Outpatient Recovery and Transformation Programme

Specialist Advice Services
Specialist Advice and Clinical Responsibility
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, the Specialist Advice SA Medico-Legal FAQs document was developed for clinicians to support conversations around legal liability and clinical cover for the delivery of Specialist Advice services.

This document covers good clinical practice relating to SA, including delegation, clinical competency, diagnostic requests and turn-around times for reporting SA. The document has been developed by NHSE with contributions from professional stakeholders and is intended to be used alongside the SA Medico-Legal FAQs for 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.

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

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Q1 What are the specific issues relating to clinical responsibility and Advice and Guidance requests returned with advice

Advice and Guidance requests returned with advice:
The providing clinician is responsible for ensuring A&G requests returned with advice are clinically indicated, and in the patients' best interests based on referral information provided. The providing clinician should give clear information to the requesting clinician explaining the rationale for suggesting management of the patient with specialist advice rather than conversion to a referral. The providing clinician is responsible for ensuring any management advice is clinically appropriate for delivery by the requesting clinician.

The requesting clinician is responsible for communicating this information to the patient in a timely manner and acting on any advice provided within their clinical competency. Future developments in A&G platforms will aim to support communication directly with patients where appropriate. As e-RS A&G supports two-way dialogue and shared decision making, the referrer is responsible for responding in e-RS if they do not feel the advice provided is in the patients' best interests, or if they are unable to provide the advice, management plan or diagnostic investigations recommended by the specialist within the scope of their clinical competency. Based upon GMC guidance, the requesting clinician must recognise and work within the limits of their competence and may therefore refuse to undertake the management advice given, instead referring the responsibility for the patient to be managed back to the providing clinician.

If the providing clinician recommends the requesting clinician carry out diagnostic tests the providing clinician should include guidance in the A&G response to signpost the referrer to use the results appropriately in the ongoing management of the patient. If a requesting clinician accepts the specialist advice to carry out diagnostic investigations in primary care, the requesting clinician is responsible for requesting and reviewing the results of these diagnostic tests and acting on them accordingly within the scope of their clinical competency. If it is felt that the request for diagnostic investigation and interpretation is outside of the clinical competency of the requesting clinician, then as per GMC Delegation and Referral ethical guidance, the requesting clinician should refer the responsibility for the patient to be managed back to the providing clinician.

If the patient's condition changes the requesting clinician is responsible for requesting further specialist advice or referral.

Q2 What are the specific issues relating to clinical responsibility and Referrals returned with advice

Referrals returned with advice:
The providing clinician is responsible for ensuring referrals returned with advice (rejection) are clinically indicated and in the patients' best interests based on referral information provided. The providing clinician should give clear information to the requesting clinician explaining the reason for the returned referral. The requesting clinician is responsible for communicating this information with the patient and acting on any advice provided (as above), if within their clinical competency and the requesting clinician agrees with the advice. Future developments in referral technology will aim to support communication of rejected referrals directly with patients where appropriate. If the patient's condition changes the requesting clinician is responsible for requesting further specialist advice or referral.

e-RS referral services (Referral Assessment Services and Directly Bookable services) do not support two-way dialogue. If the requesting clinician does not feel the returned referral is in the patients' best interests, or if they are unable to provide the advice, management plan or diagnostic investigations recommended by the specialist within the scope of their clinical

competency, they would need to add additional information to the e-RS referral and resubmit it or raise a new referral. If the patient's condition changes the requesting clinician is responsible for requesting further specialist advice or referral.'

Q3 What are the specific issues related to advice provided through a converted A&G request, to support the patient while they wait for their outpatient appointment.

The e-RS A&G channel allows providing clinicians to convert authorised A&G requests into referrals and provide advice at the time of conversion, to help the requesting clinician to support the patient while they wait for their appointment - NHS e-RS Advice and Guidance Toolkit

Following conversion of an A&G request into an appointment and provision of interim advice, the two-way e-RS dialogue between requesting clinician and providing clinician then ends and the patient is added to the providing clinicians waiting list. No further communication between requesting and providing clinician can take place in e-RS. Interim advice should support primary care management for the patient while they wait for their appointment, and where possible should link to existing primary care guidelines. Requesting clinicians should not be expected to provide specialist management for patients waiting for an outpatient appointment or undertake specialist tests that are required for secondary care outpatient appointments.

If the providing clinician requires diagnostic tests following conversion of an A&G request into an appointment, the providing clinician is responsible for requesting and reviewing the results of these diagnostic tests. Exceptions include locally agreed pathways to delegate specific interim diagnostic investigations to the requesting clinician, where agreed by both primary and secondary care following consultation. In this situation the providing clinician is responsible for signposting the requesting clinician to use the results appropriately in the interim management of the patient. The providing clinician needs to be satisfied that the referring clinician has the relevant resources and competency to delegate interim responsibility for diagnostic investigations as described in GMC Delegation and Referral ethical guidance (gmc.org.uk)

If a requesting clinician accepts delegation to request interim diagnostic investigations in primary care, the requesting clinician is responsible for reviewing the results of these diagnostic tests and acting on them accordingly within the scope of their clinical competency while the patient is waiting for their outpatient appointment. GMC Delegation and Referral ethical guidance.

The providing clinician is responsible for communicating with the patient after addition to waiting list and as described in the local health care organisation SOPs.

Model Access Policy - Elective Care IST Network - FutureNHS Collaboration Platform

Following prioritisation of the patient and addition onto the waiting list, both the requesting clinician and providing clinician are responsible for providing access for the patient to communicate any deterioration or change in their condition, to support shared clinical decision making and escalation of outpatient priority if clinically indicated.

Q4 How does clinical responsibility for Specialist Advice relate to turn-around times for review of A&G requests and referrals by providers?

When the providing organisation is in possession of the advice or referral information then their duty of care is engaged, and systems should be in place so that referrals and Advice and Guidance requests are able to be appropriately triaged in a timely fashion, supported by appropriate job-planning and resourcing for both providers and referrers. SA services should

be resourced in the context of the wider planning of elective care and outpatient activity. Local consideration and agreement should reflect the best use of resource to deliver a robust SA service, within the context of safe delivery of wider clinical activity and patient care.

Whilst it is in all interests for the response time to be as short as possible, it is recognised that local variables will ultimately dictate the agreed response time. In some settings this may be as short as 2 working days but in many settings the response time may be significantly longer than this. It is recommended that the response time should not exceed 10 working days for routine requests to minimise any risk to delaying patient care. For emergency/same day specialist advice, use of a synchronous platform such as telephone advice and guidance is recommended. The models used across a system are for local determination.

A response time of 2 days will only be attainable when clinicians have appropriate time allocated in job plans that covers every working day.

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 and monitoring of locally agreed SA response times.

- Specialist Advice FAQs
- Model Access Policy - Elective Care IST Network - FutureNHS Collaboration Platform

Q5 What are the broad principals around requesting, providing and communicating specialist advice?

In these cases the broad principles are outlined below:

I. Protect Patients

Patient information and safeguarding

When communicating Specialist Advice to patients, clinical teams should ensure the information is accessible to patients in a timely manner and provided in a clear and easy to understand format. Make the information available to patients in an accessible way, with considerations for your patient demographic who may have digital barriers, learning disability, literacy, and language challenges.

II. Duty of Care for requesting and providing clinicians

Providing and requesting clinical team responsibilities

When patients present to their requesting clinician and provide their history, this engages the requesting clinician's duty of care. Their professional obligations are set out in General Medical Practice guidance 'Good Medical Practice'.

GMC guidance sets out requesting clinician responsibilities with respect to referring and delegating clinical responsibilities to other clinicians, ensuring clinical teams recognise and work within the limits of competence. GMC Delegation and Referral ethical guidance.

The providing clinician's team should process Specialist Advice requests and referrals in a timely way according to locally agreed turn-around times. Where the providing clinician requests further clinical information from the requesting clinician in order to be able to process a Specialist Advice request, this should be processed in a timely way by the requesting clinician's team.

Where specific pathway issues arise we would advise you to speak to your local system colleagues to help resolve them. Safety issues should be reported within the system and mechanisms therefore need to be put in place within each ICS to monitor any delays, impact on patient care and safety concerns.

Please refer to the Specialist Advice Medico-Legal FAQs

If any patient safety issues do arise your Medical Defence Organisation may be of help.

Q6 What is the role of the GMC and its guidance?

As the regulator of doctors in the UK the General Medical Council provides guidance on the professional standards expected of doctors, as opposed to their legal, clinical, or contractual responsibilities. The GMC guidance is drafted at a high level because it applies to all doctors, at every stage of their training and in every specialty. The GMC expect doctors to use their professional judgment to apply the guidance to their specific circumstances.

The relevant provisions from the GMC are set out in the Delegation and Referral ethical guidance. The GMC are clear and states clinicians should recognise and work within the limits of their competence. The GMC expect clinicians to arrange for another practitioner to provide services where those services fall outside of their professional competence. Clinicians must make sure their patients are informed about who is responsible for their overall care and if the transfer is permanent or temporary.

Clinicians are not accountable to the GMC for the actions or omissions of those to whom they make referrals. However, clinicians referring and those receiving referrals are accountable for their decisions to transfer care, or refusal to accept care of patients and the steps they have taken to make sure patient safety is not compromised. Further questions about clinical liability would depend on the specific circumstances and areas of practice and would need to be answered at a local level.

GMC guidance is provided in GMC Delegation and Referral ethical guidance.

Annex links

- GMC: Good Medical Practice
  https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice

- GMC: Delegation and referral
  https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/delegation-and-referral

- Clinical Responsibility when delegating Roles – NHS e-Referral Service 2019 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/

- Specialist Advice Medico-Legal FAQs

- Advice and Guidance Toolkit for the NHS Referral Service
  NHS e-RS Advice and Guidance Toolkit