

Protocol for Public and Parliamentary Accountability

**Between the Department of Health
And the NHS Litigation Authority
February 2014**

INTRODUCTION

1. The Department of Health (DH) and its arms-length bodies (ALBs) place great importance on public and Parliamentary accountability. The reforms to the NHS and social care system mean that many of the new or existing Arms Length Bodies (ALBs) now share responsibility for accounting to the public and to Parliament for policies, decisions and activities across the health and social care sector. This reflects the reality that DH and its Ministers remain responsible for the system overall, and will need support from the ALBs to provide assurance that the system is working well (including by providing information for Ministers to provide to Parliament).

2. Throughout the transition, and beyond, it is essential that ministers, MPs, peers and the public alike, have confidence in the health and social care system. To secure this confidence, DH and its ALBs must work together consideratively, cooperatively and collaboratively on all matters. This protocol sets out how DH and the NHS Litigation Authority (NHS LA) will work together to secure and confidence of the public and Parliament, and to maintain the service levels that MPs and public have come to expect.

3. This protocol is intended to reflect the situation over the next 12 months. It will be reviewed on a twice-yearly basis to ensure that the arrangements remain fit for purpose.

PURPOSE

3. The purpose of this protocol is to set in place robust public and Parliamentary accountability arrangements and to ensure good communication and effective collaborative working between the two organisations, and is an agreement between DH and NHSLA. It is intended to help both organisations:

- Meet their respective public and Parliamentary responsibilities;
- Set out their own operational needs;
- Understand own and respective organisation's role and independence;
- Develop and strengthen collaborative partnership working; and
- Secure the confidence of the public, MPs and peers

4. The protocol will take effect from *1 April 2014*

WORKING TOGETHER

5. Both organisations agree to work together to ensure that a consistent message is given, thereby securing the confidence of the public, Ministers, MPs, and peers alike. In doing so, DH and NHS LA will:

- Share information about topics of interest to the public and sensitive/contentious issues; and
- Advise each other of changes to roles, responsibilities and strategic direction or policy

QUALITY, CONSISTENCY AND PERFORMANCE STANDARDS

6. Both DH and NHS LA have a responsibility to establish robust public and parliamentary accountability arrangements across the health and social care structure. It is essential that we secure the trust and confidence of ministers, and that the service we provide to MPs, peers and the public is consistent and seamless.

7. To this end, NHS LA and the Department have agreed to put in place named contacts, adequate resources, robust processes and comprehensive transition arrangements to deal with the handling of public enquiries, correspondence, Parliamentary questions and all other types of Parliamentary business, Freedom of Information (FOI) requests and complaints that meet the needs of Ministers and Parliamentary expectations and timescales.

8. The Department and NHS LA will work collaboratively to ensure that both quality and performance standards are maintained:

QUALITY, CONSISTENCY AND PERFORMANCE STANDARDS

9. DH and NHS LA have agreed to put in place named contacts, adequate resources, robust processes and comprehensive arrangements for the initial period to deal with the handling of public enquiries, correspondence, Parliamentary questions, data protection (DP) requests and all other types of Parliamentary business, Freedom of Information (FOI) requests and complaints that meet the needs of ministers and Parliamentary expectations and timescales.

10. The Department and NHS LA have agreed to work collaboratively to ensure that both quality and performance standards are maintained:

DH will:-

- Send clear, unambiguous commissions for answers to Parliamentary Questions (PQs) and briefing, allowing as much time as possible within Parliamentary and other timescales for NHS LA to provide the information required and to allow Ministers time to consider and meet their obligations to Parliament.
- Work with NHS LA to help it secure sufficient resource, and train staff to have the skills and knowledge required to provide contributions, briefing and replies that meet the required standards of timeliness, accuracy and

reliability of content, and method of presentation that apply across DH and all of its ALBs;

- Ensure an appropriate level of SCS oversight is applied to NHSLA's responses and support NHS LA in establishing quality assurance and appropriate senior level clearance arrangements;
- Provide advice and guidance on records management;
- Provide advice (as required) on FOI legislation;
- Provide advice (as required) on responsibilities under Data Protection Act (DPA) legislation
- Provide guidance on information risk management and advise NHS LA on mandatory controls and reporting
- Ensure that NHS LA is sighted on DH policy and share information to ensure that both organisations work together seamlessly.
- Discuss and agree performance standards which are realistic and achievable for NHS LA;

NHS LA will

- Provide PQ answers, briefing and contributions that allow Ministers to meet their obligations under the Ministerial Code, meet Cabinet Office and DH requirements, and that are timely, comprehensive, accurate, true and fair, and engage meaningfully with the question/ issue;
- Build capacity and capability to ensure that correspondence contributions, briefing and PQ replies meet DH's style, quality and timeliness standards, and which answer the points raised
- Put in place robust systems to manage and archive all public and parliamentary accountability work
- Establish quality assurance and arrangements for clearance by a NHS LA Director (or a named senior officer with delegated authority)
- Ensure that FOI responses meet the requirements of FOI legislation on timeliness and provision of information. NHS LA will embrace the Government's commitment to openness and transparency

- Ensure that responses to requests made, and issues raised under Data Protection (DP) legislation are handled in a timely and appropriate way in line with the requirements of the legislation and good information privacy standards
- Ensure that DH is sighted on issues affecting NHS LA and share information to ensure that both organisations work together to form a 'no surprises' culture;
- Ensure sufficient resources and arrangements for senior clearance are available to provide accurate briefing, answers to PQs, and correspondence contributions within the deadlines set by the Department
- Secure capacity and capability to ensure that at least 90% of correspondence addressed to NHS LA is replied to within 18 working days (Whitehall Standard)
- Have sufficient resource to ensure that FOI requests are responded to within 20 working days of receipt, in line with legislation
- Have sufficient resource to ensure that DPA requests are responded to within 40 calendar days, in line with legislation
- Ensure arrangements are in place to respond to telephone enquiries

ROLE OF THE DH SPONSOR BRANCH

11. The DH sponsor branch's primary role is to liaise between NHS LA and the wider Department (and, where necessary, the rest of Government). It is a supportive and facilitative relationship, based on trusting that NHS LA is best placed to carry out its own business. The sponsor will, however, be expected to assure him/herself that NHS LA's own public and Parliamentary work and contribution to that of DH, both meet the required DH standards.

MULTI-ISSUE POLICY AREAS

12. Responses to issues that span across more than one ALB should be coordinated by the main DH sponsor team (which could include delegating the work to the lead ALB). It will be the responsibility of the DH sponsors to

ensure that there are no “Orphan” policy areas or issues – all should be allocated according to statutory responsibility.

INITIAL PERIOD

13. During the initial period, DH and NHS LA will work cooperatively and collaboratively to ensure consistency in public and parliamentary accountability work, and to maintain standards. To do this they will:

- Work collaboratively to establish capacity and capability within the organisation
- Consult with DH Data Protection and Information Assurance leads to ensure that DPA requests and issues are handled appropriately

MONITORING THE IMPLEMENTATION OF THE PROTOCOL

14. A Public and Parliamentary Review Group will be established to review the accountability arrangements across the health and social care landscape. The purpose being to satisfy itself that DH and NHS LA (and the other ALBs) are responding appropriately to all public and parliamentary business and within an agreed time frame.

PARLIAMENTARY ACCOUNTABILITY

18. This will involve responsibilities around a number of Parliamentary accountability processes, including Parliamentary questions, MPs’ correspondence, debates and committee hearings.

19. Ministers are required to respond to debates and Parliamentary questions etc and NHS LA has agreed to provide the Department with draft speeches, suggested answers and briefing as appropriate that enables Ministers to account for NHS LA. Briefing will include relevant background information, in the format requested by the Department, and be signed off by a senior member of NHS LA.

20. In order to emphasise organisational responsibilities and accountabilities, Ministers will take every opportunity to explain relevant organisational responsibilities and encourage MPs and peers to liaise directly with NHS LA.

21. The Department and NHS LA have agreed to give sufficient notice of requests and provide timely responses in order to meet Parliamentary deadlines. The process for this is set out below.

Oral questions and debates

22. DH, through the sponsor branch, will alert NHS LA to the oral question or debate promptly and normally on the day of receipt. The commission will be clear and provide steer on what should be included.

23. NHS LA will provide accurate information (and background where appropriate), in the format required, by the deadline set by Ministers. It is expected that suitable senior clearance arrangements will be in place within NHS LA, and contributions will be signed off by the sponsor branch SCS

Written questions concerning matters within the responsibility of NHSLA

24. DH, through the sponsor branch, will alert NHS LA to the question on the day of receipt and seek a full answer and relevant background material for the Minister to consider.

25. The general approach is that answers need to be substantive, even if couched in terms of 'the advice we have received from the NHSLA is that...'

26. NHS LA will establish clearance arrangements at a level equivalent to senior civil service level to ensure that responses are to the required standard and that they are returned within the deadlines set. The sponsor branch SCS will be accountable for clearing the final reply submitted to PRU.

Select Committees

27. DH, through the sponsor branch, will request from NHS LA any necessary information and briefing promptly to enable a Minister or official to provide written or oral evidence to a select committee. The commission will be clear and provide a steer on what should be included.

28. NHS LA will also provide information promptly to select committees directly in appropriate circumstances.

Correspondence from MPs sent directly to NHS LA

29. This is MP correspondence addressed to the Chair, Chief Executive or another official in NHS LA about matters relating to the business of the organisation.

30. NHS LA will normally respond directly to the MP. It is usual for the addressee to reply, but this will be a matter for NHS LA to determine. NHS LA will aim to respond within the deadlines set by DH (currently 18 days).

31. On occasion, MP correspondence may refer to both NHS LA and DH business. When handling such correspondence, NHS LA should reply answering the enquiries about NHS LA business, explaining the independence of NHS LA and recommending that the MP writes to DH about the issues relating to it.

Correspondence from MPs to the Department about NHSLA responsibilities

32. This is MP correspondence addressed to DH ministers or officials, but which relates to the business of NHS LA. As NHS LA is not a government department, the Data Protection Act will prevent DH from automatically forwarding correspondence.

33. It is protocol for a DH minister to respond to MP correspondence. When an MP has written to DH about an issue which relates solely to NHS LA business, the Minister will reply explaining the independence of NHS LA and signposting the MP to that organisation. There may be occasions when the matter is so sensitive that Ministers consider that it is more appropriate to respond fully to the correspondence. In such cases, DH will discuss and agree with NHS LA the most appropriate handling approach.

34. When a contribution from NHS LA is required for a Ministerial reply, DH will aim to request the contribution within 48 hours of receipt of the correspondence. NHS LA will aim to provide the contribution within 96 hours of the request being received. It will set in place appropriate senior clearance arrangements to ensure that the contribution is of a good quality and is returned within the stated deadline.

35. In instances where the correspondence covers both Department and NHSLA responsibilities, the Department will reply addressing the issues it is responsible for and signposting the MP to NHSLA.

36. At all times, DH will aim to comply with its Whitehall Standard deadlines (currently 18 working days).

MP meeting requests (to DH Ministers) to discuss NHSLA responsibilities

37. MP requests for meetings are usually sent directly to DH ministers. It is normal practice for meeting requests from MPs to be accepted. These requests will continue to be handled by DH.

38. The Minister's private office will consider the request and seek policy advice from NHS LA before responding. DH will aim to contact NHSLA on the day that the meeting request is received for policy advice. DH will aim to

comply with its Whitehall Standard deadline when responding to the MP (currently 18 working days).

39. NHS LA is expected to provide well considered and timely policy advice on whether or not the Minister should accept the meeting request. It will also provide detailed briefing in advance of the meeting to agreed deadlines and arrange for a relevant senior officer to attend meeting with the Minister. **MP meeting requests to meet NHS LA officials**

40. These will be requests from MPs to meet directly with officials from NHSLA. It is expected that NHSLA will normally agree to requests from MPs and peers for meetings and that they will handle these without input from DH.

PUBLIC ACCOUNTABILITY

41. This will involve responding to letters and telephone calls from the public, FOI requests and complaints. When DH receives letters from the public concerning operational matters of NHS LA, in order to clarify organisational responsibilities and accountabilities the Department will respond to the correspondent advising them to contact NHS LA directly.

42. The Department and NHS LA have agreed that they will give sufficient notice of requests and provide timely responses in order to meet the Whitehall deadline for correspondence and legal deadline for FOI requests.

43. In the event of the Department responding to an FOI request with information that it considers relevant or of interest to NHS LA, the Department will inform NHSLA about the release of that information in sufficient time to prepare appropriate media handling if necessary. NHS LA will also operate to this model.

Public Enquiries

44. For the purposes of this protocol, public enquiries are telephone enquiries. NHS LA will be responsible for establishing its own arrangements to answer its public enquiries. It will be expected to set out its own Customer Charter detailing the level of service its callers can expect.

45. DH will signpost clearly any caller who wishes to discuss matters which relate solely to NHS LA.

Letters and emails from members of the public to NHS LA

46. This is correspondence from the public and health and social care professionals addressed directly to NHS LA. NHS LA will respond directly to this correspondence. Where possible, NHS LA will comply with accepted Whitehall Standard targets (currently 18 working days).

47. If the correspondence covers areas that should rightly be for the Department to answer, NHS LA will respond to the correspondence explaining the independence of NHS LA and signpost them to the Department. NHS LA will check with DH to ensure that it has re-directed the correspondent correctly.

48. The Department will pass on all public correspondence addressed to NHS LA but delivered erroneously to the Department's Ministerial Correspondence and Public Enquiries unit within 24 hours of receipt. NHS LA will make its own forwarding arrangements with the Department's postal services.

Correspondence from members of the public to DH or its Ministers about matters that are the operational responsibility of NHS LA

49. The Data Protection Act will prevent DH from automatically forwarding correspondence. Instead, DH will respond to the correspondence it receives, explaining the independence of NHS LA and signposting the correspondent to

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NHS LA. In instances where the correspondence covers both departmental and NHS LA responsibilities, the Department will reply with its policy lines and signpost the correspondent to NHS LA for all matters pertaining to NHS LA. At all times, DH will aim to comply with the Whitehall Standard target (currently 18 working days).

FOI request direct to NHSLA

50. NHSLA will respond to all FOI requests submitted to it. As a public authority, NHSLA will have a legal obligation to provide information in response to FOI requests and will be required to have in place an approved publication scheme. Under the FOI Act, information is 'held' by a public authority if it is held by that authority, or by another person or organisation on behalf of that authority. NHS LA will also have a duty under the Act to provide advice and assistance to people who have made, or propose to make, information requests to the organisation.

51. Quantitative and qualitative records about FOI requests received and answered should be maintained by NHS LA and it may wish to publish some of this information on its external website.

52. The Department will pass on all FOI correspondence addressed to NHS LA but delivered in error to the Department's FOI Unit within 24 hours of receipt.

53. Although NHS LA must independently handle FOI requests as a separate organisation, the Department's FOI team will provide informal, impartial advice on FOI legislation and duties. However, the decision as to whether a request falls under an FOI exemption or not will still rest with NHS LA.

54. NHS LA will make its own forwarding arrangements with the Department's postal service.

55. NHS LA will make its own arrangements for receiving formal legal advice on FOI handling.

56. NHS LA will also be required to have in place a nominated “qualified person” in the event of NHSLA invoking a s36 exemption.

FOI request about the NHSLA via the Department

57. FOI requests to the Department about NHSLA will be assessed on the basis of whether the Department holds the information at the time of the request. The standard rules of FOI compliance will apply.

58. If the Department holds the information and considers that it does not fall within the scope of an FOI exemption, the Department will be minded to release the information and close down the case.

59. If the Department does not hold the information - but judges that it may be in NHSLA’s possession - under the FOI Act’s duty to assist and advise, the Department will advise the applicant to contact NHSLA (giving full contact details) and close down the case.

60. There will be no onward referral of FOI cases to or from either organisation.

61. **Papers of a Previous Administration** - in the event of a handling an FOI request that relates to Papers of a Previous Administration, NHS LA will follow the guidance set out in the Permanent Secretary’s letter to all ALBs on 11 October 2013.

COMPLAINTS AND WHISTLEBLOWING

Overview

62. NHS LA and its staff must be aware of the commitments set out in the Statement of Common Purpose, as published in the Government's response to the Mid-Staffordshire NHS Foundation Trust Public Enquiry (November 2013, pages 5-7).

Complaints received by the NHS LA about the NHS LA

The NHS LA will have robust policies and processes in place for handling complaints and will respond to complaints about NHS LA or its staff from service users, or members of the public that are addressed to NHS LA or to named officers working there.

63. The NHS LA will follow best practice in responding to complaints, as laid down in the Parliamentary and Health Service Ombudsman's 'Principles of Good Complaints Handling'.

64. As a Special Health Authority, NHS LA is required to follow the legislative framework laid down in the Local Authority Social Services and the National Health Service Complaints (England) Regulations, 2009.

Complaints received by DH about NHS LA

65. If DH receives a complaint about NHS LA or its staff, it will either ask the complainant for permission to forward the case to NHS LA, or write to the complainant giving details of how to complain to NHS LA.

Whistleblowing

66. NHS LA must ensure that it has correct processes in place for handling whistleblowing cases received by the NHS LA about the NHS LA.

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67. If DH receives a whistleblowing case about NHS LA, DH will refer the case to the relevant sponsor team to action.

Complaints and whistleblowing received by NHS LA about the health and social care system

68. If NHS LA receives a complaint or whistleblowing case about NHS services, or any other part of the health and care system, the onus will be on NHS LA to respond to the complaint and to inform other relevant organisations (eg: CQC, NHS TDA). Records should be maintained, and appropriate reports provided to relevant regulatory authorities to inform on-going monitoring and quality improvement.