

Maintaining High Professional Standards

Issue Date	Review Date	Version
July 2019	July 2022	11

Purpose

This policy implements the framework set out in “Maintaining High Professional Standards in the Modern NHS” issued under the direction of the Secretary of State for Health on 11 February, 2005.

Who should read this document?

All Medical and Dental staff
 All Service Line Directors and Managers
 All Care Group Directors and Cluster Managers

Key Messages

This policy outlines the Trust's procedure for handling concerns about Doctors' and Dentists' conduct and capability.

Core accountabilities

Owner	Medical HR Business Partner
Review	Medical Staff Panel
Ratification	Director of People
Dissemination (Raising Awareness)	Medical Staff Panel
Compliance	Medical Staff Panel

Links to other policies and procedures

Performance and Conduct Policy

Version History

8.1	Sept 2005	Medical Staff Panel – Description of changes from last issue: Implementing the Framework set out in “Maintaining High Professional Standards in the Modern NHS” into our local procedures from 1 June 2005
8.2	January 2009	Removal of Informal Procedure to Pre-formal Procedure
8.3	August 2009	Reformatted, EIA, Dissemination Plan and Checklist included
8.4	November 2010	Review Date Extended
9	November 2014	Re-write of document
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11	July 2019	Reviewed and reformatted. Description of changes from last issue: Introduction of Decision Making Group Delegated authority for appointment of NED

UHP is committed to creating a fully inclusive and accessible service.

Making equality and diversity an integral part of the business will enable us to enhance the services we deliver and better meet the needs of patients and staff.

We will treat people with dignity and respect, actively promote equality and diversity, and eliminate all forms of discrimination regardless of (but not limited to) age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage/civil partnership and pregnancy/ maternity.

An electronic version of this document is available on Trust Documents. Larger text, Braille and Audio versions can be made available upon request.

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1 Introduction

This policy outlines the Trust's procedure for handling concerns about doctors' and dentists' conduct and capability.

2 Purpose, including legal or regulatory background

This policy implements the framework, applicable to all doctors' and dentists' as set out in Maintaining High Professional Standards in the Modern NHS, issued under the direction of the Secretary of State for Health on 11th February, 2005.

3 Key Elements

Part 1 Action When a Concern Arises

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Part 1 Action When a Concern Arises

Introduction

1. The management of performance is a continuous process which is intended to identify problems. Concerns about a practitioner's performance can be identified in numerous ways from which remedial and supportive action can be quickly taken, before problems become serious or patients harmed; and which need not necessarily require formal investigation or the resort to disciplinary procedures.
2. Concerns about a practitioner's conduct or capability can come to light in a wide variety of ways, for example:
 - concerns expressed by other NHS professionals, health care managers, students and non-clinical staff
 - review of performance against job plans, annual appraisal, revalidation
 - monitoring of data on performance and quality of care
 - clinical governance, clinical audit and other quality improvement activities
 - complaints about care by patients or relatives of patients
 - information from the regulatory bodies
 - litigation following allegations of negligence
 - information from the police or coroner
 - court judgments
3. Unfounded and malicious allegations can cause lasting damage to a practitioner's reputation and career prospects. Therefore all allegations, including those made by relatives of patients, or concerns raised by colleagues, must be properly investigated to verify the facts so that the allegations can be shown to be true or false.
4. Concerns about the capability of doctors in training will be considered initially as training issues and the postgraduate dean will be involved from the outset.
5. The Trust expects managers (Service Line Directors/Service Line Managers) to deal with allegations or complaints made by any person about a member of the Medical or Dental staff, wherever appropriate, informally in the first instance.
6. If such approaches do not succeed or are inappropriate, the manager should hold a "conversation of concern" meeting with the member of staff to talk about the problem and action required. This may be in the form of an action plan to address the issue, which will be agreed by all parties involved. The discussion should be recorded on the form available from Medical HR.
7. The employee must be informed that the discussion constitutes a "conversation of concern" and that continued failure to meet the appropriate standards may result in formal action being taken in accordance with this policy.
8. Allegations or complaints that have not been resolved at Service Line level will be reported to the Medical Director. If the Medical Director agrees that the matter cannot

be resolved by the Service Line or informally by him/herself he/she will, after consultation with the Chair of the Hospital Medical Staff Committee (CHMSC) (or deputy) and the Director of HR&OD (or deputy) decide whether or not to commission an investigation under the Medical Director Preformal Procedure or to proceed with a formal investigation.

Medical Director's Pre-formal Procedure

9. The purpose of the Pre-formal Procedure is to provide the Medical Director with sufficient information to make an informed recommendation as per point 5 below. The investigation will be completed as quickly as possible to achieve this objective and is not intended to be a substitute for the formal investigation that may be necessary as a consequence of a decision to proceed with the full formal process.
10. The Medical Director will act as Case Manager and appoint up to three appropriate medical practitioners/managers as Case Investigators, whose membership and terms of reference will be decided by the Medical Director.
11. The practitioner will be provided with a brief outline of the matters of concern in order that these can be explored more fully as part of the investigation.
12. Where the matter involves specialist expertise, not available within the Trust the Medical Director may appoint and consider any requests from the practitioner to appoint an additional external practitioner with that expertise who is acceptable to both the Medical Director and practitioner under investigation.
13. Upon completion of the Pre-formal Procedure the Case Investigators will be made available to the Medical Director who, following consultation with the Chair of HMSC (or deputy) and Director of HR&OD (or deputy) will make recommendations to the Chief Executive. These recommendations may include:
 - a. That there is no substance in the allegation, no case to answer and no further action required.
 - b. Remedial supportive action, which may include further training or modification or responsibilities, job plan review, referral to the Staff and Well Being Service.
 - c. Issuing of a formal verbal or written warning (including final written warning).
 - d. Referral to a conduct panel, without the need for further Formal Investigation. The appropriate formal procedure will be followed in the event that the practitioner does not agree to the Medical Director recommendations.
 - e. The matter needs further investigation required under formal investigation of Maintaining High Professional Standards.
14. The practitioner is notified in writing the outcome of the Pre-formal Procedure.
15. The person making the complaint/allegation will be informed when the investigation has concluded and that the appropriate action has been taken by the Medical Director.

Formal Process

16. The formal process is designed to deal with matters of serious concerns which have not been resolved through the Pre-formal Procedure as detailed above or for serious concerns which in the opinion of the Medical Director, following consultation with the Chair of HMSC and the Director of HR&OD are inappropriate for the resolution through the informal process.
17. All serious concerns must be registered with the Medical Director. The Medical Director has delegated authority from the Chairman to designate a non-executive member “the designated member” to oversee the case and ensure that momentum is maintained.
18. All concerns should be investigated quickly and appropriately. A clear audit route must be established for initiating and tracking progress of the investigation and resulting action. However the issue is raised, the Medical Director will need to work with the Director of HR&OD (or nominee) and the Chair of HMSC to decide the appropriate course of action in each case. The Medical Director will act as the case manager, however, he or she may delegate this role to a senior manager to oversee the case on his or her behalf. The Case Manager is responsible for appointing the Case Investigators.
19. If the matter relates to fraud and/or corruption then it must be reported to the Director of Finance or the Local Counter Fraud Specialist.

Protecting the Public

20. When serious concerns are raised about a practitioner, the Trust must urgently consider whether it is necessary to place temporary restrictions on their practice. This might be to amend or restrict their clinical duties, obtain undertakings or provide for the exclusion of the practitioner from the workplace. Part 2 of this policy sets out the procedures for this action.
21. The duty to protect patients is paramount. At any point in the process where the case manager has reached a clear judgement that a practitioner is considered to be a serious danger to patients or staff, that practitioner must be referred to the regulatory body, whether or not the case has been referred to the National Clinical Assessment Service (NCAS). Consideration should also be given to whether the issue of an alert letter should be requested.

Involving NCAS

22. At any stage of the handling of a case consideration should be given to the involvement of NCAS. Any involvement of NCAS must first be considered by the Medical Director. NCAS has developed a staged approach to the services it provides NHS Trusts and practitioners. This involves:-
 - Immediate telephone advice, available 24 hours
 - Advice, then detailed supported local case management
 - Advice, then supported local clinical performance assessment
 - Advice, then detailed NCAS clinical performance assessment
 - Support with implementation of recommendations arising from assessment
 - Understanding the issue and investigation

Summary of Key Actions for Medical Director

- Clarify initial understanding of what has happened and the nature of the problem concerned;
- Make initial contact with NCAS and decide the options available to the Trust;
- Discuss with the Director of HR&OD (or nominee) and the Chair of HMSC (or nominee)
- Identify a Case Manager, if not undertaking that role;
- Identify Case Investigators;

Role of the Case Manager

23. The first task of the Case Manager is to identify the nature of the problem or concern. This will require the appointment of a Case Investigator(s) and the gathering of statements with support from Human Resources. This will enable an assessment of the seriousness of the issue on the information available and the likelihood that it can be resolved without resort to formal disciplinary procedures. This is a difficult decision and should not be taken alone but in consultation with the Director of HR&OD (or their nominee) and the Chair of HMSC (or nominee), if necessary with NCAS.
24. Where it is decided that a more formal route needs to be followed (perhaps leading to conduct or capability proceedings) the Case Manager must appoint appropriately skilled and experienced Case Investigators to undertake the investigation. The seniority of the Case Investigator(s) may differ depending on the grade of practitioner involved in the allegation.
25. The practitioner concerned must be informed in writing by the Case Manager, as soon as it has been decided, that an investigation is to be undertaken, the name of the Case Investigator(s) and made aware of the specific allegations or concerns that have been raised.
26. If during the course of the investigation it transpires that the case involves more complex clinical issues than first anticipated, the Case Manager should consider whether an independent practitioner from another NHS body should be invited to assist.

Summary of Key Actions for Case Manager

- In conjunction with the Medical Director (if not the Case Manager), the Director of HR&OD (or nominee) and the Chair of HMSC consider if a formal MHPS investigation is required;
- Inform the practitioner of the investigation:-
 - that it is proceeding
 - the name of the Case Investigator(s)
 - an outline of the allegations made
 - the name of the non-executive member who has been appointed to oversee the process
- Consider the report from the Case Investigator(s) and make a decision about any future action that should be taken;
- Where the matter relates to capability concerns, consider any representation made by the practitioner in relation to the investigation report;
- If the matter proceeds to a formal hearing, present the rationale for this decision to a formal panel.

Role of the Case Investigator

27. The Case Investigator is responsible for leading the investigation into any allegations or concerns about a practitioner, establishing the facts and reporting the findings to the Case Manager. The Case Investigator must:-

- involve a human resources representative in meetings with staff where statements are requested;
- where possible meet with all staff members involved to clarify the sequence of events;
- formally involve a senior member of the medical or dental staff where a question of clinical judgment is raised during the investigation process. Where no other suitable senior doctor or dentist is employed by the Trust a senior doctor or dentist from another NHS body should be involved;
- ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible by all involved. Patient confidentiality needs to be maintained but any formal panel will need to know the details of the allegations. It is the responsibility of the Case Investigator to judge what and how information needs to be gathered within the boundaries of the law;
- ensure that a written record is kept of the investigation;
- write a report for the Case Manager to be able to deliver an outcome to the practitioner;
- keep the designated non-executive member up to date with the progress of the case.

28. The Case Investigator does not make the decision on what action should be taken nor whether the practitioner should be excluded from work and may not be a member of any disciplinary or appeal panel relating to the case.

29. The Case Investigator has wide discretion on how the investigation is carried out but in all cases the purpose of the investigation is to ascertain the facts in an unbiased manner. Investigations are not intended simply to secure evidence against the practitioner as information gathered in the course of an investigation may clearly exonerate the practitioner or provide a sound basis for effective resolution of the matter.

30. The Case Investigator should complete the investigation within 4 weeks of the commencement of the investigation and submit their report to the Case Manager within a further 5 working days. The report of the investigation should give the Case Manager sufficient information to make a decision whether:-

- there is a case of misconduct or gross misconduct that should be put to a conduct panel;
- there are concerns about the practitioner's health that should be considered by the Trust's occupational health department;
- there are concerns about the practitioner's performance that should be further explored with NCAS;
- the outcome warrants a verbal or written warning (including final warning)

- restrictions on practice or exclusion from work should be considered;
- there are serious concerns that should be referred to the GMC or GDC;
- there are intractable problems and the matter should be put before a capability panel;
- no further action is needed.

Summary of Key Actions for Case Investigator

- Ascertain the facts relating to the investigation;
- Provide information to the practitioner of the concern to enable them to respond;
- Meet the practitioner with a human resources representative to allow them to put across their views and establish the sequence of events;
- Meet any potential complainants or witnesses;
- Provide a report to the Case Manager within 4 weeks and 5 working days of the commencement of the investigation;
- Where the issue involves capability concerns provide a copy of the investigation report to the practitioner at the same time as it is presented to the Case Manager.

Assessment by NCAS following Local Investigation

31. Medical under-performance can be due to health problems, difficulties in the work environment, behaviour or a lack of clinical capability. These may occur in isolation or in a combination. NCAS provides support aimed at addressing all of these, particularly where local action has not been able to take matters forward successfully. NCAS's methods of working assume commitment by all parties to take part in a referral to NCAS following the local investigation. For example, its assessors work to formal terms of reference, decided on after input from the practitioner and the Trust.
32. The focus of NCAS's work is therefore likely to involve performance difficulties, which are serious and/or repetitive. That means:
- performance falling well short of what practitioners could be expected to do in similar circumstances and which, if repeated, would put patients seriously at risk;
 - alternatively or additionally, problems that are ongoing or (depending on severity) have been encountered on at least two occasions.
33. In cases where it becomes clear that the matters at issue focus on fraud, specific patient complaints or organisational governance, different local policies and procedures may be adopted. NCAS may advise on this.
34. Where the Trust is considering excluding a practitioner, whether or not his or her performance is under discussion with NCAS, it is important for NCAS to know of this at an early stage, so that alternatives to exclusion are considered. Procedures for exclusion are covered in Part 2 of the policy. It is particularly desirable to find an alternative when NCAS is likely to be involved, because it is much more difficult to assess a practitioner who is excluded from practice than one who is working.
35. A practitioner undergoing assessment by NCAS must cooperate with any request to give an undertaking not to practice in the NHS or private sector other than their main

place of NHS employment until the NCAS assessment is complete (circular HSC 2002/011, Annex 1, paragraph 3).

36. Failure to co-operate with a referral to NCAS may be seen as evidence of a lack of willingness on the part of the practitioner to work with the Trust on resolving performance difficulties. If the practitioner chooses not to co-operate with such a referral, that may limit the options open to the Trust and may necessitate disciplinary action and consideration of referral to the GMC or GDC.

Child Abuse allegations

37. Child abuse allegations should be raised with the Trust Named Nurse for Child/Adult Protection.
38. The decision as to exclusion from the Trust remains the prerogative of the Medical Director after consultation with the Director of HR&OD (or nominated deputy).

Representation

39. At any stage of this process – or subsequent disciplinary action – the practitioner may be accompanied in any interview or hearing by a companion. A companion is defined as a friend, partner or spouse, workplace colleague, or a representative who may be from or retained by a trade union or defence organisation. The companion may be legally qualified but he or she will not be acting in a legal capacity.
40. A request to adjourn an investigatory meeting or hearing to allow an employee to be accompanied should not be unreasonably refused. However, it should be stressed that a representative should make him/herself available within as short a timescale as possible and in any event no longer than five working days in order to enable the investigation to be completed within a reasonable time.

Confidentiality

41. The Trust must maintain confidentiality at all times. No press notice will be issued, nor the name of the practitioner released, in regard to any investigation or hearing into disciplinary matters. The Trust will only confirm publicly that an investigation or disciplinary hearing is underway.
42. Personal data released to the case investigator for the purposes of the investigation must be fit for the purpose, nor disproportionate to the seriousness of the matter under investigation. The Trust will operate consistently with the guiding principles of the Data Protection Act.

Part 2 Restriction of Practice and Exclusion

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Part 2 Restriction of Practice and Exclusion

Introduction

1. The phrase “exclusion from work” has been used to replace the word “suspension” which can be confused with other action taken by the General Medical Council (GMC) or General Dental Council (GDC) to suspend the practitioner from the register pending a hearing of their case or as an outcome of the fitness to practice hearing.
2. All NHS bodies must ensure that:-
 - Where possible restrictions upon practice are employed rather than exclusion from work;
 - exclusion from work is used only as an interim measure whilst action to resolve a problem is being considered;
 - where a practitioner is excluded, it is for the minimum necessary period of time, this can be up to but no more than four weeks at a time;
 - all extensions of exclusion are reviewed and a brief report provided to the Chief Executive and the Board;
 - a detailed report is provided when requested to a single non-executive member of the Board “the designated member” who will be responsible for monitoring the situation until exclusion has been lifted.

Managing the Risk to Patients

3. When serious concerns are raised about a practitioner, the Trust will urgently consider whether it is necessary to place temporary restrictions on their practice. This might be to amend or restrict their clinical duties, obtain undertakings or provide for the exclusion of the practitioner from the workplace. Where there are concerns about a doctor or dentist in training, the postgraduate dean should be involved as soon as possible.
4. Exclusion of clinical staff from the workplace is a temporary expedient. Exclusion is a precautionary measure and not a disciplinary sanction. Exclusion from work will be reserved for only the most exceptional circumstances.
5. The purpose of exclusion is:
 - to protect the interests of patients or other staff; and/or
 - to assist the investigative process when there is a clear risk that the practitioner’s presence would impede the gathering of evidence.
6. It is imperative that exclusion from work is not misused or seen as the only course of action that could be taken. The degree of action must depend on the nature and seriousness of the concerns and on the need to protect patients, the practitioner concerned and/or their colleagues.
7. Alternative ways to manage risks, avoiding exclusion, include:
 - Medical or Service Line Director supervision of normal contractual clinical duties;
 - Restricting the practitioner to certain forms of clinical duties or certain places of work;

- Restricting activities to administrative, research/audit, teaching and other educational duties. By mutual agreement the latter might include some formal retraining or re-skilling;
 - Sick leave for the investigation of specific health problems.
8. In cases relating to the capability of a practitioner, consideration should be given as to whether an action plan to resolve the problem can be agreed with the practitioner. Advice on the practicality of this approach can be sought from NCAS. If the nature of the problem and a workable remedy cannot be determined in this way, the case manager should seek to agree with the practitioner to refer the case to NCAS, which can assess the problem in more depth and give advice on any action necessary. NCAS can offer immediate telephone advice to case managers considering restriction of practice or exclusion and, whether or not the practitioner is excluded, provide an analysis of the situation and offer advice to the case manager.

The Exclusion Process

9. The Trust will not exclude a practitioner for more than 2 weeks (following immediate/temporary exclusion) or 4 weeks (following formal exclusion). The justification for continued exclusion must be reviewed on a regular basis and before any further four-week period of exclusion is imposed.
10. Key officers and the Trust Board representative have responsibilities for ensuring that the process is carried out quickly and fairly, kept under review and that the total period of exclusion is not prolonged.

Key Features of Exclusion from Work

- An initial “immediate/temporary exclusion of no more than 2 weeks if warranted;
- Notification of NCAS before formal exclusion;
- Formal exclusion (if necessary) for periods of up to 4 weeks;
- Advice on the case management plan from NCAS;
- Appointment of a non-executive member to monitor the exclusion and subsequent action;
- Referral to NCAS for formal assessment, if part of case management plan;
- Active review to decide renewal or cessation of exclusion;
- A right to return to work if a review is not carried out;
- Performance reporting on the management of the case;
- Programme for return to work if not referred to disciplinary procedures or performance assessment.

Roles of Officers

11. The Chief Executive has delegated overall responsibility to the Medical Director for managing exclusion procedures and for ensuring that cases are properly managed.
12. The authority to immediately/temporarily exclude a practitioner is vested in the Medical Director and in his or her absence or out of hours an Executive Director of the Trust. For cases out of normal working hours, the Executive Director on-call has the authority to exclude.

13. A Decision Making Group (DMG) comprising of the Chief Executive, Medical Director, Director of People, HMSC Chair (or their nominated deputies) and the Case Manager will convene in cases where formal exclusion is being considered and will review and agree extensions. The decision and rationale will be formally documented following each meeting
14. Representations may be made to the non-executive member “the designated member” in regard to exclusion, or investigation of a case. The designated member must also ensure, among other matters, that time frames for investigation or exclusion are consistent with the principles of Article 6 of the European Convention on Human Rights (which, broadly speaking sets out the framework of the rights to a fair trial).

Role of the Trust Board and the Designated Member

Trust Board

- Ensuring that exclusion procedures are established and followed;
- Ensuring the proper corporate governance of the Trust.
- Giving delegated authority to the Medical Director and/or Director of People to appoint a non-executive member to oversee a formal investigation and/or exclusion process.

Designated Board Member

- Maintains momentum of the process;
- Receives reports from the DMG in order to review the continuing exclusion from work of the practitioner;
- Considers any representations from the practitioner about his or her exclusion;
- Considers any representations about the investigation.

Immediate/Temporary Exclusion

15. In exceptional circumstances, an immediate time-limited exclusion may be necessary, following:
 - A critical incident when serious allegations have been made; or
 - There has been a break down in relationships between a colleague and the rest of the team; or
 - The practitioner’s presence would likely hinder the investigation;
16. Such an exclusion will allow a more measured consideration to be undertaken. This period should be used to carry out a preliminary situation analysis, to contact NCAS for advice and to convene a case conference. The manager making the exclusion must explain why the exclusion is being made in broad terms (there may be no formal allegation at this stage) and agree a date (maximum of two weeks) at which the practitioner should return to the workplace for a further meeting.

Formal Exclusion

17. A formal exclusion may only take place after the Case Manager has first considered whether there is a case to answer and then considered, at a case conference, whether there is reasonable and proper cause to exclude. The NCAS must be consulted where formal exclusion is being considered.
18. The Medical Director has the jurisdiction to decide on the continuation of lifting of exclusion and will take advice from relevant parties as necessary.
19. Formal exclusion of one or more clinicians must only be used where:
 - There is a need to protect the interests of patients or other staff pending the outcome of a full investigation of:
 - Allegations of misconduct,
 - Concerns about serious dysfunctions in the operation of a clinical service,
 - Concerns about lack of capability or poor performance of sufficient seriousness that it is warranted to protect patients;
 - or
 - The presence of the practitioner in the workplace is likely to hinder the investigation.
20. Full consideration should be given to whether the practitioner could continue in or (in cases of an immediate/temporary exclusion) return to work in a limited capacity or in an alternative, possibly non-clinical role, pending the resolution of the case.
21. When the practitioner is informed of the exclusion, there should, where practical, be a witness present and the nature of the allegations or areas of concern should be conveyed to the practitioner. The practitioner should be told of the reason(s) why formal exclusion is regarded as the only way to deal with the case. At this stage the practitioner should be given the opportunity to state their case and propose alternatives to exclusion (e.g. further training, referral to occupational health, referral to NCAS with voluntary restriction).
22. The formal exclusion must be confirmed in writing as soon as is reasonably practicable. The letter should state the effective date and time, duration (up to 4 weeks), the content of the allegations, the terms of the exclusion (e.g. exclusion from the premises, and the need to remain available for work), and whether a further investigation or other action will follow. The practitioner and their companion should be advised that they may make representations about the exclusion to the designated non-executive member at any time after receipt of the letter confirming the exclusion.
23. In cases when disciplinary procedures are being followed, exclusion may be extended for four-week renewable periods until the completion of disciplinary procedures if a return to work is considered inappropriate. The exclusion will still only last for four weeks at a time and be subject to review by the DMG. The exclusion should usually be lifted and the practitioner allowed back to work, with or without conditions placed upon the employment, as soon as the original reasons for exclusion no longer apply.
24. If the Case Manager considers that the exclusion will need to be extended over a prolonged period outside of his or her control (for example because of a police investigation), the case must be referred to NCAS for advice as to whether the case is being handled in the most effective way and suggestions as to possible ways forward. However, even during this prolonged period the principle of four-week "renewability" must be adhered to.

25. If any time after the practitioner has been excluded from work investigation reveals that either the allegations are without foundation or that further investigation can continue with the practitioner working normally or with restrictions, the Case Manager must lift the exclusion and make arrangements for the practitioner to return to work with any appropriate support as soon as practicable.
26. The practitioner will be notified in writing following each exclusion review outlining the rationale for the continued need for the exclusion.

Exclusion from Premises

27. Practitioners should not be automatically barred from Trust premises upon exclusion from work. Case Managers must always consider whether a bar from the premises is absolutely necessary. There are certain circumstances, however, where the practitioner should be excluded from the premises. This could be, for example where there may be a danger of tampering with evidence, or where the practitioner may be a serious potential danger to patients or other staff. In other circumstances, however, there may be no reason to exclude the practitioner from the premises. The practitioner may want to retain contact with colleagues, take part in clinical audit and to remain up to date with developments in their field of practice or to undertake research or training.

Keeping in Contact and Availability for Work

28. Exclusion within the policy should usually be on full pay, the practitioner must remain available for work with the Trust during their normal contracted hours. The practitioner must inform the Case Manager of any other organisation(s) with whom they undertake either voluntary or paid work and seek their Case Manager's consent to continuing to undertake such work or to take annual leave or study leave. The practitioner should be reminded of these contractual obligations but would be given 24 hours notice to return to work. In exceptional circumstances the Case Manager may decide that payment is not justified because the practitioner is no longer available for work. (e.g. abroad without agreement).
29. The Case Manager should make arrangements to ensure that the practitioner can keep in contact with colleagues on professional developments, and take part in continuing professional development (CPD) and clinical audit activities with the same level of support as other doctors or dentists in their employment. A mentor could be appointed for this purpose if a colleague is willing to undertake this role.

Informing Other Organisations

30. In cases where there is concern that the practitioner may be a danger to patients, the Trust may consider that it has an obligation to inform such other organisations such as the GMC/GDC, social services, the police or private sector, of any restriction on practice or exclusion and provide a summary of the reasons for it. Details of other employers (NHS and non-NHS) may be readily available from job plans, but where it is not the practitioner should supply them. Failure to do so may result in further disciplinary action or referral to the relevant regulatory body (GMC or GDC as appropriate), as the paramount interest is the safety of patients. Where the Trust has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer.
31. Where the Case Manager believes that the practitioner is practicing in other parts of the NHS or in the private sector in breach or defiance of an undertaking not to do so, he or she should contact the professional regulatory body and the Director of Public Health to consider the issue of an alert letter.

Informal Exclusion

32. No practitioner should be excluded from work other than through this procedure. The use of “gardening leave” is not appropriate.

Keeping Exclusions under Review

Informing the Trust Board

33. The Medical Director is responsible for informing the Trust Board about exclusions and their ongoing progress at the earliest opportunity. The Trust Board has a responsibility to ensure that the organisation’s internal procedures are being followed and therefore:

- Require a summary of the progress of each case at the end of each period of exclusion to the Trust Board, demonstrating that procedures are being correctly followed and that all reasonable efforts are being made to bring the situation to an end as quickly as possible;
- Receive a monthly statistical summary showing all exclusions with their duration and number of times the exclusion had been reviewed and extended.

34. It is important to recognise that Trust Board members may be required to sit as members of a future disciplinary, capability or appeal panel. Therefore, information to the Trust Board should only be sufficient to enable the Trust Board to satisfy itself that the procedures are being followed. Only the nominated non executive member “the designated member” should be involved to any significant degree in each review. Careful consideration must be given as to whether the interests of patients, other staff, the practitioner, and/or the needs of the investigative process continue to necessitate exclusion and give full consideration to the option of the practitioner returning to limited or alternative duties where practicable.

Regular Reviews

35. The Decision Making Group must review the exclusion before the end of each four week period and report the outcome to the practitioner. . The exclusion should usually be lifted and the practitioner allowed back to work, with or without conditions placed upon the employment, at any time the original reasons for exclusion no longer apply and there are no other reasons for exclusion. The exclusion will lapse and the practitioner will be entitled to return to work at the end of the four-week period if the exclusion is not actively reviewed.

36. The Trust must take review action before the end of each 4-week period. After three exclusions, NCAS must be informed:

Stage	Activity
First and second reviews (and reviews after the third review)	<p>Before the end of each exclusion period (of up to 4 weeks) the case manager reviews the position.</p> <ul style="list-style-type: none">• The case manager decides on next steps as appropriate. Further renewal may be for up to 4 weeks at a time agreed by the DMG.• Case Manager submits advisory report of outcome to the Medical Director who in turn advises the Trust Board.

	<ul style="list-style-type: none"> • Each renewal is a formal matter and must be documented as such. • The practitioner must be sent written notification on each occasion.
Third review	<p>If the Practitioner has been excluded for three periods:</p> <ul style="list-style-type: none"> • The DMG should review the reasons for the continued exclusion and why restrictions on practice would not be an appropriate alternative; and if the investigation has not been completed a timetable for completion of the investigation. • The Medical Director must report to the non-executive director “the designated member” • The case must formally be referred to NCAS explaining why continued exclusion is appropriate and what steps are being taken to conclude the exclusion at the earliest opportunity • NCAS will review the case and advise the Trust on the handling of the case until it is concluded.
6 months review	<p>If the exclusion has been extended over six months,</p> <ul style="list-style-type: none"> • A further position report must be made by the Medical Director indicating: <ul style="list-style-type: none"> • The reason for continuing the exclusion; • Anticipated time scale for completing the process; • Actual and anticipated costs of the exclusion. <p>Normally there will be a maximum limit of 6 months exclusion, except for those cases involving criminal investigations of the practitioner concerned. The Trust and NCAS will actively review such cases at least every six months.</p>

Appeal

37. At any stage when a practitioner is excluded or has restrictions placed on their practice, they may appeal to a panel convened by the Trust. Once an appeal has been heard, the practitioner will not be allowed to appeal again for a period of 3 months. The panel will consist of a Trust Executive Director appointed by the Medical Director to chair the panel, a consultant appointed by the Medical Staff Committee and a third member from the same specialty and grade as the excluded practitioner from outside the Trust. The panel will recommend to the Chief Executive whether the exclusion or restriction should continue or be lifted.

Return to Work

38. If it is decided that the exclusion should come to an end, there must be formal arrangements for the return to work of the practitioner. It must be clear whether clinical or

other responsibilities are to remain unchanged or what the duties and restrictions are to be and any monitoring arrangements to ensure patient safety.

Part 3 Conduct Hearing and Disciplinary Matters

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Part 3 Conduct Hearing and Disciplinary Matters

Introduction

1. Misconduct matters for doctors and dentists, as for all other staff groups are managed in accordance with the Trust's disciplinary procedures. Where cases of conduct and capability overlap, issues should be managed in line with the MHPS policy.
2. Where the alleged misconduct relates to matters of a professional nature, or where an investigation identifies issues of professional conduct, the Case Investigator must obtain appropriate independent professional advice. Similarly where a case involving issues of professional conduct proceeds to a hearing under the Trust's conduct procedures the panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the Trust.
3. The Trust will work to develop strong co-partnership relations with Universities to ensure that jointly agreed procedures are in place for dealing with any concerns about practitioners with honorary contracts.

Codes of Conduct

1. The Trust Disciplinary Procedure outlines the acceptable standards of conduct and behaviour expected of all its employees. Breaches of these rules are considered to be 'misconduct' or 'gross misconduct' and examples are set out in the policy.
2. Any allegation of misconduct against a practitioner in a recognised training grade should be considered initially as a training issue and dealt with via the educational supervisor and college or clinical tutor with close involvement of the postgraduate dean from the outset.

Allegations of Criminal Acts

Action when investigations identify possible Criminal Acts

1. Where an investigation establishes a suspected criminal action in the UK or abroad, this will be reported to the police. The Trust reserves the right to take action or await the outcome of a police investigation as it sees fit, depending on the circumstances of the matter. The Trust will consult the police to establish whether an investigation into any other matters would impede their investigation. In cases of fraud, the Local Counter Fraud Service or the Trust's Security Management must be contacted.

Cases where criminal charges are brought not connected with an investigation by the Trust

1. There are some criminal offences that, if proven, could render a practitioner unsuitable for employment. In all cases, the Trust, having considered the facts, will need to consider whether the employee poses a risk to patients or colleagues and whether their conduct warrants instigating an investigation and the exclusion of the practitioner. The Trust will have to give serious consideration to whether the employee can continue in their job once criminal charges have been made. Bearing in mind the presumption of innocence, the Trust will consider whether the offence, if proven, is one that makes the practitioner unsuitable for their type of work and whether, pending the trial, the employee can continue in their present job, should be allocated to other duties or should be excluded from work. This will depend on the nature of the offence and advice will be sought from human resources.

Dropping of Charges or No Court Conviction

1. When the Trust has refrained from taking action pending the outcome of a court case, if the practitioner is acquitted but the Trust feels there is enough evidence to suggest a potential danger to patients; the Trust has a public duty to take action to ensure that the individual concerned does not pose a risk to patient safety. Similarly where there are insufficient grounds for bringing charges or the court case is withdrawn there may be grounds for considering police evidence where the allegations would, if proved, constitute misconduct, bearing in mind that the evidence has not been tested in court. It must be made clear to the police that any evidence they provide and is used in the Trust's case will have to be made available to the practitioner concerned

Part 4 Procedures for Dealing with Issues of Capability

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Part 4 Procedures for Dealing with Issues of Capability

Introduction

1. The causes of adverse events should not automatically be attributed to the actions, failings or unsafe acts of an individual alone. Root cause analyses of individual adverse events frequently show that these are more broadly based and can be attributed to systems or organisational failures, or demonstrate that they are untoward outcomes which could not have been predicted and are not the result of any individual or systems failure. Each will require appropriate investigation and remedial actions.
2. The National Patient Safety Agency (NPSA) was established to co-ordinate the efforts of all those involved in healthcare to learn from adverse incidents occurring within the NHS. In particular, the NPSA aims to facilitate the development of an open and fair culture, which encourages doctors, dentists and other NHS staff to report adverse incidents and other near misses in a climate free from fear of personal reprimand, where the sharing of experience helps others to learn lessons and in turn improve patient safety.
3. However, there will be occasions where the Trust considers that there has been a clear failure by an individual to deliver an adequate standard of care, or standard of management, through lack of knowledge, ability or consistently poor performance. These are described as capability issues. Matters that should be described and dealt with as misconduct issues are covered in Part 3 of this procedure.
4. Concerns about the capability of a practitioner may arise from a single incident or a series of events, reports or poor clinical outcomes. Advice from NCAS will help the Trust to come to a decision on whether the matter raises questions about the practitioner's capability as an individual (health problems, behavioural difficulties or lack of clinical competence) or whether there are other issues that need to be addressed. If the concerns about capability cannot be resolved routinely, the matter must be referred to NCAS, before the matter can be considered by a capability panel (unless the practitioner refuses to have his or her case referred).
5. Matters which fall under the Trust's capability procedures include but is not exhaustive:

Some Examples of Concerns about Capability

- Out of date clinical practice;
- Inappropriate clinical practice arising from a lack of knowledge or skills that puts patients at risk;
- Incompetent clinical practice;
- Inability to communicate effectively;
- Inappropriate delegation of clinical responsibility;
- Inadequate supervision of delegated clinical tasks;
- Ineffective clinical team working skills

6. Wherever possible, the Trust will aim to resolve issues of capability (including clinical competence and health) through ongoing assessment and support. Early identification of problems is essential to reduce the risk of serious harm to patients.

7. Any concerns about capability relating to a practitioner in a recognised training grade should be considered initially as a training issue and dealt with via the educational supervisor and college or clinical tutor, with close involvement of the postgraduate dean from the outset.

How to proceed where conduct and capability issues are involved

8. It is inevitable that some cases will cover conduct and capability issues. It is recognised that these cases can be complex and difficult to manage. If a case covers more than one category of problem, they should usually be combined under a capability hearing although there may be occasions where it is necessary to pursue a conduct issue separately. The Trust will decide upon the most appropriate way forward which may involve consulting with NCAS.

Trust Duties

9. The procedures set out below are designed to cover issues where a practitioner's capability to practice is in question. Prior to instigating these procedures, the Trust will consider the scope for resolving the issue through counseling or retraining and will take advice from NCAS.
10. Capability may be affected by ill health. Arrangements for handling concerns about a practitioner's health are described in Part 5 of this policy. The Trust will follow its Sickness Absence Policy for dealing with ill health.
11. The Trust will ensure that investigations and capability procedures are conducted in a way that does not discriminate on the grounds of race, gender, disability, age, sexual orientation, religion or belief or indeed on any other grounds.

Capability Procedure

The Pre-Hearing Process

12. When a report of the Trust investigation has been received, the Case Manager must give the practitioner the opportunity to comment in writing on the factual content of the report produced by the Case Investigator. Comments in writing from the practitioner, including any mitigation, must normally be submitted to the Case Manager within 10 working days of the date of receipt of the request for comments. In exceptional circumstances, for example in complex cases or due to annual leave, the deadline for comments from the practitioner may be extended.
13. The Case Manager should decide what further action is necessary, taking into account the findings of the report, any comments that the practitioner has made and the advice of NCAS. The Case Manager will need to consider urgently:
 - Whether action under Part 2 of the policy is necessary to exclude the practitioner; or
 - To place temporary restrictions on their clinical duties.
14. The Case Manager will also need to consider with the Medical Director (of not the Case Manager), the Director of HR&OD (or nominee) and the Chair of HMSC whether the issues of capability can be resolved through local action (such as retraining, counselling, performance review). If this action is not practicable for any reason the matter must be referred to NCAS for it to consider whether an assessment should be carried out and to provide assistance in drawing up an action plan. The Case Manager will inform the practitioner concerned of the decision immediately and normally within 10 working days of receiving the practitioner's comments.

15. NCAS will assist the Trust to draw up an action plan designed to enable the practitioner to remedy any lack of capability that has been identified during the assessment. The Trust will facilitate the agreed action plan (which has to be agreed by the Trust and the practitioner before it can be actioned.) There may be occasions when a case has been considered by NCAS, but the advice of its assessment panel is that the practitioner's performance is so fundamentally flawed that no educational and/or organisational action plan has a realistic chance of success. In these circumstances, the Case Manager must make a decision, based upon the completed investigation report and informed by NCAS advice, whether the case should be determined under the capability procedure. If so, a panel hearing will be necessary.
16. If the practitioner does not agree to the case being referred to NCAS, a panel hearing will normally be necessary.
17. The following procedure should be followed before the hearing:

Procedure to be Followed Prior to Capability Hearings

- The Case Manager must notify the practitioner in writing of the decision to arrange a capability hearing. This notification should be made at least 20 working days before the hearing and include details of the allegations and the arrangements for proceeding including the practitioner's rights to be accompanied and copies of any documentation and/or evidence that will be made available to the capability panel. This period will give the practitioner sufficient notice to allow them for a companion to accompany them to the hearing if they so choose.
- All parties must exchange any documentation, including witness statements, on which they wish to rely in the proceedings no later than 10 working days before the hearing. In the event of late evidence being presented, the Trust should consider whether a new date should be set for the hearing.
- Should either party request a postponement to the hearing the case manager is responsible for ensuring that a reasonable response is made and that time extensions to the process are kept to a minimum. The Trust retains the right, after a reasonable period, (not normally less than 30 working days) to proceed with the hearing in the practitioner's absence. The Trust will act reasonably in deciding to do so.
- Should the practitioner's ill health prevent the hearing taking place the Trust will implement its Sickness Absence Policy and involve the Occupational Health Department as necessary.
- Witnesses who have made written statements at the inquiry stage may, but will not necessarily be required to attend the capability hearing. Following representations from either side contesting a witness statement which is to be relied upon in the hearing, the Chairman will invite the witness to attend. The Chairman cannot require anyone other than an employee to attend. However, if the evidence is contested and the witness is unable or unwilling to attend, the panel should reduce the weight given to the evidence as there will not be the opportunity to challenge it properly. A final list of witnesses to be called must be given to both parties not less than two working days in advance of the hearing.
- If witnesses required to attend the hearing choose to be accompanied; the person accompanying them will not be able to participate in the hearing.

The Hearing Framework

18. The capability hearing will normally be chaired by an Executive Director of the Trust.
19. The panel should comprise a total of 3 people, normally 2 members of the Trust Board, or senior staff appointed by the Board for the purpose of such a hearing.
20. At least one member of the panel must be a medical practitioner who is not employed by the Trust.
21. As far as is reasonably possible or practical, no member of the panel or advisers to the panel should have been previously involved in the investigation. In the case of clinical academics a further panel member may be appointed in accordance with any protocol agreed between the Trust and the University.
22. Arrangements must be made for the panel to be advised by:-
 - A senior member of staff from human resources;
 - A senior clinician from the same or similar clinical specialty as the practitioner concerned, but from another NHS employer;
 - A representative of a University if provided for in any protocol between the Trust and the university.
23. It is important that the panel is aware of the typical standard of competence required of the grade of practitioner in question. If for any reason the senior clinician is unable to advise on the appropriate level of competence, a doctor from another NHS employer in the same grade as the practitioner in question should be asked to provide advice.
24. It is for the Trust to decide on the membership of the panel. The practitioner may raise an objection to the choice of any panel member within 5 working days of notification. The Trust will review the situation and take reasonable measures to ensure that the membership of the panel is acceptable to the practitioner. It may be necessary to postpone the hearing while this matter is resolved. The Trust must provide the practitioner with the reasons for reaching its decision in writing before the hearing can take place.

Representation at Capability Hearings

25. The hearing is not a court of law. Whilst the practitioner should be given every reasonable opportunity to present his or her case, the hearing should not be conducted in a legalistic or excessively formal manner.
26. The practitioner may be represented in the process by a friend, partner, spouse, colleague, or a representative who may be from or retained by a trade union or defence organisation. Such a representative may be legally qualified but they will not, however, be representing the practitioner formally in a legal capacity. The representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any witness evidence.

Conduct of the Capability Hearing

27. The hearing should be conducted as follows:

- The panel and its advisers, the practitioner, his or her representative and the Case Manager will be present at all times during the hearing. Witnesses will be admitted only to give their evidence and answer questions and will then retire.
- The Chairman of the panel will be responsible for the proper conduct of the proceedings. The Chairman should introduce all persons present and announce which witnesses are available to attend the hearing.
- The procedure for dealing with witnesses attending the hearing shall be the same and shall reflect the following:
 - The witness to confirm any witness statement and give any supplementary evidence;
 - The side calling the witness can question the witness;
 - The other side can then question the witness;
 - The panel may question the witness;
 - The side which called the witness may seek to clarify any points which have arisen during questioning but may not at this point raise new evidence.

The Order of Presentation Shall Be:

- The Case Manager presents the management case including calling any witnesses. The above procedure for dealing with witnesses shall be undertaken for each witness in turn, at the end of which each witness shall be allowed to leave.
- The Chairman shall invite the Case Manager to clarify any matters arising from the management case on which the panel requires further clarification.
- The practitioner and/or their representative shall present the practitioner's case, calling any witnesses. The above procedure for dealing with witnesses shall be undertaken for each witness in turn, at the end of which each witness shall be allowed to leave.
- The Chairman shall invite the practitioner and/or representative to clarify any issues arising from the practitioner's case on which the panel requires further clarification.
- The Chairman shall invite the Case Manager to make a brief closing statement summarising the key points of the case.
- The Chairman shall invite the practitioner and/or representative to make a brief closing statement summarising the key points of the practitioner's case. Where appropriate this statement may also introduce any grounds for mitigation.
- The panel shall then retire to consider its decision.

Decisions

28. The panel has the power to make a wide range of decisions including the following:
- No action required;
 - Oral agreement that there must be an improvement in clinical performance within a specified timescale with a written statement of what is required and how it might be achieved *[stays on the employee's record for 6 months]*;
 - Written warning that there must be an improvement in clinical performance within a specified timescale with a statement of what is required and how it might be achieved *[stays on the employees' record for 1 year]*;
 - Final written warning that there must be an improvement in clinical performance within a specified timescale with a statement of what is required and how it might be achieved *[stays on the employee's record for 1 year]*;
 - Termination of contract.
29. It is also reasonable for the panel to make comments and recommendations on issues other than the competence of the practitioner, where these issues are relevant to the case. For example, there may be matters around the systems and procedures operated by the employer that the panel wishes to comment upon.
- A record of oral agreements and written warnings should be kept on the practitioner's personnel file but should be removed following the specified period.
 - The decision of the panel should be communicated to the parties as soon as possible and normally within 5 working days of the hearing. Because of the complexities of the issues under deliberation and the need for detailed consideration, the parties should not necessarily expect a decision on the day of the hearing.
 - The decision must be confirmed in writing to the practitioner. This notification must include reasons for the decision, clarification of the practitioner's right of appeal and notification of any intent to make a referral to the GMC/GDC or any other external/professional body.

Appeals Procedures in Capability Cases

Introduction

30. Given the significance of the decision of a capability panel to warn or dismiss a practitioner, it is important that a robust appeal procedure is in place. There is no requirement for the Trust to set up a procedure for appeal against exclusion or investigation as these are adjuncts to the stages of the decision making process on what future action to take. The procedure for handling issues about the classification of a case as misconduct is dealt with in Part 3.
31. The appeals procedure provides a mechanism for practitioners who disagree with the outcome of a decision to have an opportunity for the case to be reviewed. The appeal panel will need to establish whether the Trust's procedures have been adhered to and that the panel in arriving at their decision acted fairly and reasonably based on:
- Fair and thorough investigation of the issue;

- Sufficient evidence arising from the investigation or assessment on which to base the decision;
 - Whether in the circumstances the decision was fair and reasonable, and commensurate with the evidence heard;
32. It can also hear new evidence submitted by the practitioner and consider whether it might have significantly altered the decision of the original hearing. The appeal panel, however, should not rehear the entire case.

The Appeal Process

33. The predominant purpose of the appeal is to ensure that a fair hearing was given to the original case and a fair and reasonable decision reached by the hearing panel. The appeal panel has the power to confirm or vary the decision made at the capability hearing, or order that the case is reheard. Where it is clear in the course of an appeal hearing that the proper procedures have not been followed and the appeal panel determines that the case needs to be fully re-heard, the Chairman of the panel shall have the power to instruct a new capability hearing.
34. Where the appeal is against dismissal, the practitioner should not be paid during the appeal, if it is heard after the date of termination of employment. Should the appeal be upheld, the practitioner will be reinstated and must have their pay backdated to the date of termination of employment. Where the decision is to rehear the case, the practitioner shall also be reinstated, subject to any conditions or restrictions in place at the time of the original hearing, and paid backdated to the date of termination of employment.

The Appeal Panel

35. The panel should consist of three members. The members of the appeal panel must not have had any previous direct involvement in the matters that are the subject of the appeal. The panel will consist of three members:
- An independent member (trained in legal aspects of appeals) from an approved pool. This person is designated Chairman.
 - The Chairman (or other non executive director) of the Trust who must have the appropriate training for hearing an appeal.
 - A medically qualified member (or dentally qualified if appropriate) who is not employed by the Trust who must also have the appropriate training for hearing an appeal.
 - In the case of clinical academics a further panel member may be appointed in accordance with any protocol agreed between the Trust and the university.
36. The panel should call on others to provide specialist advice. This should normally include:
- A senior clinician from the same or subspecialty as the appellant, but from another NHS Employer.
 - A senior human resources specialist.

37. It is important that the panel is aware of the typical standard of competence required of the grade of practitioner in question. If for any reason the senior clinician is unable to advise on the appropriate level of competence, a doctor from another NHS employer in the same grade as the practitioner in question should be asked to provide advice.
38. The Trust should arrange the panel and notify the appellant as soon as possible and in any event within the recommended timetable below. Every effort should be made to ensure that the panel members are acceptable to the appellant. Where in rare cases agreement cannot be reached upon the constitution of the panel, the appellant's objections should be noted carefully.
39. It is in the interests of all concerned that appeals are heard speedily and as soon as possible after the original capability hearing. The following timetable should apply in all cases:
 - Appeal by written statement to be submitted to the designated appeal point (Director of HR&OD) within 25 working days of the date of the written confirmation of the original decision.
 - Hearing to take place within 25 working days of date of lodging appeal
 - Decision reported to the appellant and the Trust within 5 working days of conclusion of the hearing.
40. The timetable should be agreed between the Trust and the appellant and thereafter varied only by mutual agreement. The Case Manager should be informed and is responsible for ensuring that extensions are absolutely necessary and kept to a minimum.

Powers of the Appeal Panel

41. The appeal panel has the right to call witnesses of its own volition, but must notify both parties at least 10 working days in advance of the hearing and provide them with a written statement from any such witness at the same time.
42. Exceptionally, where during the course of the hearing the appeal panel determines that it needs to hear the evidence of a witness not called by either party, then it shall have the power to adjourn the hearing to allow for a written statement to be obtained from the witness and made available to both parties before the hearing reassembles.
43. If, during the course of the hearing, the appeal panel determines that new evidence needs to be presented, it should consider whether an adjournment is appropriate. Much will depend on the weight of the new evidence and its relevance. The appeal panel has the power to determine whether to consider the new evidence as relevant to the appeal, or whether the case should be reheard, on the basis of new evidence, by a capability hearing panel.

Conduct of Appeal Hearing

44. All parties should have all documents, including witness statements, from the previous capability hearing together with any new evidence.
45. The practitioner may be represented in the process by a friend, partner, spouse, colleague, or a representative who may be from or retained by a trade union or defence organisation. Such a representative may be legally qualified but they will not, however, be representing the practitioner formally in a legal capacity. The

representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any witness evidence.

46. Both parties will present full statements of fact to the appeal panel and will be subject to questioning by either party, as well as the panel. When all the evidence has been presented, both parties shall briefly sum up. At this stage, no new information can be introduced. The appellant (or his/her companion) can at this stage make a statement in mitigation.
47. The panel after receiving the views of both parties, shall consider and make its decision in private.

Decision

48. The decision of the appeal panel shall be made in writing to the appellant and shall be copied to the Trust's case manager such that it is received within 5 working days of the conclusion of the hearing. The decision of the appeal panel is final and binding. There shall be no correspondence on the decision of the panel, except and unless clarification is required on what has been decided (but not on the merits of the case), in which case it should be sought in writing from the Chairman of the appeal panel.

Action Following Hearing

49. Records must be kept, including a report detailing the capability issues, the practitioner's defence or mitigation, the action taken and the reasons for it. These records must be kept confidential and retained in accordance with the capability procedure and the Data Protection Act 1998. These records need to be made available to those with a legitimate call upon them, such as the practitioner, the Regulatory Body, or in response to a Direction from an Employment Tribunal.

Termination of employment with performance issue unresolved

50. Where an employee leaves employment before disciplinary or capability procedures have been completed, the investigation must be taken to a final conclusion in all cases and capability proceedings must be completed wherever possible, whatever the personal circumstances of the employee concerned.
51. Every reasonable effort will be made to ensure the former employee remains involved in the process. If contact with the employee has been lost, the Trust will invite them to attend any hearing by writing to both their last known home address and their registered address (the two will often be the same). The Trust will make a judgment, based on the evidence available, as to whether the allegations about the practitioner's capability are upheld. If the allegations are upheld, the Trust will take appropriate action, such as requesting the issue of an alert letter and referral to the professional regulatory body, referral to the police, or the Protection of Children Act List.
52. If an excluded employee or an employee facing capability proceedings becomes ill, they will be subject to the Trust's sickness absence procedures. The Trust will take reasonable steps to give the employee time to recover and attend any hearing. Where the employee's illness exceeds 4 weeks, they will be referred to the Staff, Health and Wellbeing Service. The Staff, Health and Wellbeing Service will advise the Trust on the expected duration of the illness and any consequences it may have for the capability process and will also be able to advise on the employee's capacity for future work, as a result of which the Trust may wish to consider retirement on health grounds. Should the employment be terminated as a result of ill health, the investigation should still be taken to a conclusion and the Trust form a judgment as to whether the allegations are upheld.

53. If, in exceptional circumstances, a hearing proceeds in the absence of the practitioner, for reasons of ill-health, the practitioner will be given the opportunity to submit written submissions and/or have a representative attend in their absence.

Part 5 Handling Concerns about a Practitioner's Health

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Part 5 Handling Concerns about a Practitioner's Health

Introduction

1. A wide variety of health problems can have an impact on an individual's clinical performance. These conditions may arise spontaneously or be as a consequence of work place factors such as stress.
2. The principle for dealing with individuals with health problems is that, wherever possible and consistent with reasonable public protection, they should be treated, rehabilitated or re-trained (for example if they cannot undertake exposure prone procedures) and kept in employment, rather than be lost from the NHS.

Retaining the services of individuals with health problems

3. Wherever possible the Trust will attempt to continue to employ the individual provided this does not place patients or colleagues at risk.

Some Examples of Action to Take

- Sick leave for the practitioner (the practitioner to be contacted frequently on a pastoral basis to stop them feeling isolated);
- remove the Practitioner from certain duties;
- reassign them to a different area of work;
- arrange re-training or adjustments to their working environment, with appropriate advice from NCAS and/or deanery, under the reasonable adjustment provision in the Equality Act 2010.

Reasonable Adjustments

4. At all times the practitioner will be supported by the Trust and the Staff, Health and Wellbeing Service who will ensure that the practitioner is offered every available resource to get back to practice where appropriate. The Trust will consider what reasonable adjustments could be made to their workplace or other arrangements.

Examples of Reasonable Adjustments

- Making adjustments to the premises;
- Re-allocating some of the practitioner's duties to another;
- Transferring a practitioner to an existing vacancy;
- Altering a practitioner's working hours or pattern of work;
- Assigning the practitioner to a different workplace;
- Allowing absence for rehabilitation, assessment or treatment
- Providing additional training or retraining;
- Acquiring/modifying equipment;
- Modifying procedures for testing or assessment;
- Providing a reader or interpreter;
- Establish mentoring arrangements;

5. In some cases retirement due to ill health may be necessary. Ill health retirement will be approached in a reasonable and considerate manner, in line with NHS Pensions

Agency advice. However, it is important that the issues relating to conduct or capability that have arisen are resolved, using the agreed procedures where appropriate.

Handling Health Issues

6. Where there is an incident that points to a problem with the practitioner's health, the incident may need to be investigated to determine a health problem. If the report recommends occupational health involvement, the nominated manager must immediately refer the practitioner to a qualified occupational physician (usually a consultant) with the Staff, Health and Wellbeing Service.
7. NCAS should be approached to offer advice on any situation and at any point where the Trust is concerned about a practitioner. Even apparently simple or early concerns should be referred as these are easier to deal with before they escalate.
8. The occupational physician should agree a course of action with the practitioner and send their recommendations to the Medical Director or manager who made the referral. A meeting should be convened with the Director of HR&OD (or nominee), the Medical Director or Case Manager, the Chair of HMSC, the practitioner and case worker from the Staff, Health and Wellbeing Service to agree a timetable of action and rehabilitation (where appropriate). The practitioner may wish to bring a support companion to these meetings. This could be, a colleague or a trade union or defence association representative. Confidentiality must be maintained by all parties at all times.
9. If a practitioner's ill health makes them a danger to patients and they do not recognise that, or are not prepared to co-operate with measures to protect patients, then exclusion from work must be considered and the professional regulatory body must be informed, irrespective of whether or not they have retired on the grounds of ill health.
10. In those cases where there is impairment of performance solely due to ill health, disciplinary procedures will be considered only in the most exceptional of circumstances, for example if the individual concerned refuses to co-operate with the Trust to resolve the underlying situation e.g. by repeatedly refusing a referral to occupational health or NCAS. In these circumstances the procedures in Part 4 will be followed.
11. There will be circumstances where a practitioner who is subject to disciplinary proceedings puts forward a case, on health grounds, that the proceedings should be delayed, modified or terminated. In such cases the Trust will refer the Practitioner to occupational health for assessment as soon as possible. Unreasonable refusal to accept a referral to, or to co-operate with, occupational health under these circumstances, may give separate grounds for pursuing disciplinary action.

6 Overall Responsibility for the document

Director of People.

7 Consultation and ratification

The design and process of review and revision of this policy will comply with The Development and Management of Trust Wide Documents.

The review period for this document is set as default of three years from the date it was last ratified, or earlier if developments within or external to the Trust indicate the need for a significant revision to the procedures described.

This document will be approved by the Medical Staff Panel and ratified by the Director of People.

Non-significant amendments to this document may be made, under delegated authority from the Director of HR&OD, by the nominated author. These must be ratified by the Director of People and should be reported, retrospectively, to the Medical Staff Panel and HR&OD Committee.

Significant reviews and revisions to this document will include a consultation with named groups, or grades across the Trust. For non-significant amendments, informal consultation will be restricted to named groups, or grades who are directly affected by the proposed changes

8 Dissemination and Implementation

Following approval and ratification, this policy will be published in the Trust's formal documents library and all staff will be notified through the Trust's normal notification process, currently the 'Vital Signs' electronic newsletter.

Document control arrangements will be in accordance with The Development and Management of Trust Wide Documents.

9 References and associated documentation

Maintaining High Professional Standards in the Modern NHS – East Kent Hospitals University, May 2013.

Core Information				
Document Title	Maintaining High Professional Standards			
Date Finalised				
Dissemination Lead	Medical HR Business Partner			
Previous Documents				
Previous document in use?	yes			
Action to retrieve old copies.	Email document controller			
Dissemination Plan				
Recipient(s)	When	How	Responsibility	Progress update
All medical and dental staff		email	Medical HR	
All managers		email	Medical HR	

Review		
Title	Is the title clear and unambiguous?	yes
	Is it clear whether the document is a policy, procedure, protocol, framework, APN or SOP?	Yes
	Does the style & format comply?	Yes
Rationale	Are reasons for development of the document stated?	Yes
Development Process	Is the method described in brief?	Yes
	Are people involved in the development identified?	Yes
	Has a reasonable attempt has been made to ensure relevant expertise has been used?	Yes
	Is there evidence of consultation with stakeholders and users?	Yes
Content	Is the objective of the document clear?	Yes
	Is the target population clear and unambiguous?	Yes
	Are the intended outcomes described?	Yes
	Are the statements clear and unambiguous?	Yes
Evidence Base	Is the type of evidence to support the document identified explicitly?	Yes
	Are key references cited and in full?	Yes
	Are supporting documents referenced?	Yes
Approval	Does the document identify which committee/group will review it?	Yes
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	Yes
	Does the document identify which Executive Director will ratify it?	Yes
Dissemination & Implementation	Is there an outline/plan to identify how this will be done?	Yes
	Does the plan include the necessary training/support to ensure compliance?	Yes
Document Control	Does the document identify where it will be held?	Yes
	Have archiving arrangements for superseded documents been addressed?	Yes
Monitoring Compliance & Effectiveness	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	Yes
	Is there a plan to review or audit compliance with the document?	Yes
Review Date	Is the review date identified?	Yes
	Is the frequency of review identified? If so is it acceptable?	Yes
Overall Responsibility	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?	Yes

Core Information	
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Manager	Medical HR Business Partner
Directorate	Human Resources
Date	15 th July 2019
Title	Maintaining High Professional Standards
What are the aims, objectives & projected outcomes?	This policy implements the framework set out in Maintaining High Professional Standards in the Modern NHS, issued un the direction of the Secretary of State for health on 11 th February, 2005.

Scope of the assessment	
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Collecting data	
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Race	This is mitigated as the guidelines can be made available in alternative languages
Religion	The document has no impact in this area
Disability	This is mitigated as the guidelines can be made available in alternative formats
Sex	The document has no impact in this area
Gender Identity	The document has no impact in this area
Sexual Orientation	The document has no impact in this area
Age	The document has no impact in this area
Socio-Economic	The document has no impact in this area
Human Rights	The document has no impact in this area
What are the overall trends/patterns in the above data?	There are no trends/patterns in this data. External consideration has been given to 2011.12 NHS Litigation Authority Risk Management Standards for NHS Trusts.
Specific issues and data gaps that may need to be addressed through consultation or further research	Trust wide documents can be made available in a number of different formats and languages if requested. No further research is required as there are no further equality issues.

Involving and consulting stakeholders	
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Internal involvement and consultation	These guidelines have been compiled by Senior Medical Staff in conjunction with Medical HR representatives and has been circulated for consultation to LNC members and the Medical Staff Panel.
External involvement and consultation	None

Impact Assessment	
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Overall assessment and analysis of the evidence	<p>The assessment has shown that there could be an impact on race or disability groups. However, this document can be made available in other formats and languages if requested.</p> <p>The document does not have the potential to cause unlawful discrimination. The document does not have a negative impact.</p>
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Action Plan				
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Action	Owner	Risks	Completion Date	Progress update
Provide documents in alternative formats and languages if requested	Medical HR Business Partner	Potential cost impact	Ongoing	This action will be addressed as and when the need occurs

Committee Approval: Medical Staff Panel

Medical Director

Name: Dr Phillip Hughes

Date:

Signature:

Chair of LNC

Name: Dr Roderick Campbell

Date:

Signature:

Executive Approval:

Director of People

Name: Steven Keith

Date:

Signature: