PROFESSIONAL STANDARDS AND REGULATION DIVISION

THE INVITED REVIEW MECHANISM

REGULATIONS FOR INDIVIDUAL REVIEWS

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CONTENTS

1. INTRODUCTION AND BACKGROUND

The Royal College of Surgeons of England is an independent professional body committed to promoting and protecting the interests of patients by maintaining and enhancing professional standards in surgery.

The Invited Review Mechanism (IRM) was established in 1998 by the College and the Specialty Associations in response to the events in Bristol and with the aim of assisting hospitals and Trusts, in avoiding unnecessary suspensions and service disruption. The IRM provides a service that covers all surgeons working in the NHS and independent sector in England, Wales and Northern Ireland.

The purpose of this document is to provide information on the regulations for individual reviews and should be read in conjunction with the guidance for individual reviews.

Individual reviews assist hospitals in identifying whether there is a problem to consider or case to be answered with regard to alleged unsafe, inappropriate or unsatisfactory surgical performance of an individual surgeon. It is intended that this process is seen as giving a fair, independent professional review which will support, but not replace, existing procedures for dealing with such issues.

1.1 Governance

The IRM is overseen by the IRM Joint Standing Committee made up of representatives from the College and the nine surgical Specialty Associations. The Committee oversees the development and operation of the IRM. Members of the Committee are also available to provide pre-visit advice to hospitals and support reviewers in their role.

1.2 National Clinical Assessment Service

The National Clinical Assessment Service (NCAS) (part of the National Patient Safety Agency) supports local health organisations and individual practitioners to enable effective management of doctors, dentists and pharmacists ('practitioners') whose performance gives cause for concern. NCAS currently provides a service to healthcare bodies and practitioners throughout the UK and in its associated island administrations, crossing both public and private sectors.

There is a working protocol in place between the College and NCAS which provides guidance on how the two organisations work together and the mechanisms they will use to ensure effective communication and collaboration. The working protocol can be found on the College website.

In accordance with the framework set out in Maintaining High Professional Standards in the Modern NHS, hospitals are required to contact NCAS before commissioning an individual review from the College.

2. CHARGES FOR INDIVIDUAL REVIEWS

The charge to hospitals and Trusts (from herein referred to as the hospital) for an individual review is £15,000. This is to cover the College's 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 hospital.

In addition to this fee the hospital must reimburse each reviewer (or their employer) financially for their time at a rate of £450 per day of the site visit. The travel and subsistence expenses of each reviewer must also be met by the hospital.

The College will charge a cancellation fee for an IRM request which has been approved but is cancelled by the hospital before the review visit takes place. Please see appendix 1 for more information.

3. REGULATIONS

Below are the regulations which govern the IRM process and must be adhered to by all parties involved in an invited review.

3.1 Requesting a review

The IRM will be initiated when a formal request is made by a hospital. To do this, a request proforma (please see guidance for the request pro forma) must be completed by the Chief Executive or Medical Director and returned to the Chairman of the Invited Review Mechanism with a covering letter.

The covering letter **must** include the following: -

- The name, the specialty and the grade of the individual to be reviewed
- Draft terms of reference (and parameters) for the review
- Confirmation of acceptance of the review conditions (see section 3.3)

The College can only accept requests for reviews from the Chief Executive or Medical Director acting on behalf of the hospital. A surgeon wishing to request an individual review regarding their own performance can only do so by approaching their employer to request a review on their behalf.

The completed request proforma and any supporting documentation provided will be considered by the Chairman of the Invited Review Mechanism and the relevant specialty member of the IRM Joint Standing Committee and a decision will be taken as to whether an invited review is appropriate. If the College decides that an invited review is not appropriate, an explanation as to the reasons why will be given and the College will try to provide advice on an alternative course of action.

The College will not normally undertake a review if the case is subject to investigation by another organisation e.g. NCAS, the Care Quality Commission (CQC) or the General Medical Council (GMC).

3.2 Indemnity

The hospital is required to indemnify the College, the Association and the reviewers in undertaking the review by signing a Deed of Indemnity. A review cannot take place until signed copies of the Deed of Indemnity are received by the College from all parties involved. See the guidance for our standard Deed of Indemnity.

3.3 Review conditions

In addition to the requirements of the Deed of Indemnity there are several conditions that are attached to a review and the hospital will be asked to confirm in its covering letter to the College that these are acceptable: -

3.3.1 All those directly involved – the individual being reviewed, the staff who will be called upon for interview and the service managers - are to be fully informed in advance of the purpose of, and arrangements for, the review. The hospital must confirm in writing that all parties have been informed of the aims of the review and that the surgeon concerned has agreed to participate.

3.3.2 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 the identity of this person must be declared well in advance of the site visit.

3.3.3 The review must be carried out in an open, fair and structured manner; therefore all relevant documents relied on by the hospital and given to the reviewers should also be made available to the surgeon being reviewed and vice versa.

3.3.4 The final report must be made available to the surgeon being reviewed by the Chief Executive or Medical Director and to others directly involved as determined by the hospital.

3.3.5 The hospital must pay the relevant fee (£15,000) and expenses before the report is released or the relevant cancellation charge.

3.3.6 Where there are concerns about patient safety the hospital must ensure that all other places in which the surgeon provides a surgical service are made aware of the review[1].

[1] This condition will be reviewed when the new DoH 'Healthcare Workers Duty of Cooperation Regulations 2010' are introduced.

3.4 The surgeon

The surgeon concerned must confirm in writing to the Chief Executive or Medical Director that he/she agrees to the review taking place and that he/she has been fully informed by the hospital of its purpose, terms of reference and arrangements. The letter from the surgeon should be copied to the Chairman of the Invited Review Mechanism at the College.

3.5 The invited review team

3.5.1 The invited review team will normally comprise three people: two clinical reviewers (who are surgeons), one representing the College (the lead reviewer), one representing the relevant surgical Specialty Association and one lay reviewer. The College's invited review panel is made up of trained clinical and lay reviewers, recruited in open competition against set criteria. Occasionally there may be reviews where the clinical expertise required necessitates the use of a surgical reviewer who is not a member of the panel.

3.5.2 Reviewers will be asked to declare if they are aware of any conflict of interest that may disqualify them from undertaking the review.

3.5.3 The Chief Executive or Medical Director should ensure that the names of the reviewers are sent to the surgeon being reviewed. If the surgeon has any objections to any member of the invited review team, he/she is asked to inform the Chief Executive or Medical Director of the hospital as soon as possible, stating the nature of their objection. It will be for the Chief Executive or Medical Director to pass this information to the College for consideration. The reviewers will only be changed if there is a substantial risk of conflict of interest or to avoid any potential risk of bias.

3.6 Terms of reference and supporting documentation

3.6.1 The terms of reference setting out the scope for the review must be jointly agreed by the College, the Chief Executive or Medical Director of the hospital and the reviewers. The terms of reference must be shared (by the hospital) with the surgeon whose practice is being reviewed in advance of the visit.

3.6.2 When identifying the personnel to be seen by the reviewers, the Chief Executive or Medical Director is asked to ensure that, in the interests of fairness, the surgeon being reviewed has the opportunity to comment on the list before it is submitted to the reviewers. If, within reason, the surgeon believes that there are other members of the clinical team that should be part of the review, he/she must inform the hospital which will, in turn, inform the reviewers. If the surgeon concerned has any strong

objections to any person on the list, he/she will be asked to explain the nature of the objection.

3.6.3 In finalising the terms of reference for the review with the hospital, the reviewers will have the opportunity to request from the hospital or from the surgeon being reviewed additional information they believe necessary to further the review process.

3.6.4 The Chief Executive or Medical Director of the hospital is required to make available all relevant documentation relating to the terms of reference for the review and the questions the reviewers are asked to consider, subject to compliance with its obligations on patient confidentiality and any other obligations of confidence and obligations under the Data Protection Act 1998.

3.6.5 All relevant documents relating to the review must be received by the review team a minimum of two weeks before the visit date. The College and the review team reserve the right to postpone the review if the documentation is not received in sufficient time. The review team also reserve the right to discount any information received on the day of the visit which is not deemed as relevant to the terms of reference. The hospital must ensure that the surgeon being reviewed has the opportunity to submit any documentation they feel is relevant to the review. Again, this must be received by the review team a minimum of two weeks before the visit.

3.6.6 If the reviewers feel it is appropriate to consult published Quality Assurance Committee visit reports as part of the review, these may be made available through the College on request to the appropriate Committee Chairman. Information or documentation relating to trainees held on SAC files may be requested from the appropriate Committee Chairman via the Joint Committee on Surgical Training with the permission of the individual being reviewed. However, hospitals may have copies of visit reports and these should be made available by the Chief Executive or Medical Director.

3.7 The report

3.7.1 The lead reviewer will prepare a draft report for the consideration of the College within four weeks of the site visit. The College will send the text of the report (minus the conclusions and recommendations) to the hospital and the surgeon being reviewed, for factual checking within six weeks of the site visit. The comments of both parties will be sent to the reviewers for their consideration. The College will inform the hospital if there are any delays in producing the draft report.

3.7.2 If the surgeon's comments in particular show that there are disagreements between the hospital and surgeon in relation to matters of

'fact', the reviewers will not put themselves in the position of resolving these factual differences but will instead ensure that the surgeon's comments accompany the report submitted to the hospital so that these can be fully taken into account when the hospital considers the report. However, the surgeon must agree in advance to his/her comments on the report being sent to the hospital.

3.7.3 If the review team identify any circumstances where an individual surgeon's performance is unsatisfactory and patients' safety may be at risk, appropriate recommendations will be made in the report for consideration by the hospital.

3.7.4 If a report recommends that the hospital involve NCAS, the draft report may be shared with NCAS (with the prior consent of the surgeon under review and the hospital), to ensure the feasibility of the recommendation.

3.7.5 Where the report highlights issues of relevance to the Quality Assurance Committee of The Royal College of Surgeons of England, relevant information will be forwarded by the College to the appropriate Committee Chairman with the consent of the hospital and surgeon concerned.

3.7.6 The College will not normally forward the final signed report until payment for the review has been received.

3.7.7 Once the final report has been forwarded to the hospital, it becomes the property of the hospital. The College, the Association and the reviewers have no authority to release the report or comment on its contents to any third party. Reviewers are asked to ensure that they respect the confidentiality of reports at all times. See section 4 on data protection and the Freedom of Information Act.

3.7.8 The College, 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 National Patient Safety Agency 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 College, the Association and/or the reviewers to the hospital. The College will only disclose this information on rare occasions, when it is apparent that the hospital has not taken appropriate action following receipt of the report.

3.7.9 The hospital must within six months of receipt of the report provide feedback to the College on the progress made on implementing the recommendations from the report.

3.8 Media and communication

3.8.1 The College will not normally enter into correspondence about reviews with any party other than the Chief Executive or Medical Director. If the College is approached directly by any member of the hospital staff (including the surgeon) regarding specific arrangements for the review, they will normally be advised to approach the Chief Executive or Medical Director in the first instance.

3.8.2 The College will inform NCAS in confidence, of the name of the hospital where an individual review is taking place.

3.8.3 The local College appointed Director of Professional Affairs[2] (DPA) will be informed of the name of the hospital where an individual review is taking place. The DPA can provide advice and support to the Medical Director or Chief Executive during the IRM process.

3.8.4 In the event of media interest, responses to press enquiries or the preparation of press releases should be handled jointly by the hospital and the College Communications Department unless, by prior agreement, it has been confirmed that either the hospital or the College will respond. The hospital is asked to nominate the person who may be contacted by the College Communications Department regarding any press enquiries that may arise in relation to the review. This information must be provided in the request proforma. For your information, the preferred College policy when dealing with such press enquiries is to provide confirmation that a review is taking/has taken place, but not normally to disclose any specific details of the review.

4. DATA PROTECTION AND FREEDOM OF INFORMATION ACT

There are no legal requirements regarding the minimum period of time the College and the reviewers should retain documents relating to invited reviews. The College will retain all documents relating to a review for four years after which they will be confidentially destroyed. The College will permanently retain a signed copy of the final report.

The College is currently exempt from the requirements of the Freedom of Information Act 2000. Hospitals are advised to consider their obligations under the Act in relation to the IRM reports. As IRM reports contain information about individuals (including the reviewers themselves) which is regarded as confidential, hospitals should take their obligations of confidence very seriously and observe the “breach of confidence” exemption before making a decision to disclose, under FOIA.

[2] The DPA is the local College spokesperson for professional affairs, and is responsible for engaging with the SHA, PCTs and Trusts, and also with the local School/s of Surgery, on a strategic level. The local Professional Affairs Board provides guidance on the frameworks which the College needs to establish locally to support surgeons in the workplace.

Appendix 1

RCS
ADVANCING SURGICAL STANDARDS

PROFESSIONAL STANDARDS AND REGULATION DIVISION

INVITED REVIEW MECHANISM

CANCELLATION POLICY

Stage of IRM process	Cancellation charges
Once request approved	£500
From when the review documentation (formal letter including Deed of Indemnity etc) sent to Trust	£1000
Within two weeks of the visit date	£5000 plus any travel expenses incurred by the review team
Postponement of visit date by the hospital [1]	Any travel expenses incurred by the review team
Postponement of visit by College[2]	Any travel expenses incurred by the review team plus £1000

[1] A review can be postponed for a maximum of three months from the original review date otherwise a £5000 cancellation fee will apply.

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