

# Shared Insights: Commissioning an independent review of a service, clinical department or clinician

Ros Foster, Nicola Evans and Kathryn Fearn led a session on commissioning independent reviews when NHS organisations identify issues with a service, clinical department or clinician's practice.

Ros Foster is a partner at Browne Jacobson who has over 25 years' experience advising a wide range of clients on regulatory and administrative law issues. Ros specialises in healthcare regulation and leads Browne Jacobson's information law team.

Nicola Evans is a Consultant at Browne Jacobson who has specialised in health law for more than two decades. She acts for a wide range of NHS organisations and NHS Resolution, advising on complex health law queries and representing NHS organisations at inquests. Nicola has 12 years' experience working at senior legal within the NHS as Associate Director of Legal Services for a large acute hospital Trust.

Kathryn Fearn is an experienced Solicitor-Advocate and is the Associate Director of Legal Services at University Hospitals Derby and Burton NHS Foundation Trust (UHDB). Kathryn Fearn shared learning from two external reviews commissioned at UHDB and the lessons learnt from that process.

## The Shared Insights were:

When commissioning an external review, it is essential to agree robust Terms of Reference which set out the end to end process. The Terms of Reference should be agreed at the outset and should set the objectives of the review and outline how key issues will be dealt with to meet essential legal requirements.

Consider seeking specialist legal advice when drafting the Terms of Reference.

Click here to read a [checklist](#) of key legal issues that should be addressed in the Terms of Reference. This checklist should be shared with Divisional Management Teams and at Board level, to raise awareness of the pitfalls to avoid and the legal obligations that must be met when commissioning external reviews.

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## When commissioning the review:

- Consider how you will select the external reviewer. Keep a written record of how and why the reviewer was selected, so you can provide assurance that he or she is independent and has the appropriate expertise. Consider what type of review is required and what methodology will be followed. Options include a thematic review or an individual case/clinician/department review.
- Identify your key stakeholders and consider when and how to involve them. These will include regulators, NHS Resolution and individuals such as staff, patients, families and clinicians.
- Consider at the outset what approach you will take to patient engagement and obtaining patient consent before disclosing medical records to the reviewer. Trusts will want to be as open as possible, but this must be balanced with duties of confidentiality owed to clinicians/employees of the Trust.
- It is also important to secure buy-in from clinicians who will be involved in the review. Terms of Reference should be shared with them at the outset.
- Decide what the final report will look like, how will it be shared, what approach will be taken to agreement and sign off of the report and who will make the decisions about how to action the recommendations of the report?
- If the review was commissioned as a result of whistleblowing, ensure you comply with the legal duties owed to whistleblowers.