

Suspected Inflicted Head Injury Service: Questions Answered

August 2024

1) What does the multidisciplinary team (MDT) model consist of? Would this model be considered by judges as trustworthy?

The multidisciplinary model comprises of existing clinicians operating within a particular hospital. All aspects of a patient's care are reviewed and managed by a team of specialists from relevant disciplines. The SIHIS is an MDT which will include core members from paediatric radiology, ophthalmology, haematology, neurosurgery and neuroradiology, with availability from clinical genetics or orthopaedics. It will be for the judiciary on a case-by-case basis to determine what evidence, including any Part 25 expert evidence, is needed to determine the outcome of any case.

2) How is the MDT approach congruent with the recent endorsement of 'Martha's Rule' providing patients with the right to request a second medical opinion? What account has been taken of the Article 6 rights of parents and respondents in care proceedings?

Parents can request second opinions, and their right to do so will not be impacted by the SIHIS. Statutory proceedings have not been impacted by the SIHIS.

3) Is the goal of the SIHIS to formulate a unifying hypothesis? And, if so, will all minutes of meetings, emails passing between the clinicians and all other communications be freely disclosed with any report?

The principal aim of the SIHIS MDT approach is better investigation and treatment of children. Insofar as that aim is furthered by achieving a clearer opinion, then a goal is to provide as clear an opinion as is possible; this is no different to current practice. Records may be requested as is standard with current practice.

4) How will you mitigate the risk that disagreement is unlikely for any SIHIS report? In that situation, will it be possible to prove necessity for a Part 25 application?

The SIHIS MDT approach seeks to promote the fullest investigation and best treatment of children. The SIHIS may or may not reach agreement, although it is hoped that this MDT process will lead to greater clarity of the clinical opinion. If the SIHIS is unable to come to a decision, this will be reflected in the SIHIS proforma. If the child is subject to court proceedings, the court will be able to

instruct Part 25 experts as they do now in standard legal proceedings, regardless of the decision of the SIHIS. The hope is that the SIHIS will provide more robust clinical information which may help a final decision to be made more quickly. Statutory proceedings have not been impacted by the SIHIS.

5) Is the pilot also about improving NHS protection services and the court's use of this is a secondary benefit?

One of the aims of the pilot is to provide better outcomes for children and young people suspected of abusive head injuries. Its potential impact on the family justice system is a byproduct of a change in clinical management of children. Better investigation would result in an improvement in quality of clinical evidence.

6) What are the criteria for, and who is to be responsible for, making decisions as to whether a case to be accepted on the SIHIS pathway plan?

The SIHIS lead paediatrician is ultimately responsible for making the decisions as to whether the case should be included in SIHIS. The criteria for a SIHIS case is whether a child presents with a head injury and after tests it is suspected that the head injury could have resulted from inflicted trauma.

7) How are questions to be put to the SIHIS?

As currently happens, questions will usually come from the local authority solicitor to the clinician. If proceedings are issued, the court will be able to determine how questions are put to SIHIS. We anticipate that this process will be made easier by the SIHIS pilot co-ordinator.

8) Who are the clinicians appointed to each SIHIS?

The SIHIS will include core members such as paediatricians, radiologists, ophthalmologists, haematology, neurosurgery and neuroradiology, with availability of clinical genetics or orthopaedics on a case-by-case basis. The clinicians are not 'appointed' to the SIHIS. As per the General Data Protection Regulation, the Department will not provide any individual personal data for any of the pilot areas.

9) How were these clinicians selected or recruited?

The clinicians would have been recruited via the normal NHS recruitment processes. There is no additional recruitment process needed for the SIHIS; it is for clinicians already working in those hospitals.

10) What respective roles will clinicians and experts play in SIHIS?

As statutory proceedings have not been impacted by the SIHIS, the SIHIS clinicians will be professional witnesses. The court can still instruct Part 25 experts in the same way they currently do.

11) Will members of the SIHIS be treated as independent witnesses if they are called as witnesses?

Members of the SIHIS would be treated as professional witnesses of fact if they are called as witnesses. Working as part of a SIHIS does not affect the status of clinicians and as considered in **Sunderland CC v AB (Re-hearing: Fact-Finding: Expert or Professional Evidence) [2019] EWHC 3887 (Fam) (22 November 2019)**.

12) Have SIHIS clinicians agreed to the expert code of practice and received training on the same?

SIHIS clinicians are not Part 25 experts and so, unless subsequently instructed as a Part 25 expert, are not subject to FPR 25 PD 25B (if that is what is meant by 'the expert code of practice') and will not as part of a SIHIS undergo the same training as Part 25 experts.

13) Will the SIHIS clinicians have access to reading all the paperwork a Part 25 expert usually receives, including considering a detailed and lengthy statement from the person accused of causing the harm?

The SIHIS clinicians will not, in the ordinary course of events, have access to a court bundle or the paperwork a Part 25 expert would be sent. They are compiling a standard clinical professional report, not a Part 25 expert report.

14) What checks have been undertaken as to their expertise, experience, any pre-formed views about non-accidental head injury cases and any judicial comment or criticism about them if they have previously been court-appointed single joint experts within the court system?

They do not need any further training as they are professional witnesses of fact.

15) What are the criteria for, and who is to be responsible for, making decisions as to whether further testing is to be arranged?

The SIHIS lead paediatrician will have the final decision based on all the evidence presented on whether further testing is required and to be arranged.

16) Will minutes or transcripts of the SIHIS multi-disciplinary meeting(s) that take place prior to the report being completed be made available to the parties?

This information will be contained in the SIHIS proforma. In the same way that contemporaneous records are applied for, the SIHIS records can be provided.

17) Where would the child be whilst the SIHIS investigate the suspected inflicted head injury?

Statutory proceedings have not been impacted by the SIHIS. As per current practices, children who require ongoing medical care or investigations are likely to remain in hospital until they are medically fit for discharge. At the point of discharge there would be a discharge meeting to decide a place of safety.

18) If a further expert report is required that is not covered by the existing expertise of the SIHIS clinicians, will the SIHIS source its own expert or do the parties make a Part 25 application for an independent expert?

The SIHIS does not act in place of Part 25 experts and will not instruct any Part 25 experts. The court will instruct additional experts if required, as usually happens for Part 25 experts. If, during continued treatment of a child, the SIHIS considers further clinical expertise is required, then they may seek such assistance, but this is separate to any applications which the parties may make to the court.

19) Who will monitor and, if necessary, moderate opinions held by clinicians?

If clinicians do not agree on the outcome, then this will be reflected in the SIHIS proforma report, as in non-SIHIS Trusts and their standard clinical reports. As in current statutory proceedings, it is then the duty of the court to consider whether to give permission to instruct Part 25 experts and if so, in what disciplines.

20) How was the proforma designed? Will the SIHIS form a conclusion and then tick the box on the proforma that applies?

The proforma was designed in line with the best practices from the Royal College of Paediatrics and Child Health and Working Together guidance. Based on the evidence provided at the SIHIS meetings, the SIHIS will then conclude on the appropriate outcome for that case. This is to provide a further level of clarity of clinical information to anyone reviewing the SIHIS proforma.

21) If a SIHIS proforma takes several weeks to be completed, who will form the initial clinical decision that the injury is non-accidental, and therefore prompt the local authority to initiate safeguarding procedures?

A strategy meeting would be called to determine whether the Section 47 threshold has been met and if so, whether the case is a SIHIS case or not. The SIHIS team would feed into this meeting verbally, just as standard professional clinicians do in cases not involved in the pilot. This input would be documented in the strategy meeting minutes and fed into local authority proceedings. This process happens whether or not a case is reviewed by the SIHIS. Statutory processes are not impacted by the SIHIS, and the length of time it will take to produce the report from the SIHIS is not set.

22) What are timescales for the SIHIS proforma to be completed?

There are no predetermined minimum agreed timescales for a SIHIS proforma to be completed. It is a live document that will continue to be updated when further information is found during any additional testing. This process is the same as the standard clinical processes that already exist. Section 47 processes also remain unchanged, as would any statutory timeframes around this. The local authority may ask for the SIHIS proforma at any point, to the same extent they can already request a child's medical information following any concerns raised. If there is significant concern and consent has not been provided for a child protection medical, the local authority will issue proceedings to request an order for investigations. No statutory processes have been impacted by the SIHIS.

23) Will you publish the criteria against which you will judge success or failure of this pilot?

The evaluation is still in the design process and further information will be provided in due course.

24) If the evaluation is still in design phase, how do you know what data must be collected?

The independent evaluators are deciding the range of data that is suitable for collection, working closely with the Department and pilot NHS Trusts to agree the approach. The inception phase of the evaluation is expected to conclude shortly, ahead of the data collection and fieldwork analysis phase commencing from the autumn of 2024. The specification provided to the evaluators includes publicly available data and routinely collected management information from the pilot. The SIHIS Trusts may also be utilised to support analysis, for example, by providing the number of cases assessed at each stage of the SIHIS pathway.

25) If the position remains the same so far as parents' Article 6 rights and Part 25 applications are concerned, will the pilot reduce the number of Part 25 experts?

This will be determined as the pilot progresses and through the independent evaluation.

26) If the report is a collaborative piece flowing from the SIHIS, how do we ascertain individual contributions to the report and which opinions are attributable to which clinician?

A draft SIHIS proforma document has been widely circulated. This shows clear sections for naming and sign-off from each clinician involved.

27) Will the SIHIS report be an 'expert report' in the eyes of the court, or witness evidence from clinicians who are witnesses of fact (including the fact of their treating opinion)?

All clinicians in the SIHIS are professional witnesses of fact. They are not experts as Part 25 experts. Part 25 experts will need to be commissioned by the court separately as part of the normal process. See the answer to Q11 above.

28) How does the pilot complement existing guidelines (such as NICE, good practice guidelines, hiring practices, minimum standards, qualification requirements etc.) for Part 25 experts?

The SIHIS pilot aims to streamline the process of providing clinical opinion in a hospital when a child has been suspected of inflicted head trauma. Statutory processes have not been impacted by the SIHIS, and the SIHIS team does not replacing Part 25 experts.

29) What status does the SIHIS report have in Care Proceedings if the judge is attaching weight to it? E.g. expert evidence which needs to be admitted under s13 of CFA 2014?

A SIHIS report will have the same status as current clinical reports.

30) Will all those involved in the SIHIS be insured to give expert evidence? Has there been consultation with the Medical Defence Union about participating in the pilot?

All clinicians in the SIHIS are professional witnesses of fact, not experts as Part 25 experts. The Medical Defence Union has not been consulted as we are not changing the role of Part 25 experts.

31) What is the average length of current care cases where suspected head injury is a central issue?

Unacceptable delays in the family courts have been a long-standing issue for over 10 years. The latest HMCTS data indicates the average length of public law proceedings to be around 38 weeks¹, but for some complex cases, conclusion may not be achieved before more than 52 weeks. Key drivers of unnecessary delay have been identified by a report commissioned by the Department for Education in 2022: *Impact of court delays on children's services*². One of these key drivers of delay was found to be the ability for family court judges to expedite decisions more quickly where additional medical expert opinion is required. The SIHIS is aiming to streamline the process of providing clinical opinion when a child has been suspected of inflicted head trauma, to be able to provide more robust evidence from the point that a child of concern is identified.

32) Who was consulted about the concept of the proposed pilot, the details of it, and the impact upon the court process within the Family Justice System?

In the early stages of designing the pilot the Department consulted with social workers, the Royal College of Paediatrics and Children's Health, the Family Justice Council including their Experts Working Group, local authorities, NHS England and clinicians from the National Network of Named and Designated Healthcare Practitioners and designated Doctors' Network. This pilot is supported by the Department for Education, Department of Health and Social Care and the Ministry of Justice and is being delivered by NHS Trusts. This is a clinical pilot, where only clinical processes are impacted. No statutory processes have been impacted by the SIHIS.

33) Why were practitioner groups such as the FLBA, ALC, Resolution and the Law Society not involved in designing the pilot or consulted upon it?

The Family Justice Council, the President of the Family Division, Local Family Justice Boards, NHS England's Legal team, local authorities and Designated Family Judges in each of the areas where the pilot was taking place were informed of the pilot. As this is a clinical pilot, where only clinical processes are impacted, legal bodies were not consulted in designing the pilot. No statutory processes are impacted by the SIHIS.

¹ [HMCTS management information - April 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/hmcts-management-information-april-2024)

² [Court delays report \(mutualventures.co.uk\)](https://mutualventures.co.uk/court-delays-report)

34) Which professional bodies have approved the SIHIS as the correct pathway to be used?

This is a pilot project to trial and evaluate whether streamlining certain, non-statutory clinical processes will provide an effective way of improving the timeliness of case duration.

35) Which representative bodies for clinicians and expert witnesses were involved in designing the pilot or consulted upon it?

In the early stages of designing this pilot, and at various points since the funding was awarded, the Department has communicated with social workers, the Royal College of Paediatrics and Children's Health, the Family Justice Council including their Experts Working Group, local authorities, NHS England and clinicians from the National Network of Named and Designated Healthcare Practitioners.

36) As this is a pilot, will the parents have the option to consent out of it? What happens if the parents refuse to sign the consents in the form?

As with standard statutory proceedings, if a parent does not consent to a child protection medical and there is significant concern, then the local authority may apply to the court for orders which will permit further investigation and treatment. No statutory processes have been impacted by the SIHIS.

37) What information are parents to be given about the pilot before the decision is made for a case to be referred to the SIHIS pathway?

The process is the same as with any non-SIHIS case, but the SIHIS pathway is specifically managing cases of suspected abusive head injury.

38) What information/advice is being given/has been given to family judges in the pilot areas? Can we please see a written copy of that information / advice?

The Department for Education has met with family judges in the Designated Family Judge areas most likely to receive a SIHIS case. Judges received the SIHIS proforma document, and the Information for Legal Practitioners document that was also widely circulated.

39) What role will parents have within the pilot in deciding whether a case should be referred to the SIHIS pathway?

Parents will not have a role in this pilot. As with current practices in non-pilot cases, clinicians are the ones to refer cases to the SIHIS team.

40) What role will parents have within the pilot in deciding whether further testing should take place?

As with any child patient, the clinicians will listen to the family and organise investigations as appropriate. Parents can request a second opinion if they choose to do so.

41) What role will parents have within the pilot in deciding what clinical opinion should be sought, including whether a second opinion on any issue should be sought?

As with any other SIHIS or non-SIHIS case, the parent has the right to request a second opinion. Statutory proceedings have not been impacted by the SIHIS.

42) What data is to be provided about cases on the pilot and who will that data be made available to?

The evaluation is still in the design phase, but any personal or medical data would be aggregated and/or anonymised.

43) Who is to undertake the evaluation of the pilot?

Verian is leading a consortium with the National Children's Bureau and Alma Economics to conduct an independent evaluation of the pilot.

44) Is there going to be a control group within the same geographical areas?

It is for the evaluator to determine the best methodology in assessing process/ implementation and impact of the pilot, in line with the research objectives agreed with DfE.

45) What specific funding will be in place to enable counsel on behalf of parents to be involved with this (there is currently no funding for work undertaken in drafting questions to experts)?

This pilot is funded by His Majesty's Treasury's Shared Outcomes Fund, which funds initiatives to trial and address a wide range of issues that impact multiple Departments. As the SIHIS is a clinical pilot, funding was awarded to 3 NHS Trusts to streamline their clinical processes. There is no additional funding available for legal professionals during this period, therefore current funding processes will remain. No legal processes have been impacted by the SIHIS.

46) Where would the District General Hospital (DGH) fit in with the SIHIS?

If a child is admitted to a DGH and requires tertiary medical care and is admitted to a tertiary centre with a SIHIS, they would be reviewed by the SIHIS.

47) Is funding likely to be available for all the cases which currently are held by DGH?

There is no additional funding for cases that are not presented to the 3 participating NHS Trusts during the pilot, therefore there is no funding likely to be available for cases which are currently being held DGHs.

48) What are the terms of reference for the pilot?

Each individual SIHIS has their own terms of reference as dictated in the governance requirements of the grant funding agreement.

49) How/to whom do we feedback experience of the pilot?

Please email feedback to the Department for Education Family Justice Team at FamilyJustice.Team@education.gov.uk.