



Home Office

Performance, Assurance and Governance Directorate
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Lewis Kett
lewisk@Duncanlewis.com

21 May 2020

Dear Mr Kett

Freedom of information request (our ref. 55580: internal review)

Thank you for your email dated 14 November 2019, in which you asked for an internal review of our response to your Freedom of Information (FOI) request for information pertaining to any guidance document, or training slides/information, other than the Adults at Risk policy, which advises Home Office caseworkers how to consider independent medico-legal reports, or psychiatric reports for the purposes of reviewing suitability for detention. A full copy of your original request is set out in Annex A. I apologise for the delay in providing a response.

I have now completed the review. I have examined all the relevant papers and have consulted the policy unit which provided the original response. I have considered whether the correct procedures were followed and assessed the reasons why information was withheld from you. I confirm that I was not involved in the initial handling of your request.

The Home Office response of 14 November 2019 confirmed that we hold the information you have requested, but that it is exempt from disclosure under section 31(1)(e) of the FOIA. The reasons for our decision were set out in the original response. A public interest test was conducted and the balance of the public interest favoured maintaining the exemption.

I have considered your original request and the response provided by the Home Office.

I note that you wish to challenge the refusal to release the requested information and that your request for an internal review relates to two areas:

1. Policy guidance or documents relating to the passing of reports to healthcare;
2. Policy guidance or documents advising caseworkers how to consider Medico-Legal Reports (MLR) for detention decisions.

I have discussed your arguments with the unit which provided the original response and they have confirmed that we can now provide redacted versions of two documents which fall within scope of your request.

The first document is the 'Adults at Risk Returns Assurance Team (ARRAT) MLR Guidance and Frequently Asked Questions'.

The second document is an 'Email chain document' which provides further instructions to caseworkers on how to deal with MLRs in the same way as the ARRAT guidance.

Both documents include redactions under sections 31(1)(e) and 40(2) of the FOIA. The original FOI response set out the reasons for withholding information under section 31(1)(e) and I can confirm that this exemption has been applied correctly to the information now being withheld. I have judged that the public interest falls in favour of maintaining the exemption, to enable the Home Office to maintain effective immigration control in this area. Additionally, we have decided that section 40(2) of the FOIA is also engaged. This is because the Home Office has obligations under data protection legislation and in law generally to protect personal data. We have concluded that some information is exempt from disclosure under section 40(2), because of the condition at section 40(3A)(a). This exempts personal data if disclosure would contravene any of the data protection principles in Article 5(1) of the General Data Protection Regulation and section 34(1) of the Data Protection Act 2018.

My conclusion is that the original response was correct to cite the exemption to withhold some, but not all, of the requested information. We have now provided you with additional information as attachments to the review response.

Yours sincerely

J Conquest
Information Rights Team

Medico-Legal Reports (MLR) – Guidance and Frequently Asked Questions

The advice below relates to reviewing detention in light of an MLR only. Other case-working decisions need to be made in line with the published policies relating to MLRs/ decision making.

Guidance

If you receive an MLR; **and**

- the report states that the medical assessment was conducted in person within an IRC, or where the report is vague and unclear about how the assessment was carried out; **and**
- you have received confirmation from the IRC that the Dr has not attended to visit the detainee on the date stipulated, (*and therefore could not have carried out this assessment in person as claimed*), please respond to the legal representatives asking for clarification on;
 - Information on the date on which the Dr attended the IRC for the assessment with their client, and for how long the assessment lasted.

In cases where the IRC have confirmed that the Dr has not attended the IRC at all:

- Ask the legal representatives to provide evidence that the Dr attended the IRC and evidence of the assessment, including when and how the assessment was carried out [i.e. over the phone, skype etc.] and by whom this assessment was carried out by. If the assessor is not the author of the report, seek clarification on what the assessor's qualifications are to undertake a psychological/medical assessment.

It would be reasonable for us to note that only when these points are clarified, will we be in a position to substantively consider the report. However please specify a short deadline for the legal representatives to respond.

FAQs

Do we need to change the AAR level whilst we wait for clarification from legal representatives?

We do not need to change the Adults at Risk level of the individual in light of the content of the MLR, until we receive a response from the legal representatives and/or have substantially considered the report.

What if we do not receive a response from the legal representatives?

If no response is received from the legal representatives, it would be advisable to formally respond and reason out why no weight is being attached to the report (*We*

should be mindful that, despite the initial concerns, some parts of the report may nevertheless deserve careful consideration).

What if it is claimed that an assessment has taken place, and this assessment is not mentioned in the MLR?

If we have confirmation from the legal representatives, that the Dr has not assessed the detainee in person and claims to have done so over the phone/skype etc., and there is no reference to or mention of this telephone assessment in the report, we need not place weight on the report. In such cases, we do not need to raise the Adults at Risk Level to Level 3 (or any other level) in light of the report. However, please ensure that details of this decision are clearly recorded in CID notes. It may also be useful to submit a Healthcare Enquiry with the MLR, to find out whether the GP or Mental Health team in the IRC have any concerns.

Can we challenge an MLR?

We can challenge the report where there are clear mistakes or errors, for example a report for a detainee which provides an incorrect name, DOB, nationality etc. [*as this clearly suggests that the report was produced for another person, or has been copy/pasted in parts and we cannot be sure which parts can be relied upon*]. Other comments, for example; *“he heard the voices of his children”* where we know the detainee has no children, *“symptoms due to his elderly age”* when the individual is a young adult, can certainly cause a basis for challenge, particularly if there are a number of errors throughout the report. Although it is possible to challenge the MLR on grounds of the doctor’s failure to clearly set out their modus-operandi, or on grounds of such errors as identified in the above examples, case workers should not specifically challenge the doctors’ clinical opinion.

How should we challenge MLRs?

In terms of how we challenge reports; we should contact the legal representatives, highlighting the errors we have noted and asking for clarification. Where there are many errors/mistakes, or where we are in a strong position to say that the report is unreliable following a response from the legal representatives, we can place no weight on the report. The Adults at Risk policy also allows for no/little weight to be attached to an MLR where there are judicial findings rejecting the claimant’s credibility.

It is advised that any decision to place no weight on an MLR, is authorised by an SEO (or the equivalent grade for which a detention review for that individual would otherwise have been authorised).

What if the account in a Rule 35 report and MLR are different?

If an MLR is received, in which the detainee has provided the psychologist with a different account from that provided in the evidence we have (for example a Rule 35

report), and the MLR is the most recent report, we should accept the MLR as the most current evidence of the vulnerabilities of the individual.

What if we have conflicting evidence from the MLR and Healthcare?

In the circumstances where we are in receipt of conflicting information, *for example; the content of the MLR satisfies Level 3 evidence (that detention is, or is likely to worsen symptoms/condition of the individual)*, and after reviewing the MLR, healthcare have responded with the information that they do not consider the individual to be suffering with any mental health conditions and have no concerns for the individual with regards to detention, we should consider the below guidance:

- Where we have agreed to place no weight on the MLR due to concerns (noted above), we can consider the evidence we have from healthcare as the most recent professional evidence and should consider the case under the Adults at Risk policy accordingly.
- Where none of the above concerns with the MLR are present and the MLR doctor has seen and/or appropriately assessed the individual, we should regard the MLR as the most recent professional evidence and should consider the case under the Adults at Risk policy accordingly. We should remember that the Dr carrying out the MLR assessment is an expert in their field.

Can we delay a response to the MLR for healthcare to carry out a Mental Health Assessment?

If we are in a position to substantively consider an MLR, we should not delay doing so in order for healthcare/mental health team in the IRC to undertake a mental health assessment for that individual.

Does the level under the Adults at Risk policy need to be reviewed if we are placing no weight on the MLR?

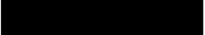
Where we have agreed to place no weight on the report, we do not need to review the level under the Adults at Risk policy in light of the contents of the report. However, as above, we should consider any comments from healthcare (if provided) when considering the level under the policy.

Important points to remember

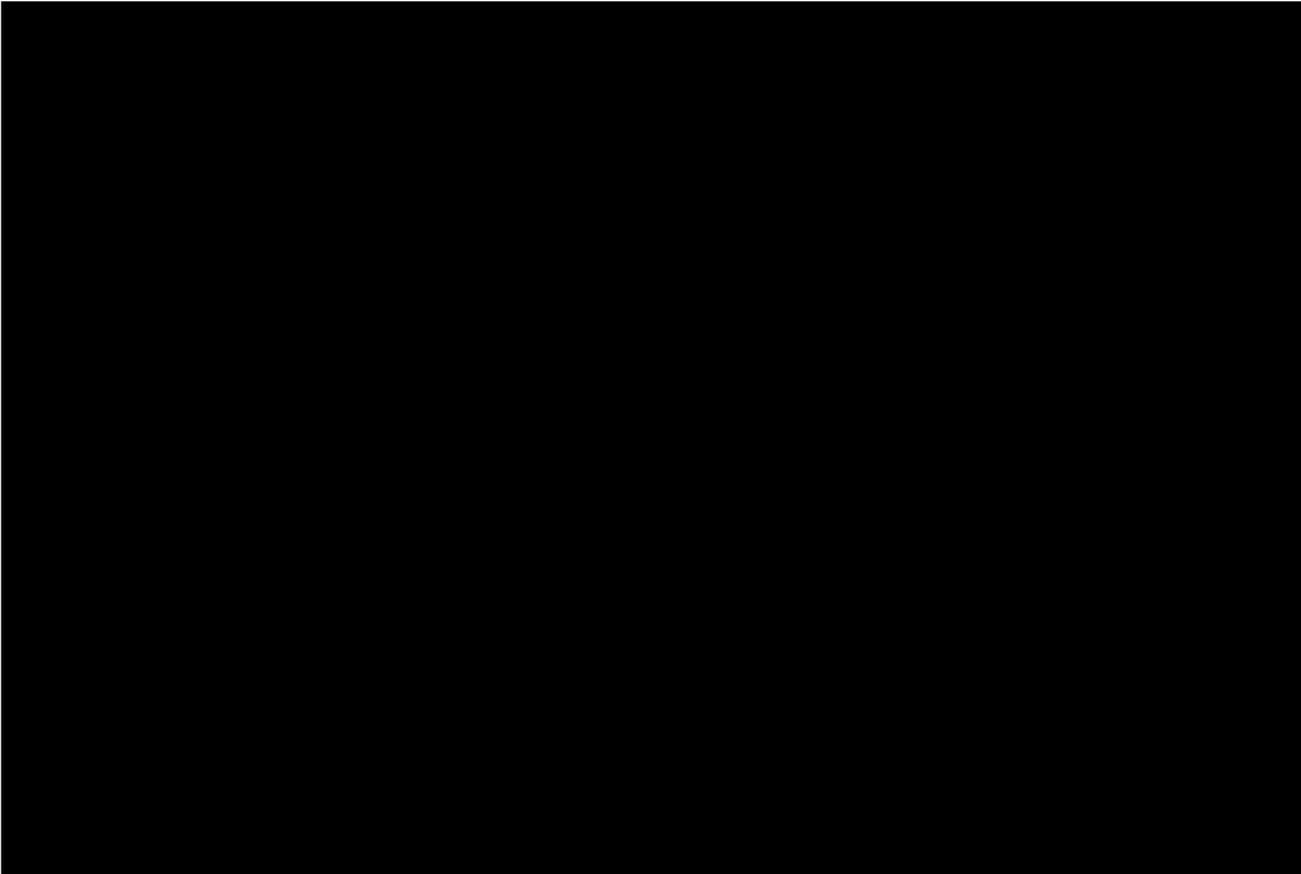
- All MLRs should be considered on individual merit and should not be rejected merely because there have been other reports from that doctor which have raised concern.
- We do not need to escalate the Adults at Risk level in light of the contents of the MLR until we have considered it substantially; where clarification is being sought from the legal representatives (as above), it is advisable to wait until a response is received or the deadline for a response has passed before

- considering the MLR substantially (and the impact, if any, on the Adults at Risk level).
- Given that such decisions will be liable to legal challenge, any response to the legal reps/ applicant should be properly reasoned. It is not enough to merely record this information on CID.
 - Although it may be possible to challenge the MLR on grounds of the doctor's failure to clearly set out their modus-operandi, or on grounds of the errors/concerns with the MLR, case workers should not specifically challenge the doctors' clinical opinion.

This advice has been produced by the Adults at Risk Returns Assurance Team, Detention Policy Team and representatives across the business.

Further Questions should be forwarded to the ARRAT Inbox copying 

email chain



All,

As you are aware, the previous trend of concerns with regards to MLRs being received from [REDACTED] has extended to numerous doctors and legal representatives. As a reminder, I have set out the main concerns below.

We are aware that detained casework teams across the board are in receipt of these reports and it is important that our approach in responding to the concerns we have, are consistent and in line with policy. We are sending this email as a reminder to teams, on how best to approach responding to such reports.

A number of questions have been raised by teams directly with ARRAT, and an updated version of the attached FAQ will be disseminated when a steer is agreed with RED policy colleagues.

I write to you on behalf of ARRAT to request that the below reminder, along with the attached guidance is disseminated through your management chains, as appropriate.

The below has been agreed by our detention policy colleagues and is the approach

email chain

we
should all be taking.

Many Thanks,

Adults at Risk Returns Assurance Team – Detained Casework Oversight and
Improvement Team – Immigration Enforcement

All,

Please refer to the guidance below when considering a Medico Legal Report (MLR) for which there are concerns. For further information, please see the attached FAQ document. This guidance has been agreed with Detention Policy colleagues and representatives across the business, and we encourage that it is followed wherever possible.

Current Trend of MLRs

You may be aware of a recent influx of medico-legal reports (MLR) being submitted for detained cases, often diagnosing conditions related to mental health (e.g. PTSD) and which state that detention is, or is likely to worsen the symptoms or the condition of that individual. In such cases, where these details are received, we should be raising the Adults at Risk Level to Level 3 (as set out within the policy) and reviewing detention accordingly. It is also good practice to share the MLR with the relevant IRC Healthcare to assist their safeguarding provisions on release, or ongoing care if detention is maintained.

Why am I receiving this email?

A huge number of MLRs have been received from a variety of psychologists/psychiatrists, having been instructed by a wide range of legal representatives.

email chain



You have received this email to ensure you are aware of the advice on how to respond,
and that our responses are consistent across the business.

Does this advice relate to all decisions surrounding MLRs?
This advice relates to reviewing detention in light of an MLR only. Other case-working decisions need to be made in line with the published policies relating to MLRs/ decision making.



If you receive an MLR for which you have concerns and the report states that the medical assessment was conducted in person within an IRC or where the report is vague and unclear about how the assessment was carried out, and you have received confirmation from the IRC that the Dr has not attended to visit the detainee on the date stipulated, (and therefore could not have carried out this assessment in person as claimed), please respond to the legal representatives asking for clarification on;

* Information on the date on which the Dr attended the IRC for the assessment with their client, and for how long the assessment lasted.

* (In cases where the IRC have confirmed that the Doctor has not attended the IRC at all) Ask the legal representatives to provide evidence that the Dr attended the IRC and evidence of the assessment.

* (If it is apparent that the Dr did not attend the IRC to assess the individual on any date) When and how the assessment was carried out [i.e. over the phone, skype etc.] and by whom this assessment was carried out by. If the assessor is not the

email chain

author of the report, what the assessor's qualifications are to undertake a psychological/medical assessment.

We should highlight that only when these points are clarified, will we be in a position to substantively consider the report. Please specify a short deadline for the legal representatives to respond. We do not need to change the Adults at Risk level of the individual in light of the content of the MLR, until we receive a response from the legal representatives and/or have substantially considered the report. If no response is received from the legal representatives, we should formally respond and reason out why no weight is being attached to the report. (Please be mindful that, despite the initial concerns, some parts of the report may nevertheless deserve careful consideration).

Further advice already sought

A number of questions have been raised to ARRAT and detention policy colleagues and discussions are ongoing as to the correct advice/approach to take in the particular circumstances posed. Once an approach is agreed with policy colleagues, an updated version of the attached FAQ will be disseminated.

Important points to remember

* All MLRs should be considered on individual merit

* We need not escalate the Adults at Risk level in light of the contents of the MLR until we have considered it substantially; where clarification is being sought from the legal representatives (as above), it is advisable to wait until a response is received or the deadline for a response has passed before considering the MLR substantially (and the impact, if any, on the Adults at Risk level).

* If a reviewing officer concludes to not attach any weight to a particular MLR, we do not need to escalate the Adults at Risk level of that individual in light of

email chain

the contents of the report.

* If a reviewing officer concludes to not attach any weight to a particular MLR, it would be advisable for the decision to be approved by an SEO (or at least by an officer of the same grade as the one who would have otherwise authorised ongoing detention).

* Given that such decisions will be liable to legal challenge, any response to the legal reps/ applicant should be properly reasoned. It is not enough to merely record this information on CID.

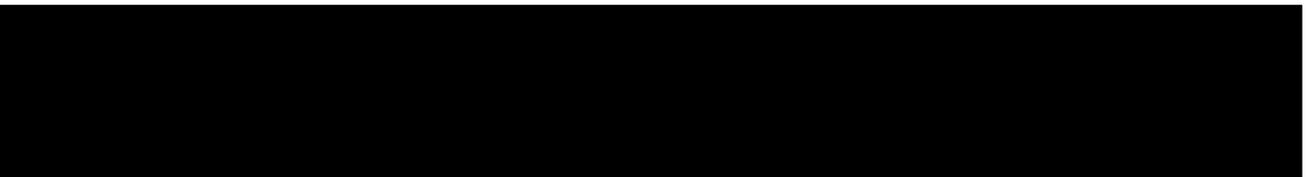
* Although it may be possible to challenge the MLR on grounds of the doctor's failure to clearly set out their modus-operandi, or on grounds of the errors/concerns with the MLR, case workers should not specifically challenge the doctors' clinical opinion.

For further advice, please see the attached FAQ document.

If you have any further questions on the above, please email the ARRAT inbox,



Kind Regards,



<https://www.gov.uk>

FILE MESSAGE

Ignore, Junk, Delete, Reply, Reply All, Forward, Meeting, More

billing, Team Email, Reply & Delete, To Manager, Done, Create New

Rules, OneNote, Actions, Move, Mark Unread, Categorize, Follow Up, Translate, Find, Related, Select, Zoom

Fri 22/05/2020 11:42

FOI Responses <FOIResponses@homeoffice.gov.uk>
 [K153520004] [DL Admin] FW: FOI 55580 Lewis Kett Internal Review Final response

To: Lewis Kett

Follow up. Start by 22 May 2020. Due by 22 May 2020.
 You forwarded this message on 22/05/2020 11:57.

Message R - email chain June 2018.pdf (120 KB)

Dear Mr Kett

Thank you for your email dated 21 May asking for confirmation of the date of the redacted email chain document that we provided as part of the internal review response for FOI case reference 55580.

I confirm that the date of the redacted email chain that we have already provided was 18 December 2018.

In checking the date we located an additional email chain within scope and this is attached. Some redactions have been made on the same basis as were made to the email chain already disclosed. We apologise for the omission and hope that you find the attached information useful.

Kind regards

Information Rights Team
 Knowledge and Information Management Unit
 Performance, Assurance and Governance Directorate
 Home Office | 2 Marsham Street | London SW1P 4DF



[REDACTED]

Subject: Current Trend of MLR/Psychology reports - Please disseminate this guidance to your teams as appropriate

Attachments: Medico-Legal Reports - Frequently Asked Questions v1.dot; [REDACTED]

[REDACTED]

Categories: [REDACTED]

All,

You may be aware, there are currently significant concerns with regards to MLRs being received [REDACTED]. If you are not, I have set out the main concerns below.

We are aware that detained casework teams across the board are in receipt of these reports and it is important that our approach in responding to the concerns we have, are consistent and in line with policy.

I write to you on behalf of ARRAT to request that the below, along with the attached guidance is disseminated through your management chains, as appropriate. The below has been agreed by our detention policy colleagues and is the approach we should all be taking.

[REDACTED]

Current Trend of MLR Psychology reports - original email chain June 2018 information.

Many Thanks,



Adults at Risk Returns Assurance Team – Detained Casework Oversight and Improvement Team – Immigration Enforcement

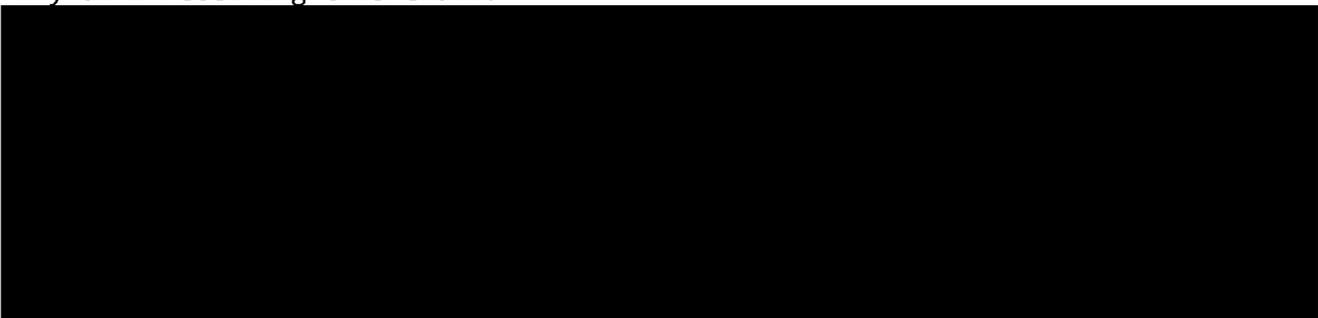
All,

Please refer to the guidance below when considering a Medico Legal Report (MLR) for which there are concerns. For further information, please see the attached FAQ document. This guidance has been agreed with Detention Policy colleagues and representatives across the business, and we encourage that it is followed wherever possible.

Current Trend of MLRs

You may be aware of a recent influx of medico-legal reports (MLR) being submitted for detained cases, often diagnosing conditions related to mental health (e.g. PTSD) and which state that detention is, or is likely to worsen the symptoms or the condition of that individual. In such cases, where these details are received, we should be raising the Adults at Risk Level to Level 3 (as set out within the policy) and reviewing detention accordingly. It is also good practice to share the MLR with the relevant IRC Healthcare to assist their safeguarding provisions on release, or ongoing care if detention is maintained.

Why am I receiving this email?

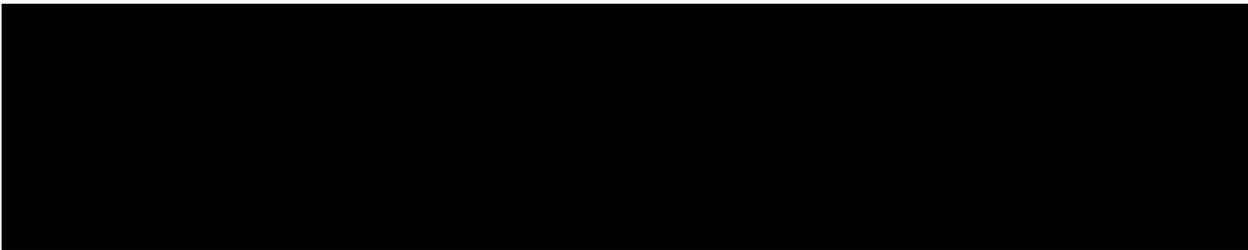


You have received this email to ensure you are aware of the advice on how to respond, and that our responses are consistent across the business.

Does this advice relate to all decisions surrounding MLRs?

This advice relates to reviewing detention in light of an MLR only. Other case-working

Current Trend of MLR Psychology reports - original email chain June 2018
decisions need to be made in line with the published policies relating to MLRs/
decision
making.



What to do if you receive an MLR for which there are concerns
If you receive an MLR produced by [REDACTED] (or any other doctor) and the report
states
that the medical assessment was conducted in person within an IRC or where the
report
is vague and unclear about how the assessment was carried out, and you have
received confirmation from the IRC that the Dr has not attended to visit the
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* (If it is apparent that the Dr did not attend the IRC to assess the
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etc.] and by whom this assessment was carried out by. If the assessor is not the

author of the report, what the assessor's qualifications are to undertake a
psychological/medical assessment.

We should highlight that only when these points are clarified, will we be in a
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out why

no weight is being attached to the report. (Please be mindful that, despite the

Current Trend of MLR Psychology reports - original email chain June 2018
initial concerns, some parts of the report may nevertheless deserve careful consideration).

Important points to remember

* All MLRs should be considered on individual merit and should not be rejected merely because [REDACTED]

* We need not escalate the Adults at Risk level in light of the contents of the MLR until we have considered it substantially; where clarification is being sought from the legal representatives (as above), it is advisable to wait until a response is received or the deadline for a response has passed before considering the MLR substantially (and the impact, if any, on the Adults at Risk level).

* If a reviewing officer concludes to not attach any weight to a particular MLR, we do not need to escalate the Adults at Risk level of that individual in light of the contents of the report.

* If a reviewing officer concludes to not attach any weight to a particular MLR, it would be advisable for the decision to be approved by an SEO (or at least by an officer of the same grade as the one who would have otherwise authorised ongoing detention).

* Given that such decisions will be liable to legal challenge, any response to the legal reps/ applicant should be properly reasoned. It is not enough to merely record this information on CID.

* Although it may be possible to challenge the MLR on grounds of the doctor's failure to clearly set out their modus-operandi, or on grounds of the errors/concerns with the MLR, case workers should not specifically challenge the doctors' clinical opinion.

For further advice, please see the attached FAQ document.

If you have any further questions on the above, please email the ARRAT inbox, copying [REDACTED]

Kind Regards,

[REDACTED]

Current Trend of MLRPsychology reports - original email chain June 2018