Neutral Citation Number: [2020] EWHC 1664 (Admin)

Case No: CO/3419/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/06/2020

Before:

MR JUSTICE SWIFT

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BETWEEN

THE QUEEN

on the application of

BRITISH MEDICAL ASSOCIATION **Claimant**

- and -

(1) NORTHAMPTONSHIRE COUNTY COUNCIL
(2) CHIEF CONSTABLE OF NORTHAMPTONSHIRE
(3) NHS NENE CLINICAL COMMISSIONING GROUP
(4) NHS CORBY CLINICAL COMMISSIONING GROUP
Defendants

-and-

NHS COMMISSIONING BOARD **Interested Party**

Ms. Jenni Richards QC, Ms. Katherine Barnes (instructed by Capital Law Ltd.) for the **Claimant**
Mr. John McKendrick QC (instructed by LGS Law) for the **First Defendant**
Mr. Elliot Gold (instructed by Legal Services Derbyshire Constabulary) for the **Second Defendant**
Mr. Andrew Sharland QC (instructed by DAC Beachcroft) for the **Third & Fourth Defendants**
Mr. Clive Sheldon QC (instructed by Browne Jacobson LLP) for the **Interested Party**

Hearing dates: 6 & 7 May 2020

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Approved Judgment

MR. JUSTICE SWIFT

A. Introduction

1. In these proceedings the British Medical Association ("the BMA") contends that the Local Safeguarding Arrangements Plan 2019 – 21, published by the Defendants on 1 June 2019 ("the Plan") does not meet the requirements of sections 16A to 16L of the Children Act 2004 ("the 2004 Act"). Pursuant to the definition at section 16E(3) of the 2004 Act, the Defendants are the "safeguarding partners" for Northamptonshire.

2. By section 16E(1) of the 2004 Act, the safeguarding partners:

> "must make arrangements …to work together in exercising their functions, so far as the functions are exercised for the purpose of safeguarding and promoting the welfare of children in the area."

The "area" is the area of responsibility of the relevant local authority. Section 16E(2) states that the arrangements made "… must include arrangements for the safeguarding partners to work together to identify and respond to the needs of children in the area." The arrangements that must be made are further specified in section 16F, to extend to "arrangements to identify serious child safeguarding cases which raise issues of importance in relation to the area" and arrangements for reviews of those cases where considered appropriate.

3. Section 16G(2) requires the safeguarding partners to publish the arrangements they have made. The Plan was published in accordance with this obligation.

4. Three further provisions are material. The first is section 16H:

> "**16H Information**
>
> (1) Any of the safeguarding partners for a local authority area in England may, for the purpose of enabling or assisting the performance of functions conferred by section 16E or 16F, request a person or body to provide information specified in the request to—
>
> (a) the safeguarding partner or any other safeguarding partner for the area,
>
> (b) any of the relevant agencies for the area,
>
> (c) a reviewer, or
>
> (d) another person or body specified in the request.
>
> (2) The person or body to whom a request under this section is made must comply with the request.
>
> (3) The safeguarding partner that made the request may enforce the duty under subsection (2) against the person or body by making an application to the High Court or the county court for an injunction.

(4) The information may be used by the person or body to whom it is provided only for the purpose mentioned in subsection (1).”

The second is section 16I:

“**16I Funding**

(1) The safeguarding partners for a local authority area in England may make payments towards expenditure incurred in connection with arrangements under section 16E or 16F –

(a) by making payments directly, or

(b) by contributing to a fund out of which the payments may be made.

(2) The payments that may be made include payments of remuneration, allowances or expenses to a reviewer or an independent person.

(3) The safeguarding partners for a local authority area in England may provide staff, goods, services, accommodation or other resources to any person for purposes connected with arrangements under section 16E or 16F.

(4) Relevant agencies for a local authority area in England may make payments towards expenditure incurred in connection with arrangements under section 16E –

(a) by making payments directly, or

(b) by contributing to a fund out of which the payments may be made.

(5) In this section an *“independent person”* means an independent person mentioned in section 16G(3).”

The third provision is section 16K(1) of the 2004 Act, which requires the safeguarding partners to “have regard to any guidance given by the Secretary of State in connection with functions conferred on them by sections 16E to 16J”.

5. The context for this claim is the BMA’s contention, raised on behalf of its General Practitioner members, that when GPs are asked by the safeguarding partners for Northamptonshire (most usually the request comes from the First Defendant, Northamptonshire County Council), to provide information either in the form of safeguarding reports provided to assist safeguarding investigations, or by attending child safeguarding conferences, they should be paid for their work. (In this judgment references to “the GP safeguarding information” are references to the reports and the information provided to the safeguarding conferences.)

6. This state of affairs is not unique to Northamptonshire. I have been shown copies of letters dated 20 November 2014, 20 June 2019 and 11 July 2019 sent by the NHS Commissioning Board (better known as NHS England, the Interested Party in these

proceedings) to the accountable officers at Clinical Commissioning Groups. Each accountable officer is the member of the governing body of the relevant CCG with responsibility for ensuring that the CCG exercises its functions effectively and efficiently. These letters refer to a range of practice from area to area. Prior to 2013 the work presently undertaken by CCGs was undertaken by their predecessors the Primary Care Trusts. The letters explain that some PCTs made payments to some GPs on behalf of safeguarding partners. The letters also explain that in some instances local authorities made payment, while in other instances they did not.

7. In its November 2014 letter, NHS England stated that because of the variability in the arrangements that existed before 2013 it was "not feasible a single rational solution". Instead each CCG was asked to discuss the situation with the relevant local authority to "agree… the fees (if any) to be paid for the services (agreed locally between local authorities and local GPs"). The letter did, however, state unequivocally that NHS England did not consider that the cost of GP safeguarding work was included within the payments made by NHS England under its GP contracts. This latter point was repeated in the letter dated 20 June 2019. It seems that by the time of this letter CCGs had not implemented the recommendations listed at the end of the November 2014 letter. The June 2019 letter asserted that GPs were entitled to seek payment for GP safeguarding work but noted in many areas that this work was no longer funded. Under the headings "Action Required" and "Monitoring" NHS England stated as follows:

> "**Action Required**
>
> System Transformation Partnerships – effectively Clinical Commissioning Groups working together in this collaboration along with Local GP provider representatives – should review their local arrangements in 2019/20 and where necessary implement changes to ensure safeguarding activity in general practice is supported.
>
> Local examples of work that have been successfully implemented to improve reporting and the quality of reports include:
>
> - Direct payments to a practice by the CCG under longstanding "Collaborative arrangements".
>
> - Introducing a Safeguarding Local Enhanced Service.
>
> …
>
> **Monitoring**
>
> NHS England and NHS Improvement expects local system reviews for supporting (including resourcing) general practice reporting activity to completed and implemented by the end of October 2019. (sic)

> NHS England and NHS Improvement will work with CCGs named GP safeguarding leads to obtain assurances that local systems are supporting effective safeguarding arrangements in general practice from 1 November 2019."

These points were substantially repeated in the final letter of 11 July 2019.

8. The BMA's objective in bringing these proceedings is to secure a ruling that GPs should be paid for the time spent providing GP safeguarding information. However, these proceedings do not raise that issue directly. The BMA's first submission is that the Plan is unlawful because it does not specify what sum the Defendants have budgeted to meet the cost of obtaining GP safeguarding information. This submission rests on what is said to be the combined effect of the obligation under section 16G of the 2004 Act to publish the arrangements made in discharge of the obligation under 16E; the power under section 16I to meet the costs of arrangements made under section 16E; and the obligation under section 16K to have regard to guidance issued by the Secretary of State. The BMA's second submission is that the Plan was formulated without regard to a relevant consideration, namely the way in which the cost of obtaining GP safeguarding information would be met. The third submission relies on the obligation at section 11(2) of the 2004 Act, to which each Defendant is subject, to ensure that "their functions are discharged having regard to the need to safeguard and promote the welfare of children". The submission is that the Defendants failed to discharge that obligation when they formulated the Plan by not considering how the costs of obtaining GP safeguarding information would be met.

9. Given the BMA's objective is to establish that GPs should be paid for this part of their work, it is unfortunate that it has gone about achieving that objective by these indirect routes. For the reasons set out below, I do not consider that any of the three submissions the BMA advances requires a decision on whether or not any of the Defendants in this case are required to pay GPs for provision of GP safeguarding information. Whether GPs should be paid for this work is obviously a matter of practical importance. I will return to this in Section C of this judgment (see below at paragraphs 28 - 40), but for now it is sufficient to say that this matter would be best determined in proceedings that directly concerned whether payment for those services should be made.

B. Decision

(1) Breach of section 16K of the 2004 Act?

10. The guidance relied on by the BMA was published by the Secretary of State in July 2018, and is titled "Working Together to Safeguard Children. A guide to inter-agency working to safeguard and promote the welfare of children" ("the 2018 Guidance"). Chapter 3 of the 2018 Guidance, "Multi-Agency Safeguarding Arrangements", states as follows at paragraphs 36 and 37, under the heading "Funding":

> "36. Working in partnerships means organisations and agencies should collaborate on how they will fund their arrangements. The three safeguarding partners and relevant agencies for the local authority area should make payments towards expenditure incurred in conjunction with local multi-agency arrangements for safeguarding and promoting welfare of children.
>
> 37. The safeguarding partners should agree the level of funding secured from each partner, which should be equitable and proportionate, and any contributions from each relevant agency, to support the local arrangements. The funding should be transparent to children and families in the area, and sufficient to cover all elements of the arrangements, including the cost of local child safeguarding practice reviews."

11. The relevant part of the Plan is under the heading "Funding and Business Support" and states as follows:

> "**The work of the Partnership will be supported by the Business Office hosted by Northamptonshire County Council.**
>
> This continues the same arrangements used for previous Safeguarding Children Board and will include supporting the Child Deaf Review arrangements.
>
> Proportionate funding, based on previous formulas, has been agreed and is sufficient to cover all elements of the arrangements, including the cost of two local child safeguarding practise reviews. Any further reviews will be considered at the time"

1.

Northamptonshire County Council	48,949
The Police and Crime Commissioner for Northamptonshire	23, 931
Northamptonshire Clinical Commissioning Groups (NENE CCG and Corby CCG)	65,949
Total for the 7 District and Borough Councils	6,586

Other	19,793
TOTAL	**167,323**

12. I do not agree with the BMA's submission that this part of the Plan is defective for want of consistency with the 2018 Guidance.

13. The context for the 2018 Guidance is what is required of the safeguarding partners by sections 16E and 16F of the 2004 Act. Section 16E is the provision material to the BMA's submission in this case. By that section, safeguarding partners such as the Defendants, must make arrangements to enable themselves, when they exercise their individual safeguarding functions, to work together. The arrangements made must include arrangements to work together to identify and respond to the needs of children in the area. What is important for present purposes is that that is as far as the function conferred by 16E and 16F goes. The functions arising under those sections do not comprise the generality of the functions that the safeguarding partners have, respectively, that concern safeguarding and welfare protection work.

14. The Secretary of State's power under section 16K is simply a power to issue guidance in respect of "functions conferred… by sections 16E to 16J". Guidance issued in exercise of this power will not be directed to the generality of steps taken by the safeguarding partners in exercise of powers that each has to act in ways which safeguard children and promote their welfare. Guidance under section 16K, such as the 2018 Guidance, is directed only to the arrangements made by the safeguarding partners to work together. This conclusion is not altered by what is said at section 16I of the 2004 Act. That section does no more than provide safeguarding partners with the power to meet costs incurred in connection with the arrangements they have made under sections 16E and 16F. The function conferred by that section does not extend to any/all expenditure incurred by each of the safeguarding partners in exercise of the powers they have under other statutes to safeguard children and promote their welfare. Nor is the situation altered by anything in section 16G: what is to be published is the arrangements made under sections 16E and 16F.

15 These matters are clearly recognised in paragraphs 36 and 37 of Chapter 3 of the 2018 Guidance. What is said there about funding relates only to meeting the costs of the arrangements made under section16E to work together: see for example, the second sentence of paragraph 36. It does not concern the funding generally available to meet the cost of discharging obligations that each of the safeguarding partners has, respectively, to safeguard children and promote their welfare.

16. Thus, the "Funding and Business Support" section of the Plan appropriately identifies the extent to which each Defendant will contribute to the costs of the arrangements made under sections 16E and 16F. This part of the Plan is consistent with what the 2018 Guidance requires. The BMA's submission interprets section 16G(2) of the 2004 Act as if refers to the entirety of the arrangements each safeguarding partner makes to discharge any/all obligations on it that concern safeguarding and promoting the welfare of children, and then reads the 2018 Guidance as requiring the budget for all such expenditure to be published. The BMA is wrong on both matters. Section 16E of the 2004 Act and the provisions that follow, up to and including section 16K,

concern the arrangements that ensure the safeguarding partners work together. No less, but no more.

17. For sake of completeness, I note that the requirement to make arrangements to work together under section 16E of the 2014 Act will extend beyond the safeguarding partners to include any "relevant agency" that the safeguarding partners choose to include. However, this possibility does not assist the BMA's position. A relevant agency is one specified in Regulations made by the Secretary of State: see section 16E(3). The relevant regulations are the Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018/789. GPs are not included on the list of relevant agencies: see at regulation 18 and Schedule 1.

(2) A failure to have regard to a relevant consideration?

18. The BMA's submission is that when compiling the Plan, the Defendants did not consider how work undertaken by GPs would be funded, and that this was either irrational or a failure by the Defendants to take account of a relevant consideration. I reject this submission for broadly the same reasons that caused me to reject the BMA's first ground of challenge.

19. The Plan, published pursuant to section 16G of the 2004 Act sets out the arrangements made by the Defendants to discharge their obligations under sections 16E and 16F of the 2004 Act. For the avoidance of doubt, the BMA's submissions in this case did not rest on the obligation at section 16F of the 2004 Act to make arrangements for local child safeguarding practice reviews. This case only concerns information provided by GPs for the purposes of routine safeguarding investigations and decisions, not the serious case reviews which are the concern of section 16F of the 2004 Act.

20. Section 16E comprises carefully framed obligations that the safeguarding partners make arrangements to work together when exercising their respective functions, so far as each exercises such functions for the specified purpose of safeguarding children in the area and promoting their welfare. The BMA's submission is that the arrangements required to be made by section 16E must address all functions exercised in connection with safeguarding children and promoting their welfare, and for that reason extend to arrangements that may be necessary to ensure that GPs provide information for safeguarding investigations and case conferences. However, that submission is inconsistent with the ordinary meaning of the words used in section 16E(1). The arrangements required by section 16E concern the way the safeguarding partners and relevant agencies are "to work together". There is a distinction between the function to make such arrangements, conferred by section 16E of the 2004 Act, and the other functions (i.e. powers and duties) conferred under other provisions which are exercised by the Defendants when they take specific actions to safeguard a child or children, or promote their welfare. For instance, to the extent a local authority, a CCG or a police force might seek to make arrangements with GPs to obtain information about a particular child, that is not done in exercise of the function conferred by section 16E of the 2004 Act, but in exercise of duties and powers arising elsewhere. The BMA submits that information provided by GPs will be important when safeguarding partners such as the Defendants decide what steps need to be taken

in any specific case. I agree, but this is not to the point. Section 16E is about the way safeguarding partners will work together to ensure that the case of any specific child or children receives nothing less than comprehensive consideration, taking account the responsibilities and powers of each safeguarding partner. The arrangements required by section 16E do not extend to arrangements explaining how each of the safeguarding partners intends to exercise (or for present purposes meet the cost of exercising) any or all other powers it may use to safeguard children and protect their welfare.

21. In the premises, it was lawful for the Defendants not to include in the Plan arrangements explaining how, respectively, each intended to go about obtaining information from GPs for whether for safeguarding investigations, or case conferences. The Defendants neither acted irrationally nor in disregard of a relevant consideration by the omitting to address the specific arrangements to be made with GPs to obtain information from them for safeguarding investigations and case conferences. Arrangements made to obtain that information are outside the scope of the section 16E obligation.

(3) Breach of section 11(2) of the 2004 Act?

22. The obligation at section 11 of the 2004 Act applies to a range of public authorities, including each of the Defendants. By section 11(2) each is required to make arrangements to ensure: (a) that "their functions are discharged having regard to the need to safeguard and promote the welfare of children"; and (b) that "any services provided by others pursuant to arrangements made by [each Defendant] in the discharge of their functions are provided having regard to that need".

23. The BMA's submission is that the Defendants failed, when formulating the arrangements set out in the Plan to comply with the section 11(2) obligation because they failed to "consider the impact on children's welfare of the failure to include any means of securing the input of GPs in the safeguarding process" (see the BMA's Skeleton Argument at paragraph 68). In submissions, the BMA put the point terms of there being no active consideration by any Defendant when the Plan was made, of the implications of not paying GPs for providing safeguarding information, and that instead the Defendants had simply assumed that GPs would provide such information without charge.

24. I reject this ground of challenge for two reasons. First, as explained in the context of the BMA's first two grounds of challenge, neither section 16E nor the requirement under section 16G is concerned with arrangements made or not made with GPs to provide information for safeguarding investigations and conferences. Thus, regardless of the application of section 11 of the 2004 Act, the decision to publish the Plan, a document that met the obligations at section 16G of the 2004 Act and which evidenced the Defendants' compliance with the obligations section 16E of that Act, showed no want of regard to the need to safeguard children and promote their welfare. Second, given the objective to which section 16E obligation is directed, I see no room for the conclusion in this case that publication of the Plan (or the Defendants' decision to make the arrangements as set out in the Plan) evidences any lack of regard to the need to safeguard children and promote their welfare. The contents of the Plan itself

evidence that the Defendants did have regard to those matters. Given the objective of the section 16E obligation, the circumstances of the present case are an example of a situation in which performance of the substantive obligation (section 16E) coincides with performance of the adjectival "have regard" obligation (i.e. section 11(2)).

25. The further point to have in mind is this. Section 11(2) of the 2004 Act, like other similar obligations formulated in terms of a requirement to "have regard" to prescribed matters, does not require that the decision-making process produce any specific substantive outcome. The consequence in the present case is that to the extent that the BMA contends that the Defendants ought, in performance of the section 16E duty, to have applied their minds to whether GPs should be paid when they provide information for safeguarding investigations and case conferences, this third ground of challenge, based on section 11 of the 2004 Act, collapses into the second ground of challenge about relevant considerations and (alleged) irrational outcomes.

26. In the course of submissions, in addition to making its submission on section 11 of the 2004 Act by reference to the obligations under sections 16E and 16G of the 2004 Act, the BMA also contended that the relevant function (for section 11(2) purposes) could be either section 17 of the Children Act 1989 ("the 1989 Act" – the general duty on local authorities to safeguard and promote the interests of children in their area) and/or section 47 of the 1989 Act (the obligation on local authorities in any particular case to investigate whether it is necessary to take action to safeguard or protect the welfare of a child). Neither reliance on section 17 nor on section 47 advances the BMA's position on this third ground of challenge. Reliance on these obligations in this case is somewhat artificial. The focus of this challenge remains the Plan; it is the decision to publish the Plan that is the decision challenged. Yet even if the arrangements made under section 16E of the 2004 Act or the Plan published under section 16G were repackaged as an exercise falling under the auspices of section 17 and/or 47 of the 1989 Act, or even if the lack of arrangements made by any of the Defendants to pay GPs for information provided for the purpose of safeguarding investigations or safeguarding conferences was regarded as an aspect of the discharge by the First Defendant of its obligation under those sections, that would not demonstrate any breach of section 11(2) of the 2004 Act. As I have already stated, compliance with the section 11(2) duty does not predicate any particular substantive outcome. The absence of arrangements to pay GPs is not, of itself, evidence of any breach of section 11(2) of the 2004 Act in the way in which the First Defendant approaches the discharge of its obligations under section 17 and /or 47 of the 1989 Act. For sake of completeness, I also note that the BMA led no evidence at all to suggest that the First Defendant had, for want of payment to GPs, failed to discharge any substantive obligation arising under either section 17 or section 47 of the 1989 Act.

27. For all these reasons, this ground of challenge fails.

C. Are GPs obliged by law to provide information for safeguarding investigations and conferences?

28. The point canvassed in submissions was concerned not so much with whether any of the Defendants was obliged to pay GPs for time spent providing information for safeguarding investigations and conferences, as with whether there was any legal

obstacle to GPs being paid for such work. The argument advanced by the Defendants, on various different grounds, was that GPs were under a legal duty to provide information for safeguarding investigations and case conferences, and for that reason the Defendants could not be subject to any obligation to pay for the time spent providing the information.

29. I have not found it necessary to decide this issue in order to determine the BMA's application for judicial review. That being so I do not need to undertake a comprehensive analysis of the submissions I have heard on whether GPs are under a legal duty to provide information to local authorities for the purpose of safeguarding investigations or safeguarding case conferences. Instead I will go no further than the following brief remarks.

30. *First*, none of the Defendants suggested that in principle they lacked the power to make payments to GPs for such information. It does not seem to me that there would be any basis on which such a submission could succeed. I can see no reason in principle why any of the Defendants would, as a matter of simple *vires*, lack the power to enter into a contract to pay GPs for such work, or to establish a defence to a claim in restitution made by a GP in respect of such work. In some of the correspondence prior to these proceedings one or other of the Defendants suggested that each had "no budget" to make payments to GPs. To state the obvious, having "no budget" is not the same as lacking *vires*; having no budget is the consequence only of a decision not to pay, not a decision that the power to pay does not exist.

31. *Second*, both the BMA and NHS England were adamant that payments made to GPs under their NHS contracts (i.e. the Standard General Medical Services Contract 2018-2019) did not cover the cost of providing information to local authorities for safeguarding investigations or case conferences. This submission was made by reference to the contractual definitions of "primary medical services", "essential services" and "additional services". None of the Defendants sought to argue otherwise, save for their submission that the permission granted to GPs under clause 19.1.2(a) of the NHS contract to seek payment "… from a statutory body for services rendered for the purposes of that body's statutory functions" could not assist the BMA if GPs were under an obligation to provide the safeguarding partners with information for the purposes of safeguarding investigations and case conferences.

32. *Third*, the Defendants' submissions to the effect that GPs are under a legal duty to provide information in aid of safeguarding investigations and case conferences are not convincing.

33. All the Defendants sought to rely on the obligation at section 16H of the 2004 Act. By that section the safeguarding partners may "for the purposes of enabling or assisting the performance of functions conferred by section 16E or 16F" request a person to provide information. Section 16F(2) states that a person to whom such a request is made "must comply with the request". In the course of submissions, much time was taken up debating whether the reference to request to provide "information" excluded the possibility for asking for information that amounted to "advice". This submission was made by the BMA and by NHS England by reference to section 47(9) of the 1989 Act which is the section which provides the local authority's duty to investigate to decide whether it should take steps to safeguard or promote a child's welfare. Section 47(9) provides as follows:

> "where a local authority are conducting enquiries under this section it should be the duty of any person mentioned in sub-section (11) to assist them with those enquiries (in particular, by providing relevant information and advice) if called upon by the authority to do so."

The submission made by the BMA and NHS England was to the effect the when it came to the assistance provided by GPs to safeguarding investigations and case conferences, GPs provided "advice" not "information" (or at least that the bulk of what GPs provide was advice).

34. I can see little merit in this submission. I can see no compelling reason to conclude the words in parentheses in section 47(9) of the 1989 Act intended to establish a distinction between "information" "advice". The words are much more naturally read compendiously. Even if this is not right, there is no reason why section 16H of the 2004 Act needs to be construed by reference to a distinction (contained only in parentheses) in section 47(9) of the 1989 Act between information and advice. In practice, any distinction between advice and information will be ill-defined. I have seen examples of the proforma document that GPs are asked to complete by the First Defendant. In the context of the questions posed in that document it is difficult to draw any clear line between information simpliciter and information that amounts to advice. In any circumstances such a distinction is likely to be a slippery one; moreover, trying to draw the distinction in the present context seems to me to be a sterile and pointless exercise. Fortunately, I am satisfied that there is no need to try. I would reject the Defendants' submissions on section 16H because, properly construed, it is clear that the information that can be requested under that power is limited only to information for the purpose of enabling or assisting the functions conferred by sections 16G and 16F. The functions conferred by those sections are confined to making arrangements for the safeguarding partners and specified relevant agencies to work together and for serious safeguarding practice reviews. Information requested of GPs for the purposes of safeguarding investigations and case conferences falls outside the scope of either function. Section 16H of the 2004 Act is not the source for an obligation for GPs to provide safeguarding information.

35. The Second Defendant (the Chief Constable) relies on section 47(9) of the 1989 Act as providing a relevant obligation on GPs to provide the information in issue in these proceedings. That section gives rise to no such obligation. The obligation under section 47(9) of the 1989 Act applies only to the persons and public authorities listed in section 47(11) (including persons prescribed by the Secretary of State by Regulations). The Chief Constable submitted that section 47(9) applied to GPs because NHS England is named in the section 47(11) list, and GPs work under contract to NHS England. I can see no substance in that submission at all. The GPs' provision of services to NHS England under contract does not render them part of NHS England. If the intention had been that section 47(9) applied to GPs, then GPs would have been included in the section 47(11) list or identified in the Regulations made by the Secretary of State. Neither is the case.

36. The First Defendant focused its submissions on the provision on the Health Social Care Act 2008 ("the 2008") and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ("the 2014 Regulations"). The submission runs as follows. Under the provisions of the 2008 Act, GPs are subject to regulation by the

Care Quality Commission (CQC) when they undertake "regulated activity". Those activities are prescribed in the 2014 Regulations. The provision of treatment for a disease, disorder or injury by a health care professional is a regulated activity. Next, reliance is placed on regulation 8 of the 2014 Regulations which require "registered persons" to comply with regulations 9 to 20A when carrying on regulated activities. Regulation 13 provides as follows:

> **"13. —Safeguarding service users from abuse and improper treatment**
>
> (1) Service users must be protected from abuse and improper treatment in accordance with this regulation.
>
> (2) Systems and processes must be established and operated effectively to prevent abuse of service users.
>
> (3) Systems and processes must be established and operated effectively to investigate, immediately upon becoming aware of, any allegation or evidence of such abuse.
>
> (4) Care or treatment for service users must not be provided in a way that—
>
> > (a) includes discrimination against a service user on grounds of any protected characteristic (as defined in section 4 of the Equality Act 2010) of the service user,
> >
> > (b) includes acts intended to control or restrain a service user that are not necessary to prevent, or not a proportionate response to, a risk of harm posed to the service user or another individual if the service user was not subject to control or restraint,
> >
> > (c) is degrading for the service user, or
> >
> > (d) significantly disregards the needs of the service user for care or treatment.
>
> (5) A service user must not be deprived of their liberty for the purpose of receiving care or treatment without lawful authority.
>
> (6) For the purposes of this regulation— *"abuse"* means—
>
> > (a) any behaviour towards a service user that is an offence under the Sexual Offences Act 2003,
> >
> > (b) ill-treatment (whether of a physical or psychological nature) of a service user,
> >
> > (c) theft, misuse or misappropriation of money or property belonging to a service user, or

(d) neglect of a service user.

(7) For the purposes of this regulation, a person controls or restrains a service user if that person—

(a) uses, or threatens to use, force to secure the doing of an act which the service user resists, or

(b) restricts the service user's liberty of movement, whether or not the service user resists,

including by use of physical, mechanical or chemical means."

Particular reliance is placed on regulation 13(2).

37. Finally, the First Defendant's submission relies on guidance about regulation 13, published by the CQC pursuant to section 23 of the 2004 Act. By regulation 21, registered persons are required to have regard to such guidance. The guidance in respect of regulation 13(2) reads as follows:

<table>
<tr><td>"13(2) Systems and processes must be established and operated effectively to prevent abuse of service users.</td><td>

As part of their induction, staff must receive safeguarding training that is relevant, and at a suitable level for their role. Training should be updated at regular intervals to keep staff up to date and enable them to recognise different type of abuse and the ways they can report concerns.
Staff must be aware of their individual responsibilities to prevent, identify and report abuse when providing care and treatment. This includes referral to other providers.
Staff must understand their roles and associated responsibilities in relationship to any of the provider's policies, procedures or guidance to prevent abuse.
Information about current procedures and guidance about raising concerns about abuse should be accessible to people who use the service, advocates, those lawfully acting on their behalf, those close to them and staff.
Providers should use instance and complaints to identify potential abuse and should take preventative actions,

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	including escalation, where appropriate • Providers should work in partnership with other relevant bodies to contribute to individual risk assessments, developing plans for safeguarding children and safeguarding adults at risk, and when implementing these plans. This includes regularly reviewing outcomes for people using the service. • Providers and their staff must understand and work within the requirements of the Mental Capacity Act 2005 whenever they work with people who lack the Mental Capacity to make some decisions."

This, submits the First Defendant, makes it clear that a GP is subject to a statutory obligation to provide information for the purposes of safeguarding investigations and case conferences, in respect of any person who is one of the registered patients of that GP.

38. I disagree. In context, I consider regulation 13(2) is concerned with preventing abuse of "service users" in the course of performance of regulated activities. The relevant regulated activity is the provision of treatment for disease, disorder or injury by a health professional. The purpose of the systems required by regulation 13(2) to be established, is to prevent abuse of service users during the performance of the regulated activity. It is extravagant to read regulation 13(2) either on its own or because of the guidance issued by the CQC in relation to it, as giving rise to a general legal obligation on GPs to provide information in aid of safeguarding investigations and case conferences.

39. It follows from the above, that had it been necessary for me to decide whether GPs were subject to a legal obligation pursuant to any of these three provisions to provide information to the defendants for the purposes of safeguarding investigations or case conferences, I would have concluded that no such legal obligation exists.

40. This conclusion, of course, says nothing as to GPs' professional obligations. The BMA readily acknowledged that, as a matter of professional obligation, GPs do, and will continue to provide the information required by local authorities for safeguarding investigations and case conferences.

D. Conclusion and Disposal

41. For the reasons in Section B of this judgment the BMA's application for judicial review is dismissed. The Defendants did not act unlawfully in devising and publishing the Plan.

42. My reasons for dismissing the BMA's claim are such that it was not necessary for me to address the parties' arguments on whether GPs are subject to a legal obligation to provide information for safeguarding investigations and case conferences. However, I heard full argument on the Defendants' contentions that such an obligation existed under any of section 16H of the 2004 Act, section 47 of the 1989 Act, or under the 2018 Regulations. For the reasons in Section C above none of those submissions is compelling. I do not consider that any of those provisions gives rise to legal obligation of the sort contended for, variously, by the Defendants. Yet this conclusion alone (even were it not obiter) is not sufficient to determine that local authorities or others of the safeguarding partners are obliged to pay GPs for their work. Whether such an obligation arises would depend on the application of the ordinary common law principles of the law of contract and the law of restitution as they may apply from case to case.

43. My starting point was letters written by NHS England in 2014 and 2019. Those letters identified the need for specific arrangements to be made by the safeguarding partners for each area. This remains the position. As it seems to me, either the safeguarding partners will agree suitable arrangements with GPs for the cost of work they undertake or, they will be at risk of legal proceedings, area by area or even by GP by GP, in contract or in restitution, to establish whether, and if so what payments should be made.