

# Arrangements to secure children's and adult safeguarding in the future NHS

The new accountability and assurance framework – interim advice



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# Contents

Contents.....	3
1.0 Background and Context.....	4
2.0 Purpose of this advice .....	4
3.0 The reformed commissioning system.....	5
3.1 NHS Commissioning Board (NHS CB).....	5
3.2 Clinical Commissioning Groups (CCGs) .....	5
4.0 What do these changes mean for safeguarding?.....	6
4.1 Clinical Commissioning Groups (CCGs) .....	6
4.1.1 Commissioning Support.....	7
4.1.2 Funding .....	7
4.1.3 Capacity and Capability .....	7
4.2 NHS Commissioning Board (NHS CB).....	8
4.2.1 Directly commissioned services .....	8
4.2.2 Leadership and Assurance .....	8
5.0 Key partners.....	9
5.1 Local Safeguarding Children Boards (LSCBs) .....	9
5.2 Safeguarding Adults Boards (SABs) .....	9
5.3 Local authorities .....	9
5.4 Health and wellbeing boards (HWBs).....	9
6.0 Safeguarding clinical leadership and support.....	9
7.0 Next steps .....	10
8.0 Conclusion.....	10

## 1.0 Background and Context

The NHS is currently in the process of implementing a major programme of reform following the passage of the Health and Social Care Act 2012. This is designed to support the creation of a health service that is clinically led, patient centred, dedicated to the delivery of world-class outcomes and focussed on improving the health of the population.

It is essential that there is clarity about responsibilities in relation to safeguarding within these new arrangements – and about how the new system can help drive continued improvement in practice and outcomes.

In the final report (May 2011) of her review of child protection, Professor Eileen Munro expressed concern about the possible impact of the health reforms on effective partnership arrangements and the ability to provide effective help for children suffering, or likely to suffer, significant harm. In response, the Government committed to establishing a co-produced work programme “to ensure continued improvement and the development of effective arrangements to safeguard and promote children’s welfare as central considerations of the health reforms”.

The Government is also committed to working to prevent and reduce the risk of abuse and neglect of adults.

## 2.0 Purpose of this advice

Within the new NHS Commissioning Board (NHS CB), responsibility for safeguarding will sit in the Nursing Directorate, as part of the wider patient safety agenda. Sir David Nicholson, Chief Executive designate, asked the Chief Nursing Officer to create a new accountability and assurance framework, working with colleagues across the Department of Health (DH), the NHS, and wider partners. It is anticipated that the framework will

- outline a series of principles and ways of working that are equally applicable to the safeguarding of children and young people and of vulnerable adults
- clarify the future NHS roles and responsibilities for safeguarding
- provide a shared understanding of how the new system will operate, in particular, how it will be held to account both locally and nationally
- ensure professional leadership and expertise are retained in the NHS systems, including the continuing key role of designated and named professionals
- clarify future arrangements for partnership working between the NHS and Local Safeguarding Children Boards (LSCBs), local Safeguarding Adults Boards (SABs) and health and wellbeing boards
- provide the basis for the detailed planning needed to ensure a safe transition from the existing statutory responsibilities of SHAs and PCTs, through the current SHA and PCT cluster arrangements, to the new arrangements due to come into force from April 2013.

It was originally intended that the framework should be produced as part of the review of the 2010 statutory guidance *Working Together to Safeguard Children* that is being led by the Department for Education (DfE). The revised statutory guidance was expected by July but it is now expected that the final version will appear in the autumn.

The timetable of NHS reform means that critical decisions about authorisation of CCGs and the design of the NHS CB are being made over this summer and autumn. It has therefore been agreed that this interim advice should be produced immediately, with the comprehensive framework being finalised in the autumn alongside the revised *Working Together*.

This advice therefore focuses primarily on the new NHS commissioning system and

- a) provides additional information to emerging CCGs linked to authorisation and beyond

- b) sets out how the NHS CB intends to fulfil its duties and responsibilities, both as the commissioner of some healthcare services and in its oversight role
- c) outlines the on-going work and timetable required to secure successful implementation.

Although this advice focuses on the statutory requirements to safeguard children, the same key principles will apply in relation to arrangements to safeguard adults. Legislation in this area is likely to be strengthened in the foreseeable future following the publication of the draft Care and Support Bill on 11 July 2012.

### 3.0 The reformed commissioning system

From April 2013, clinical commissioning groups (CCGs), led by GPs and other clinicians, will take over from PCTs the responsibility for commissioning most local healthcare services. The NHS CB will support CCGs and hold them to account and will itself be responsible for commissioning some healthcare services. Local authorities will become responsible for most local public health functions, supported by Public Health England.

All NHS Trusts (ie providers of healthcare services) will be on a pathway to Foundation Trust status, which will mean both greater accountability for the quality of the services they provide and greater autonomy in how they fulfill their responsibilities. Commissioners' duties to promote and enable greater choice for patients may result in a greater range of providers in some areas of healthcare, where commissioners consider that this will improve quality of care.

#### 3.1 NHS Commissioning Board (NHS CB)

The NHS CB will be an executive non-departmental public body. It will work under its mandate from DH to improve the quality of NHS care and health outcomes, reduce health inequalities, empower patients and the public and promote innovation. Its key responsibilities will include

- authorisation and oversight of CCGs and support for their on-going development
- the direct commissioning of primary care, specialised health services, prison healthcare and some public health services (including, for a transitional period, health visiting and family nurse partnerships)
- developing and sustaining effective partnerships across the health and care system.

The NHS CB will have a single operating model and will be organised into three functional areas, ie nationally, regionally and locally. There will be senior clinical leadership at all levels. The Board's national leadership team will include the Chief Nursing Officer and the regional and local area teams will each have a Director of Nursing who will be responsible for supporting and providing assurance on the safeguarding of vulnerable children and adults.

#### 3.2 Clinical Commissioning Groups (CCGs)

CCGs will be statutory NHS bodies with a range of statutory duties similar in many respects to those of PCTs. Unlike PCTs, however, they will essentially be membership organisations that bring together general practices to commission services for their registered populations and for unregistered patients who live in their area. The NHS CB will allocate around £60 billion of funds to CCGs to commission health services for their populations. CCGs will not be directly responsible for commissioning primary medical care (or other primary care services), but they will have a duty to support improvements in the quality of primary medical care.

The current planning assumption is that there will be 212 CCGs established by April 2013, some fully authorised and some authorised with conditions.

## 4.0 What do these changes mean for safeguarding?

Both CCGs and the NHS CB will be statutorily responsible for ensuring that the organisations from which they commission services provide a safe system that safeguards children and vulnerable adults. This includes specific responsibilities for looked after children and for supporting the Child Death Overview process. Local authorities will have the same responsibilities in relation to the public health services that they commission, including public health services for children aged 5-19.

Both CCGs and the NHS CB will have a statutory duty to be members of Local Safeguarding Children Boards (LSCBs) and (subject to the Care and Support Bill) Safeguarding Adults Boards (SABs), working in partnership with local authorities to fulfil their safeguarding responsibilities.

In addition to the distinct responsibilities that the NHS CB will have as a commissioner of primary care and other services, the Board will also be responsible for developing overall NHS policy on safeguarding, providing oversight and assurance of CCGs' safeguarding arrangements and supporting CCGs in meeting their responsibilities. This will include working with the Care Quality Commission (CQC), professional regulatory bodies and other national partners.

This will mean that the NHS CB and CCGs will work closely together – and in turn will work closely with local authorities, LSCBs and SABs – to ensure that there are effective NHS safeguarding arrangements across each local health community, whilst at the same time ensuring absolute clarity about the underlying statutory responsibilities that each commissioner has for the services that they commission, together with a clear leadership and oversight role for the NHS CB.

For children and young people, the key legislation includes the Children Act 1989 and the Children Act 2004. Sections 11 and 13 of the 2004 Act have been amended so that the NHS CB and CCGs will have identical duties to those of PCTs, ie to have regard to the need to safeguard and promote the welfare of children and to be members of LSCBs. The revised version of *Working Together* will set out expectations as to how these duties should be fulfilled. The draft Care and Support Bill sets out comparable requirements with respect to safeguarding vulnerable adults, including membership of Safeguarding Adults Boards.

The accountability framework being developed by the NHS CB will set out in more detail how the NHS CB and CCGs will work together to minimise risk, improve outcomes for children and vulnerable adults, develop and sustain effective partnerships, and ensure they are able to access the necessary clinical expertise and advice.

### 4.1 Clinical Commissioning Groups (CCGs)

CCGs will need to demonstrate as part of authorisation that they have appropriate systems in place for discharging their responsibilities in respect of safeguarding (see the Draft Guide for Applicants for CCG Authorisation, 4.2.3 and 5.3), including

- plans to train staff in recognising and reporting safeguarding issues
- a clear line of accountability for safeguarding, properly reflected in the CCG governance arrangements
- appropriate arrangements to co-operate with local authorities in the operation of LSCBs and SABs
- securing the expertise of a designated doctor and nurse for safeguarding children and for looked after children and a designated paediatrician for unexpected deaths in childhood
- having a safeguarding adults lead and a lead for the Mental Capacity Act, supported by the relevant policies and training.

A CCG's leadership arrangements for adult safeguarding will need to include responsibility for ensuring that the CCG commissions safe services for those in vulnerable situations, including effective systems for responding to abuse and neglect of adults in vulnerable situations and effective

interagency working with local authorities, the police and third sector organisations. CCG leads for safeguarding adults will need to have a broad knowledge of healthcare for older people, people with dementia, people with learning disabilities and people with mental health conditions.

The CCG will need to ensure that its designated clinical experts are embedded in the clinical decision making of the organisation, with the authority to work within local health economies to influence local thinking and practice.

Where the designated professionals are currently employed within PCTs, it is expected that their employment will transfer to a CCG. Where the designated professionals (most likely the designated doctor) are employed within a provider organisation, the CCG will need to have an SLA with the provider organisation that sets out the practitioner's responsibilities and the support they should expect in fulfilling their designated role (see section below on Networks).

In some areas there will be more than one CCG per local authority and LSCB/SAB area, and CCGs may want to consider developing 'lead/hosting' arrangements for their designated professional team. It is expected that CCGs will need to ensure that a memorandum of understanding (MoU) is in place to ensure and assure the effectiveness and compliance of such arrangements.

#### 4.1.1 Commissioning Support

Whilst Commissioning Support Units or other commissioning support services will have a number of important roles to play in helping CCGs to commission effective services and assure themselves of the safety of those services, they are not considered as an appropriate vehicle for the 'hosting' of designated professionals.

#### 4.1.2 Funding

CCGs should plan on the basis that running costs will be defined in the same way as PCT administration costs, which excludes any payments for the provision of healthcare or healthcare related services. CCGs, supported during the transition by PCT cluster finance staff, will need to exercise judgement in deciding what are healthcare related services. However, the current rules allow administration costs to exclude specific clinical advice where it relates to the care given to individual patients. Current advice indicates that designated professionals should fall within this definition. However, there are likely to be other costs associated with the safeguarding system, eg the local contribution to the operation of the LSCB, which will have to be met from within a CCG's running cost allowance.

#### 4.1.3 Capacity and Capability

As part of preparing for authorisation, CCGs will need to consider whether they have sufficient capacity in place to fulfil their duties and decide on the most appropriate arrangements for securing it. CCGs may wish to approach their cluster or SHA nurse for additional advice but some of the issues they may wish to consider include

- the size and geography of the 'patch'
- the number of providers and the complexity of the provider landscape
- the evidence/advice from recent inspections and reviews of safeguarding
- the deprivation of the population served and the numbers of children in need.

It is strongly recommended that future plans and arrangements are discussed with the Chair of the LSCB, the chair of the SAB, the local authority's Directors of Children's Services and the Director of Adult Social Care, who will also be able to assist and advise. They may also be providing feedback as part of the authorisation process.

## 4.2 NHS Commissioning Board (NHS CB)

The NHS CB, through the leadership of the Chief Nursing Officer, will

- ensure that the Board meets its specific safeguarding duties in relation to the services that it directly commissions (eg primary care, specialised services)
- act as the policy lead for NHS safeguarding, including leading and defining improvement in safeguarding practice and outcomes
- lead, in conjunction with Regional Nursing Leads, annual assurance and peer review processes for both CCGs and directly commissioned services
- provide specialist safeguarding advice to the NHS
- lead joint work with CQC and Monitor on a joint information sharing protocol and MoU for areas of concern.

### 4.2.1 Directly commissioned services

The NHS CB will have the same duties as CCGs for its directly commissioned services and it will be important that, through the Local Area Teams, the NHS CB works in effective partnership with CCGs, GP practices (with whom patients will generally be registered) and local authorities. As a commissioner, it will need to engage with LSCBs as required. In addition, the NHS CB Local Area Teams will need to ensure that they can access the appropriate specialist expertise including, but not exclusively, in the form of named GPs, to support their responsibilities for managing primary care contracts and managing performers' lists.

Within each local area team, the Director of Nursing will have the lead responsibility for safeguarding for both adults and children. They will convene Local Safeguarding Networks bringing together the safeguarding leads and other key stakeholders. As well as the roles outlined below, these networks will ensure that the NHS CB is able to access the expertise to commission safe services.

### 4.2.2 Leadership and Assurance

Currently the effectiveness of the safeguarding system is assured and regulated in a number of ways. These include

- via the Local Safeguarding Boards
- via external inspection – for children these have been joint inspections with CQC led by Ofsted
- locally developed peer review processes
- action planning and monitoring processes following Serious Case Reviews.

Whilst the previous programme of joint inspections has been discontinued and the review of *Working Together* will recommend a new framework for monitoring, inspection and review, it is clear that both children's and adult safeguarding will continue to be subject to active scrutiny. In addition, both the NHS CB and CCGs will want to be able to assure themselves that they are fulfilling their own duties and obligations.

We envisage that the central and regional teams of the NHS CB will take lead responsibility for policy on safeguarding and for overall assurance of the NHS safeguarding system, whilst the local area teams of the NHS CB will have the responsibility for day-to-day support, leadership and assurance. LATs will provide assurance that the local health system including CCGs and designated professionals are meeting their responsibilities effectively. The role will include

- assuring through the annual review process that the NHS is delivering improved outcomes for children
- co-ordinating and supporting local leadership of external reviews
- working with LSCBs, SABs and Health and Wellbeing Boards.



The annual review process would also give additional assurance to the LSCB and the HWB, when used in conjunction with the CQC ( and other inspections).

The NHS Commissioning Board Authority (NHS CBA) is considering with CCGs and partner organisations how these processes might feed into the annual assessment of CCGs.

Further work is also required on how the relationships between LSCBs, local authorities, the NHS CB and CCGs will operate where there are concerns about the local NHS's engagement and delivery.

## 5.0 Key partners

There are a number of key bodies with which the NHS CB and CCGs will need to work effectively in order to fulfil their statutory duties

### 5.1 Local Safeguarding Children Boards (LSCBs)

LSCBs will continue to be the key statutory mechanism for agreeing how the relevant organisations in each local area will co-operate to safeguard and promote the welfare of children in that locality, and for ensuring the effectiveness of what they do. Through its annual report, the LSCB will provide a comprehensive analysis of safeguarding children in the local area.

Local CCGs and the NHS CB will be members of the LSCB, and the LSCB will be able to involve the NHS CB in ensuring full local NHS engagement

### 5.2 Safeguarding Adults Boards (SABs)

Safeguarding Adults Boards already work effectively with health bodies. The draft Care and Support Bill proposes putting SABs on a stronger, statutory footing, better equipped both to prevent abuse and to respond when it occurs. It is intended that CCGs and the NHS CB will become statutory members of SABs. The SAB will be able to determine its own strategic plan, with the local community, to protect adults in vulnerable situations from abuse and neglect. The Board will publish its safeguarding plan and report annually on progress to ensure that agencies' activities are effectively coordinated.

### 5.3 Local authorities

Local authorities will continue to be the lead statutory organisations for safeguarding, but with some new resources and levers, in particular the creation of health and wellbeing boards and the integration of public health with local government.

The Director of Public Health will be a member of the health and wellbeing board and should ensure that the needs of vulnerable children and adults are a key part of the Joint Strategic Needs Assessment.

### 5.4 Health and wellbeing boards (HWBs)

Health and wellbeing boards will have overall strategic responsibility for assessing local health and wellbeing needs and agreeing Joint Health and Wellbeing Strategies for each local authority area. Work is still underway to define the formal relationship between health and wellbeing boards and LSCBs but the responsibilities of the LSCB will complement those of the health and wellbeing board, and the LSCB should not be subordinate to or subsumed within local structures that might compromise its separate identity and voice. There will need to be a clear distinction between the roles and responsibilities of the LSCB and the health and wellbeing board.

## 6.0 Safeguarding clinical leadership and support

CCGs and the NHS CB will want to provide appropriate support and advice to the designated professionals and will want to be able to access the widest possible expertise to support improving safeguarding practice.

In order to support this, Local Area Teams will establish local Safeguarding Forums. The role of these forums should include

- the provision of supervision and support to designated professionals including those responsible for looked after children.
- provision of specialist advice and expertise to CCGs and Local Area Teams
- driving improvement in safeguarding practice
- underpinning system accountability through peer review based assurance that will be developed in line with the overall NHS CB approach to quality improvement.
- ensuring succession planning and the commissioning of appropriate education and development for designated professionals through engagement with Health Education England.

In addition, there is a need for specialist clinical advice in complex clinical situations which may require a link to the Strategic Clinical Networks currently being established.

## 7.0 Next steps

There are a number of pieces of work that need to be completed in order that a full accountability and assurance framework for safeguarding children and adults in the NHS can be produced.

These include

- further work on how the partnerships with CQC and Monitor will operate, including the information sharing and early alert system
- continuing work with DfE on the production of the revised *Working Together* statutory guidance
- production of specimen/best practice 'hosting' and SLA agreements for CCGs
- finalising the structures by which the NHS CB will discharge its own commissioning responsibilities, including further work on named GP support and the Safeguarding Forums
- continuing work with the NHS Confederation, Royal College of Paediatrics and Child Health and other stakeholders to ensure clarity about requirements for provider organisations
- contributing to the design of the framework for the annual assessment of CCGs.

DH and the NHS CBA have agreed to establish a Safeguarding Children Transition Board, which will co-ordinate the development of the final Accountability and Assurance Framework and oversee its implementation through transition to April 2013,

## 8.0 Conclusion

This interim advice outlines key elements of the emerging accountability and assurance framework for NHS safeguarding and the work underway to develop this. It is designed to inform and underpin CCG and NHS CB decisions on structures, capability and resources during the next phases of authorisation and transition.

We anticipate that it will be replaced by a more comprehensive document in the autumn, alongside the revised *Working Together* statutory guidance.

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