

NHS permission for R&D involving NHS patients

February 2004

DH Gateway reference 2567

Contents of these notes

Summary

The NHS is expected to manage risk, minimise bureaucratic process, and facilitate research. Background and further information are available from DH and the NHS R&D Forum.

Detailed notes

- When a NHS body is the “organisation providing care”, its permission is required
- Be satisfied with reasonable assurances that others will do what is required of them
- Position of the PCT as the “organisation providing care”
- When the PCT is not the “organisation providing care”: its permission is not required
- Information for patients involved in a clinical trial
- Public involvement in research
- Commercial research
 - R&D Partnership Agreement
 - Costs and Charges
- Scientific review
 - The main funder and sponsor are responsible for scientific review
 - Universities are responsible for reviewing student research
 - The NHS would arrange for full scientific review when the NHS is to be the main funder and/or sponsor
- Existing research

Summary

The NHS is expected to manage risk, minimise bureaucracy, and facilitate research

These notes explain what is expected of the NHS when considering permission for research that involves patients on a Primary Care Trusts NHS list. Many of the points are also relevant to NHS Trusts. They provide further details of the intention behind this aspect of the Research Governance Framework for Health and Social Care.

The aim for the NHS is to

- **manage any significant risks** to patients, users and carers, staff and other individuals covered by a health care organisations’ duty of care and Duty of Quality, while
- **minimise bureaucratic process and facilitate high quality research.**

Research and development is a core function of the NHS. It leads to benefits for health care, public health and the national economy. It is government policy to encourage and facilitate both

commercial research and publicly funded research in health and social care. Guidance on NHS support for non-commercial (publicly funded) research is given in HSG (97)32.

The NHS is expected to work with others to maintain research governance systems and procedures that are proportionate to the risk presented by particular studies.

The Research Governance Framework for Health and Social Care requires that in future each study will have a sponsor¹. It calls for documented agreements about allocation of responsibilities between all parties concerned. It requires the lead investigator to ensure that the health and social care organisations involved are informed when a study is planned, and that the study does not begin without their permission.

It would create unnecessary barriers to research if each PCT or NHS Trust were to duplicate the checks the ethics committee, the sponsor and the main funder are expected to carry out. NHS organisations are encouraged to accept assurances about quality systems from those in a position to give them. The onus is on those providing assurances to fulfil their responsibilities.

When considering whether there is any reason to refuse permission for a research study, providers of health and social care are expected to take account of the issues in the following notes. Many of the considerations apply to any health or social care organisation. When they are particular to PCTs, the notes say so.

Background and further information are available from DH and the NHS R&D Forum

The Research Governance Framework for Health and Social Care (RGF) brought together standards for research in settings that fall within the responsibility of the Secretary of State for Health. The Department of Health (DH) issued the first edition of the Framework in March 2001, [click here](#) to access the document.

A draft second edition of the Framework is also available, [click here](#) to access the document. The second edition will include changes to take account of legislation on clinical trials of medicines for human use, and developments in research governance for social care. Guidance for local research governance implementation plans (DH, 2003) is also available from the same website.

The NHS R&D Forum has assembled an Information Toolkit for PCTs who employ researchers and/or sponsor research. It is available at www.rdforum.nhs.uk. It includes material on partnership arrangements around Research Management and Governance PCTs, and (for those that sponsor or fund research) processes such as peer review.

Research and Development Directorate

Department of Health

February 2004

¹ It is a national research governance implementation target that from April 2004, no research with human participants, their organs, tissue or data, may begin or continue in the NHS until a sponsor has taken on responsibility for the study. Further advice was given for on-going research in the NHS in the guidance for annual reports for 2003 [click here](#) to access the document

Detail

When a NHS body is the “organisation providing care” its permission is required before a study may begin

The context for permission depends on the research governance functions the health or social care organisation is performing. It may have duties related to one or more of the following functions.

- A NHS Trust or PCT may be considering, as an organisation providing care, whether there is any reason to withhold permission for a study that might affect its duty of care.
- A NHS Trust or PCT may learn of a study that is to take place in its area. If it is not the organisation providing care, its permission is not required. If there could be uncertainty whether the research participants are recruited as NHS patients, the organisation may ask for an assurance that everyone taking part understands who takes responsibility for the study.
- A NHS Trust or PCT may be considering, as an employer of research active NHS staff, whether to take the employer’s responsibility for a study that its employees wish to conduct in the course of their employment.
- A NHS Trust or PCT may be considering whether to fund a study and/or to take on responsibility for it as the sponsor.

Many requests for permission will involve the NHS Trust or PCT as the organisation providing care, and not as the research employer, funder or sponsor.

Paragraph 3.10.4 of the Research Governance Framework summarises the main responsibilities of organisations providing care. These include that

- they be aware and maintain a record of all research; and
- they ensure
 - all research involving participants for whom they are responsible has ethical approval and
 - someone with the authority to do so has given permission.

NHS Trusts and PCTs are expected to answer requests for permission within a reasonable period, avoiding unnecessary delay. They may for example give permission conditional on a favourable ethical opinion (and ask to be provided, before the study commences with evidence of ethical approval).

Statutory time limits apply for regulatory approval and ethical opinion for clinical trials of medicines from May 2004. NHS bodies are asked to bear these in mind and not delay the overall process. If a PCT or NHS Trust does withhold permission, it should give reasons.

A NHS body may be satisfied with evidence or reasonable assurances that others will do what is required of them

For research funded by external bodies such as DH, Medical Research Council, medical research charities which operate beyond a local level, universities, or established pharmaceutical companies, there is an expectation that the standards in the Research Governance Framework will be respected.

If an external body has taken responsibility for a study, it is normally reasonable for the NHS to rely on the arrangements that body says it has made (see below), and the NHS can normally expect to give permission. It would create unnecessary barriers to research if each PCT and NHS Trust were to duplicate all the checks the ethics committee, the sponsor and the main funder are expected to carry out.

Ethical review provides an independent opinion that reassures other parties it is safe to go ahead with a study. It is the responsibility of the ethics committee to be satisfied that a study will respect the dignity, rights, safety and well-being of participants, and that the benefits from it justify the impact on individuals. Ethical review includes scrutiny of the Patient Information Sheet to be used with the research. Requests for changes to this document would prompt further ethical reviews and approvals (including in other

countries if the trial is multi-national).

It is the responsibility of the ethics committee to review the ethics of a clinical trial. The ethical review process will normally look for evidence of local issues that may affect the suitability of particular sites, and the ethics committee may consult care providers about them. It is usual for the NHS to rely on the outcome of ethical review. It is very unlikely to be appropriate for a PCT or NHS Trust to impose additional conditions relating to ethical issues the ethics committee is satisfied with.

It is the responsibility of the sponsor and the funders to satisfy themselves that the study will represent good value for money. For example, the anticipated cost of using a new intervention in treatment after it has been trialled is not expected to influence the decision of a PCT or NHS Trust to give permission.

A NHS organisation can be expected to consider withholding permission when:

- no suitable sponsor is identified (from April 2004); or
- no evidence of an application for ethical approval has been supplied; or
- there are no agreements for the allocation of responsibilities, or for indemnity and/or insurance (or those provided are clearly unacceptable to the NHS); or
- the NHS has evidence of local issues that could make it unsafe to conduct the study at the proposed sites within its area, which the ethics committee needs to consider; or
- the study would harm service delivery, because of local issues the ethics committee or the sponsor did not take into account.

Position of a PCT as the “organisation providing care”

A PCT has a particular duty towards NHS patients for whom it is the provider of services.

Most commercial research in primary and community care involves participants as NHS patients. The sponsoring company (or a body acting on the company’s behalf) will normally contact the PCT for permission, and can be expected to provide supporting documentation. It can be expected to give the PCT the information required for a decision (e.g. date of application to the ethics committee, authorisation for the trial, arrangements to supply investigational medicinal products to patients).

For research involving medicines, there are controls under the Medicines Act 1968. They will be replaced, for clinical trials, by the Medicines for Human Use (Clinical Trials) Regulations. EU law requires these changes to be implemented from May 2004. The new controls are expected to extend the powers of the Medicines and Healthcare products Regulatory Agency. They will make it an offence for anyone to undertake a clinical trial involving medicines unless there is

- a favourable ethical opinion
- authorisation from the MHRA
- someone in the EU with authority to act on behalf of the sponsor.

Permission for clinical trials of medicinal products

The NHS decision to give permission for a trial within this regulatory system should normally be a formality, provided the sponsor can

- confirm who is authorised to act on behalf of the sponsor
- provide evidence of its MHRA clinical trial authorisation (presently CTC or CTX for commercial trials, DDX for publicly funded trials),
- provide evidence of a positive ethics committee opinion, and
- provide details of indemnity and/or insurance.

DH issued guidance on commercial sponsorship and ethical standards for the NHS in 2000, including an annex on research and development².

When the PCT is not the “organisation providing care”, its permission is not required

In general, a PCT has a duty to provide a safe system of care³. This covers all NHS care provided to the NHS patients for which it is responsible.

When patients on a PCT’s NHS list take part in research in secondary or tertiary care, the onus falls mainly on the care provider to make appropriate research governance arrangements.

When the research participants are not recruited as NHS patients, the PCT’s duty of care is not at issue.

Permission is not required

The PCT’s permission is not required when

- research involves primary care practitioners in their private capacity; and
- it is clear the NHS accepts no liability; and
- the participants are fully aware of the circumstances, and take part at their own risk.

If the circumstances leave any room for doubt, it is reasonable for the PCT to ask for assurances about the terms on which participants will be asked for their consent. There may be room for doubt about the PCT’s liability when an independent practitioner providing NHS services is involved with research on individuals who are not recruited as NHS patients.

In general, a practitioner undertaking an activity in a private capacity is not expected to carry it out at the same time as NHS activities when there could be any confusion between them. (For instance, a GP providing a report for life insurance purposes would arrange a separate consultation.) A practitioner may not be able to prescribe NHS and private treatment for the same patient at the same time.

Sometimes, the private activity may take place in the facilities where the practitioner normally provides NHS treatment. (This will typically be the case with dental, optometrist and pharmacy services, for example.) Whether the PCT has a duty of care depends mainly on what a patient could be expected to assume about the status of the activity.

For example, NHS patients seen in a research room on a general medical practitioner’s premises would be unlikely to recognise that a GP is conducting research in a private capacity. There needs to be clear information about the nature of the private research. Normally, the research contact will be clearly distinguished from NHS treatment, for instance by making an additional appointment at a time separate from NHS consultation.

When there is any uncertainty, it is for the GP, the sponsor and the ethics committee to satisfy themselves that everyone knows the research is entirely separate from any NHS treatment and that the NHS accepts no liability for it. For commercial research undertaken in a private capacity, it is the sponsor’s and the practitioner’s responsibility to arrange for indemnity or clinical trials insurance for negligent harm, and not the responsibility of the NHS.

Practice brochures and information sheets can be used to set out overall policies about involving patients in research. Practitioners may ask participants to sign a statement confirming their understanding in relation to the specific trial for which they are being recruited.

PCTs are expected to keep a record of all research undertaken within their area. This relates to research

² Commercial Sponsorship – ethical standards for the NHS; [Click here](#) to access the document

³ For the legal background, see the explanatory note *Research Governance in health and social care: notes for Primary and Community Care*, DH 2002, [click here](#) to access the document.

involving participants as NHS patients. The PCT has no responsibility for recording or reporting private research, including studies undertaken by practitioners in their private capacity.

Against this background, it is reasonable for the PCT to ask sponsors and independent practitioners to make the PCT aware of studies when it is necessary to inform participants that they are not to be recruited as NHS patients.

Practitioners undertaking private research remain subject to the disciplinary processes of their professional body, which may turn to the Research Governance Framework or other accepted statements of good practice.

From May 2004, there will be statutory regulation of interventional research involving medicines. The MHRA will be the licensing authority for all such clinical trials, whether commercial, private or public funded. Private practitioners will be subject to the same inspection arrangements as NHS practitioners.

Information for patients involved in a clinical trial

It is the responsibility of the ethics committee to review the information given to patients recruited into research. This is to ensure that informed consent can be obtained. The NHS does not normally need to consider requiring additional information to the patient.

If a PCT is informed of private research (e.g. by a commercial sponsor), it may take the opportunity to check for notices informing potential participants that the NHS is not involved in, and takes no responsibility for, that research.

The PCT as a provider of health care is not expected to produce information on the worthiness or potential therapeutic benefit of any research that has an external sponsor. PCTs may wish to encourage potential participants through an educational exercise to consider the advice produced by Consumers for Ethics in Research, which is available at www.ceres.org.uk

Data about patients is controlled under the Data Protection Act, which binds upon individuals as well as bodies who may be involved in research.

Public Involvement in Research

The Research Governance Framework advocates that wherever possible participants or their representatives should be actively involved in the research process [2.2.6]. INVOLVE (formerly Consumers in NHS Research) is funded by the Department of Health to provide information, advice and support regarding public involvement in research. PCTs may wish to advise researchers and members of the public of the resources that INVOLVE has to offer <http://www.invo.org.uk/>

Commercial research

R&D Partnership Agreement

The acceptability of company arranged peer review forms part of an R&D Partnership Agreement between DH/NHS and the pharmaceutical industry⁴. It is one of the understandings that support the use of a model Clinical Trial Agreement⁵ between a company and a NHS host. The model agreement has the endorsement of both DH and the pharmaceutical industry and is on the DH research web site.

DH encourages NHS trusts to use the model agreement and the Association of the British Pharmaceutical Industry does the same for pharmaceutical companies. The use of this model in secondary care is leading to faster starting up of clinical trials, and therefore more efficient recruitment of patients into such studies.

There are plans to issue a version of this agreement for industry trials in primary care. At present, there are no plans to require trials in primary care to be undertaken under contracts between the PCT and the sponsor or clinical research organisation operating for the sponsor, but some GPs and PCTs may find this an attractive option.

Costs and charges

The NHS Finance Manual sets out the principles that apply to the recovery of costs related to commercial research. The relevant section is at annex A. The NHS should not subsidise commercial R&D. On the other hand, the Government does not wish the NHS to maximize profits.

Commercial trials should not normally have additional funding implications for a PCT during the trial period. Trial medicines are provided free by the commercial sponsor of the study, and there will be contracts with the trial sites providing principally for the staff costs.

If, exceptionally, a PCT is asked to contribute to some costs of a trial, it would need to be satisfied that this is in line with Government policy. Any costs it would incur (and which are not recoverable from other sources) will need to represent value for money in the context of the protocol for the trial. PCTs are reminded that there are circumstances when prescription charges are levied for non-exempt NHS patients participating in trials.

A PCT's permission is linked to its duty to provide a safe system of care, and to its public health responsibilities. It is reasonable for a PCT to treat straightforward permissions as part of its normal business, rather than as an income generating activity.

Recovering small direct costs of signing off and record storage (e.g. forms of indemnity for ongoing trials) may be disproportionate to the administration costs concerned, and invoicing could create disproportionate delay. Where the PCT is the party contracting on behalf of the site and managing the trial finances, for example, it is reasonable to determine and request the sponsor to reimburse appropriate administrative charges.

There is no basis for PCTs to charge overheads on direct costs they do not bear. Any charges are expected to relate to recovery of direct costs. There is no basis for requesting payment of unspecified overheads, for example as a fixed percentage of per patient payments to GPs.

The NHS is encouraged to develop efficient systems and to minimise costs.

⁴ NHS R&D Partnership with the Pharmaceutical Industry, Annex 1 to Pharmaceutical Industry Competitiveness Task Force Clinical Research Report, 2002, accessible through www.doh.gov.uk/pictf

⁵ Clinical trial Agreement (DH2003) is accessible at: <http://www.dh.gov.uk/assetRoot/04/07/52/06/04075206.doc>

Scientific review

The main funder and sponsor are responsible for scientific review

The Research Governance Framework (paragraph 4.4) requires care providers to satisfy themselves that systems are in place to ensure all research conducted in or through their organisation conforms to appropriate scientific and ethical standards, and offers value for public money.

This does not mean that PCTs and NHS Trusts are expected to arrange full scientific review for every research study before giving permission.

It is the sponsor who is responsible under research governance for ensuring that an appropriate process of independent expert review has demonstrated the research proposal is worthwhile, of high scientific quality and represents good value for money (RGF paragraph 3.8.6).

The Framework suggests that it is normally the main funder who plays the critical role in assuring the quality of a study, and who normally makes arrangements for independent expert review (see section 3.7).

This means a PCT or NHS Trust would expect to be responsible for full scientific review only when it is considering whether to be the main funder and/or the sponsor. In other cases, it will normally be satisfied with evidence or reasonable assurances that others have done what is required, or have made arrangements to do so.

If there has been no independent expert review, a PCT or NHS Trust would normally ask the organisation responsible for the study to arrange for review, before giving permission for the research to go ahead.

In normal practice for commercial clinical trials, the pharmaceutical company concerned takes on the responsibilities of both the funder and sponsor of the research.

For commercial research, the company funding the study should be able to provide satisfactory information about the processes it undertakes to assure the scientific quality and probity of the work. DH has determined that the NHS should be willing to accept, as independent, the normal review processes involving either internal company or external academic consultants, or which have been conducted by the MHRA.

The Royal Society is engaged in a review of peer review. It is expected that commercial trade associations will provide guidance for their members about any recommendations on standards. DH would expect to be consulted.

Universities are responsible for reviewing student research

In the case of student research, the student's university tutor would normally act as sponsor for the work, with the backing of the university, and arrange the expert review. This may arise, for example, in the pre-qualification, post-qualification or continuing education of primary health care professionals.

The NHS would arrange for full review when the NHS is to be the main funder and/or sponsor

When there is no external funder or sponsor, a PCT or NHS Trust may consider whether to make its own arrangements for independent expert review before giving permission for the study. That is most likely when the NHS organisation is considering becoming the sponsor.

It could be for research by its employees during the course of their employment, or for other non-funded research undertaken by researchers for whom the NHS intends to accept responsibility.

Sometimes, it may be appropriate when there is an external funder. It is national policy for the NHS to support research involving university staff provided it forms part of an agreed collaborative programme within NHS Priorities and Needs R&D. Charitable funding in the context of these programmes is

welcome. Sometimes, a charity may wish to fund research that falls within the PCT's responsibility as a health and social care provider. The charity may not wish to be the sponsor, or be prepared for others to rely on checks it did for its own internal accountability. The PCT has to decide whether to take on full responsibility for the study.

Existing research

A PCT may be informed of research, which is under way. For example, changes to a long-standing research protocol may be notified to an ethics committee. If such research is

- funded by the DH, MRC, major charity,
- receiving NHS Support for Science Funding, or
- taking place within the context of a publicly-funded primary care R&D network,

the arrangements are likely to be in line with good research practice.

This is likely to be the position also for commercial research, which has the appropriate regulatory authorisation(s).

PCTs are asked to consider other cases on their merits, in the context of DH guidance on the implementation of research governance.

Footnote 1

It is a national research governance implementation target that from April 2004, no research with human participants, their organs, tissue or data, may begin or continue in the NHS until a sponsor has taken on responsibility for the study. Further advice was given for on-going research in the NHS in the guidance for annual reports for 2003 this document is accessible at: <http://www.dh.gov.uk/assetRoot/04/07/48/04/04074804.PDF>

Footnote 2

Commercial Sponsorship – ethical standards for the NHS; is accessible at: http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4005135&chk=2dVITD

Footnote 3

For the legal background, see the explanatory note *Research Governance in health and social care: notes for Primary and Community Care*, DH 2002, this document can be accessed at:

http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4008949&chk=y40aQM

Footnote 4

NHS R&D Partnership with the Pharmaceutical Industry, Annex 1 to Pharmaceutical Industry Competitiveness Task Force Clinical Research Report, 2002, accessible through www.doh.gov.uk/pictf

Footnote 5

Clinical trial Agreement (DH2003) is accessible at: <http://www.dh.gov.uk/assetRoot/04/07/52/06/04075206.doc>

Relevant web site addresses

RGF 1st edition :

<http://www.dh.gov.uk/PolicyAndGuidance/ResearchAndDevelopment/ResearchAndDevelopmentAZ/ResearchGovernance/fs/en>

RGF draft second edition:

http://www.dh.gov.uk/PolicyAndGuidance/ResearchAndDevelopment/ResearchAndDevelopmentAZ/ResearchGovernance/ResearchGovernanceArticle/fs/en?CONTENT_ID=4002112&chk=PjlaGg

Extract From: Revised Guidance on Income Generation in the NHS (in Chapter 4 “Other Income Generating Activities” of Section 30 to the NHS Finance Manual (NHS Trusts – detailed guidance))

Commercial R&D in the NHS

30.27 The Prime Minister’s Pharmaceutical Industry Competitiveness Task Force (PICTF, March 2001) reported an inconsistent approach to costing for commercial R&D activity in the NHS. The Department agreed to clarify guidance to promote a more consistent and transparent approach to pricing.

30.28 The current policy for commercial R&D in the NHS is in two guidance documents:

- HSG (97) 32 Responsibilities for meeting patient care costs associated with research and development in the NHS and
- Ethical guidance on commercial sponsorship (DH 2000).

This section supplements that guidance and should be read in conjunction with it.

30.29 All NHS income derived from commercial R&D activity is raised through Income Generation powers. NHS Bodies engaged in this activity should make arrangements to ensure they comply fully with this guidance, including the accounting requirements.

30.30 The guidance requires income generation activity to be profit making but does not specify target levels. The Department has assured the pharmaceutical industry that it wishes to support and encourage R&D in the NHS. The NHS should not subsidise commercial R&D. That would divert resources from patient care. On the other hand, the Government does not wish the NHS to take advantage of market conditions to maximize profits, because of the wider benefits of conducting R&D activity to NHS patients in this country.

30.31 Paragraph 3.13 of the income generation guidance states that where an item or service is considered an integral part of a patient’s treatment (treatment in this context includes diagnostic procedures) then a charge should not be made if in all the circumstances this is the best use of resources. Therefore, when costing out commercial studies, NHS Bodies may not seek to recover from industry the costs of standard treatment that would otherwise have been incurred in treating patients in the NHS. NHS Bodies’ costing may include only activities, tests, treatments, etc which are in addition to normal treatment of the condition concerned. The exception is that, in accordance with the normal conventions for commercial clinical trials, the company sponsoring the trial is expected to supply free the medicine that is the subject of the trial.

30.32 In discussions on pricing with companies proposing to undertake commercial studies, NHS bodies should seek to disaggregate costs, with appropriate overheads related to each separately identified item, to avoid the use of general overheads. This approach is in line with Government policy to improve transparent pricing in selling government services into wider markets.

30.33 NHS bodies should consider in the context of all their functions how they propose to utilise funds generated through commercial R&D activity. It is acceptable to plan for profit to be used within the NHS Body’s own managed R&D programme, but this is a matter for agreement with the NHS Body’s Board and Chief Executive.