



The Royal College of Pathologists

Pathology: the science behind the cure

Response from the Royal College of Pathologists to Consultation ECR0181 from the Department of Health on Providing a 'safe space' in healthcare safety investigations.

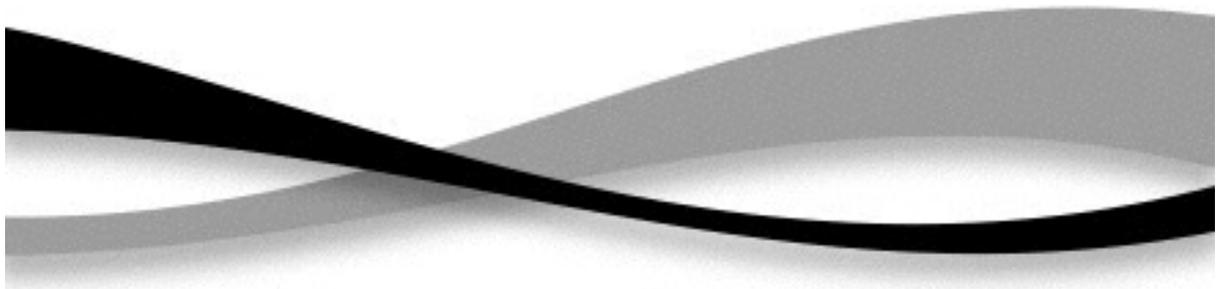
The Royal College of Pathologists' written submission

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1 About the Royal College of Pathologists

1.1 The Royal College of Pathologists (RCPATH) is a professional membership organisation with charitable status. It is committed to setting and maintaining professional standards and to promoting excellence in the teaching and practice of pathology. Pathology is the science at the heart of modern medicine and is involved in 70 per cent of all diagnoses made within the National Health Service. The College aims to advance the science and practice of pathology, to provide public education, to promote research in pathology and to disseminate the results. We have over 10,000 members across 20 specialties working in hospital laboratories, universities and industry worldwide to diagnose, treat and prevent illness.

1.2 The Royal College of Pathologists comments were made by members of the College Council during the consultation which ran from 24th November 2016 until the 9th December 2016 and collated by Dr Rachael Liebmann, Registrar and Professor Peter Furness, Director of Professional Standards.

2 GENERAL COMMENTS

2.1 Council members considered that the NHS should aim to use a system of investigation which encourages people to be able to speak relatively freely about incidents, without fear of personal criticism apart from under exceptional circumstances.

2.2 The concept of mimicking air accident investigations was considered to be a good one, and the idea of a safe space, “just culture” and a set of agreed principles of investigation for NHS staff would be welcome. However, Council members were not quite sure how the principle of confidentiality would work in practice for internal root cause analysis investigations within Trusts.

2.3 In the experience of the College respondents, quite a number of people are involved in such root cause analysis panels, and findings are disseminated widely as soon as possible to allow any learning from incidents to be put into practice quickly. It would be very difficult to decide which pieces of information have an immediate impact on patient safety and could be disclosed, and which do not, as often, the cause of a serious incident is multifactorial. Many factors alone might not seem to cause an immediate threat to patients, but in combination with a number of sub-optimal factors, they do.

2.4 One College respondent had been involved in many Coroner’s inquests where the Coroner had been in possession of internal Trust incident review reports, and this has materially guided the direction of an inquest. Such information may be very pertinent to the outcome of the inquest, and therefore it does not seem practical if the Coroner has to apply to the High Court for relevant information.

2.5 However, it should also be noted that the suggestion was made that this proposal may ‘ring hollow’ due to the NHS culture of reputation management. Potential problems were also identified in the way that NHS Improvement is pursuing Sustainability and Transformation Programmes without reference to some of the failed and expensive previous consolida-

tions. It was considered that this indicated that the NHS is not currently a learning organisation and College Council members would welcome a move to address this.

3 RESPONSE TO SPECIFIC QUESTIONS Council members responded to the specific questions as follows:

3.1 Question 1 - Do you consider that the proposed prohibition on disclosure of investigatory material should apply both to investigations carried out by HSIB, and to investigations conducted by or on behalf of NHS Trusts, NHS Foundation Trusts and other providers of NHS-funded health care?

(Yes) Agree. Local investigations will provide many more opportunities to learn and their outcomes should have more impact on local staff. On the other hand, as mentioned above, confidentiality is much more difficult to enforce at a local level.

3.2 Question 2 - for those investigations undertaken by or on behalf of providers and commissioners of NHS-funded care, should the proposed prohibition on disclosure apply only in relation to investigations into maternity services in the first instance or should it apply to all investigations undertaken by or on behalf of such bodies?

(Yes) Agree. Sounds reasonable to phase the HSIB principles in. However College respondents were not sure that maternity services are the most deserving and suggest that other approaches e.g. geographical, might be considered.

3.3 Question 3 - Do you have any comments about the type of information that it is proposed will be protected from disclosure during healthcare investigations?

(Yes) Agree. The scope of prohibition may be reasonable but this area needs a lot more detail since it is likely to be most contentious.

3.4 Question 4 - Do you agree that the statutory requirement to preserve the confidentiality of investigatory material should be subject to such disclosure as may be required by High Court order?

(Yes) Agree. With the caveat regarding Coronial investigations as mentioned above.

3.5 Question 5 - Do you agree with the proposed elements of the test to be applied by the High Court in considering an application for disclosure?

(Yes) Agree.

3.6 Question 6 - Do you have any views on the proposed exceptions that would apply to the prohibition on disclosure of material obtained during investigations by the HSIB and by or on behalf of providers and commissioners of NHS service?

See below

3.7 Question 7 - Do you have any views on where the bar should be set on passing on concerns to other organisations whose functions involve or have a direct impact on patient safety?

See below

3.8 Question 8 - Do you consider that the exceptions proposed could undermine the principle of 'safe space' from the point of view of those giving evidence to investigations?

Questions 6, 7 and 8 are all important questions that will determine the success or otherwise of this proposal. College Council members considered that the prohibition on disclosure needs to be rigorously enforced for there to be a genuine 'safe space'. There should therefore be a high threshold for referral to professional regulators (immediate risk to patient safety, possibly). It is also unclear to College respondents how multiple incidents would be handled – each on its own merits or would someone determine a possible pattern of events (e.g. deaths and Shipman)? College respondents also posed the question of how would the prohibition on disclosure work across incidents all of which may be being investigated simultaneously.

3.9 Question 9 - Do you support the principle of a 'Just Culture' (that would make a distinction between human error and more serious failures) in order that healthcare professionals might come forward more readily to report and learn from their mistakes without fear of punitive action in circumstances that fall short of gross negligence or recklessness?

(Yes) Agree. But, as above, concerns were raised about how achievable this would prove to be.

3.10 Question 10 - If you consider that the prohibition on disclosure should be subject to an exception allowing for the disclosure of certain information to patients and their families, what kind of information do you consider should be able to be disclosed in that context? And when would be a sensible, workable point for patients/families to have access to information - eg, should they see a pre-publication draft report for comment?

(No) Disagree. Concerns were raised regarding the premise that relatives/patients should see all information. Pathologists are regularly in a position of having detailed, technical and potentially upsetting information about illness and cause of death. In addition, in some circumstances the investigation may reveal confidential issues pertaining to staff and their rights should also be taken into account. The suggestion was made that a 'trusted third party' could be nominated by the family to see evidence and provide guarantees to family that due process has been followed?

3.11 Question 11 - Do you see any problems in a requirement that investigatory bodies (such as professional regulators, coroners and the police) must apply to the High Court if they wish to gain access to information obtained during investigations by the HSIB or by or on behalf of providers or commissioners of NHS-funded care?

(Yes) Agree. But, as above the main issue raised by the College Council members was one of timing and avoiding undue delay to coroners and police investigations. They also recommended detailed consideration given to how much information would be disclosable in a coroners court.

3.12 Question 12 - Do you have any concerns about the use of the phrase "safe space" in relation to this policy; and, if so, do you have an alternative preference?

(No) No concerns were expressed about this phrase.

3.13 Question 13 - Do you see any problems in exempting information obtained during healthcare investigations from access under the Freedom of Information and Data Protection regimes?

(No) Council members agreed that these exemptions are probably essential to the proposal.

3.14 Question 14 - Do you agree that guidance, or an alternative source of support, should be developed?

(Yes) Additional detail was regarded as essential by several respondents.

3.15 Question 15 - Do you think it would be helpful for NHS staff to be supported by a set of agreed national principles around how they would be treated if involved in a local safety incident investigation; and, if so, do you have any suggestions for the areas that such a set of principles should cover?

(Yes) In theory this support exists already but the College consensus was that it would need to be re-worked/re-considered.

3.16 Question 16 - Do you have any concerns about the impact of any of the proposals on people sharing protected characteristics as listed in the Equality Act 2010?

(No) No concerns were expressed

3.17 Question 17 - Do you have any concerns about the impact of any of the proposals on families? If you envisage negative impacts, please explain.

(No) No concerns were expressed