms referred or delegated, when the providing clinician is in possession of the advice or referral information, their duty of care is also engaged.

Please refer to the Specialist Advice Clinical Responsibility FAQs for information regarding Clinical Responsibility throughout the patient pathway.

## **Q4 When does the providing clinician in a Trust duty of care become engaged?**

When the providing clinician are in possession of the advice or referral information then their duty of care is engaged, and the Trust will need to have systems in place so that referrals and advice and guidance requests are appropriately triaged in a timely fashion. Please refer to the [Specialist Advice Clinical Responsibility FAQs](#) for guidance on turnaround times for Specialist Advice requests.

Please refer to the [Elective Care Model access policy 1.1 January 2019](#) for guidance to ensure that all patients requiring access to outpatient appointments, diagnostics and elective inpatient or day-case treatment are managed equitably and consistently.

As SA is non-patient facing it is vital that all requests must contain sufficient information and are sent marked with the appropriate urgency to assist the triage process. SA is intended to improve effective communication between clinical teams and should not act as a barrier to referral or transfer of care where clinically indicated.

#### **Q5 What is the coverage for Requesting and Providing Clinicians in relation to Specialist Advice?**

If a Requesting Clinician seeks assistance from a Providing Clinician via Specialist Advice and is working under one of the three main NHS primary care contracts (General Medical Services (GMS), Personal Medical Services (PMS) and Alternative Provider Medical Services (APMS)), cover under the Clinical Negligence Scheme for General Practice (CNSGP) will apply. Requesting Clinicians will need to maintain membership with a medical defence organisation (MDO) or other indemnity provider or insurer to retain cover in respect of activities and services not covered by CNSGP, Extended Liabilities Scheme for General Practice (ELSGP) or General Medical Practice Indemnity (GMPI) – including non-NHS or private work, inquests, regulatory and disciplinary proceedings, employment and contractual disputes, and non-clinical liabilities.

A Providing Clinician giving assistance to a Requesting Clinician through Specialist Advice will be covered via their employing trust's membership of the Clinical Negligence Scheme for Trusts (CNST), provided the trust agrees they may do so as part of their NHS contract. Providing Clinicians will need to maintain membership with a medical defence organisation (MDO) or other indemnity provider or insurer to retain cover in respect of activities and services covered by their trust indemnity, including non-NHS or private work, employment and contractual disputes, and non-clinical liabilities or as determined by the defence organisations.

Full details of the cover provided under CNSGP and CNST are given in the representative Scheme Rules on the NHS Resolution website:

- [Clinical Negligence for General Practice \(CNSGP\) Scheme rules](#)
- [Clinical Negligence Scheme for Trusts - NHS Resolution](#)

For further information on: [Insurance, Indemnity and medico-legal support - information for doctors on the register - GMC \(gmc-uk.org\)](#)

#### **Q6 What are the issues relating to liability and Specialist Advice?**

Liability will be determined on a case by case basis.

If systems use SA services, they must liaise with their local primary care leaders including the LMC to ensure appropriate pathways are in place to support implementation.

Advice and referral services should support optional, equitable and timely access to SA services and onward referral to the most appropriate Specialist provider.

It is important to provide all relevant clinical information so the receiving clinician can optimise the onward management and care for the patient. The Referring clinician has the ability to authorise or give consent for the referral to be converted by the Providing clinician.

If all relevant clinical information is not provided and creates unnecessary delay in patient care or risks patient safety, the accountability is with the referring clinician's team.

If the providing clinician sends advice to a referrer that is not clinically appropriate, refuses to accept a patient, or creates an unnecessary delay in accepting a referral which risks patient safety the accountability is with the providing clinician in the Trust.

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## Annex links

- Clinical Responsibility when delegating Roles – NHS e-Referral Service 2019  
<https://digital.nhs.uk/services/e-referral-service/document-library/clinical-responsibility-when-delegating-roles>
- Joint Guidance on the use of the NHS e-Referral Service 2018
- <https://digital.nhs.uk/services/e-referral-service/joint-guidance-on-the-use-of-the-nhs-e-referral-service-2018>
- NHSE Specialist Advice FAQs  
<https://future.nhs.uk/OutpatientTransformation/viewdocument?docid=110912197>
- NHSE Elective Care Improvement Support Team Elective Care Model Access Policy 2019 and 2021 Addendum (attached as PDFs)  
<https://future.nhs.uk/ElecCareIST/view?objectId=21368528>  
  
Available on the IST Recovery Hub  
<https://future.nhs.uk/NationalElectiveCareRecoveryHub/grouphome>
- NHS Operational Planning and Contracting 22/23  
<https://www.england.nhs.uk/operational-planning-and-contracting/>
- NHSE Elective Recovery Plan Feb 2022  
<https://www.england.nhs.uk/coronavirus/publication/delivery-plan-for-tackling-the-covid-19-backlog-of-elective-care/>
- NHS Resolution
  - <https://resolution.nhs.uk/scheme-documents/cnsgp-scheme-rules/>
  - <https://resolution.nhs.uk/services/claims-management/clinical-schemes/clinical-negligence-scheme-for-trusts/>
- NHS Constitution for England  
<https://www.gov.uk/government/publications/the-nhs-constitution-for-england>
- [Specialist Advice and Clinical Responsibility FAQs](#)