



The Draft Health Service Safety Investigations Bill – duty of cooperation

“Following the Mid Staffordshire NHS Foundation Trust Public Inquiry, a number of reports ... emphasised the importance of coordinated regulation across the health sector.”

Memorandum of understanding between Monitor and the Care Quality Commission,
26 February 2015

This fact sheet provides a brief overview of how the new Health Service Safety Investigations Body (HSSIB) will work alongside healthcare regulators in carrying out the functions specified in the Draft Health Service Safety Investigations Bill.

Background

1. The Draft Health Service Safety Investigations Bill proposes to establish a new independent body, the HSSIB, to investigate incidents which appear to evidence serious patient safety risks in NHS-commissioned services in England.
2. Investigations by the HSSIB will focus on the underlying causes that gave rise to those patient safety risks. It is not the role of the HSSIB to assess or determine blame or liability.

What is the duty of cooperation?

3. The HSSIB's role is an investigation body. It is not a replacement or substitute for any existing healthcare regulator.
4. However, the HSSIB may wish to

- investigate an incident that is also the subject of an investigation carried out by a healthcare regulator or an NHS body.
5. It is expected that the HSSIB will have agreements with healthcare regulators – such as the Care Quality Commission and the General Medical Council – which will enable HSSIB investigations to be conducted alongside a regulator's inspection, inquiry or other investigation.
6. The Bill imposes a duty of co-operation on HSSIB and a range of specified health-related investigatory bodies where they are investigating the same or related incidents.
7. The duty to co-operate is reciprocal and relates to practical arrangements for co-ordinating the respective investigations undertaken by the HSSIB or an accredited trust.
8. HSSIB investigations will not interfere with existing inquiries or

investigations undertaken by other NHS providers and regulators, whose responsibilities will remain unchanged.

Will HSSIB share any information with regulators and others?

9. Information held by the HSSIB during the course of an investigation will be protected from disclosure under 'safe space', unless one of the statutory exemptions applies or the High Court orders disclosure. (See *Fact Sheet 3 for further information on 'safe space'*).
10. 'Safe space' is designed to encourage patients, families, NHS staff and other participants in an investigation to speak freely, when things go wrong.
11. But the HSSIB will only alert regulators, the police or other relevant bodies, if during the course of an investigation it uncovers evidence of a serious, ongoing safety risk, professional misconduct or criminal activity.
12. Following each investigation, the HSSIB will produce a final report with recommendations aimed at specific organisations and learning for the whole health system.

Will regulators share information they hold with the HSSIB?

13. Professional regulators will not be compelled to provide information to the HSSIB.
14. However, it is expected that regulators will wish to cooperate with the HSSIB investigations on logistical matters relating to parallel investigations.

FURTHER INFORMATION

- *Learning Not Blaming: the government response to the Freedom to Speak Up consultation*, the Public Administration Select Committee report *Investigating Clinical Incidents in the NHS*, and the Morecambe Bay Investigation.
<https://www.gov.uk/government/publications/learning-not-blaming-response-to-3-reports-on-patient-safety>
- Memorandum of Understanding between Monitor and the Care Quality Commission
https://www.cqc.org.uk/sites/default/files/mou_monitor_cqc_26_February_2015.pdf
- *Complaints and Raising Concerns*, Health Committee, 13 January 2015
<https://www.publications.parliament.uk/pa/cm201415/cmselect/cmhealth/350/350.pdf>