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Dealing with concerns affecting Medical Staff

(Professional advice, support and remediation available)

(Framework taken from Maintaining High Professional Standards in the Modern NHS
("MHPS"))

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1 Introduction

This is an agreement between Tees, Esk and Wear Valleys NHS Foundation Trust (the Trust”) and the Local Negotiating Committee (LNC) outlining the Trust's policy for handling concerns about doctors. Whilst regard has been given to the framework set out in "Maintaining High Professional Standards in the Modern NHS", ("MHPS") issued under the direction of the Secretary of State for Health on 11 February 2005, both parties have agreed that this policy and not MHPS shall apply to all levels of concern affecting doctors in the Trust.

This Policy has been developed to support the management of concerns about doctors across the Trust with a focus on early intervention and prevention and effective use of the low-level concerns process with the expected outcome of the potential for restriction or exclusion from practice avoided. The Policy also identifies the support that is available for colleagues who are involved in this process and a framework to allow feedback to be provided to ensure that the process remains fair, proportionate and that doctors feel supported and engaged throughout. Medical Development has an important role in supporting the implementation of the Policy and must be consulted in the event of any identified relevant concerns for advice, guidance, and support.

This policy is critical to the delivery of medical services and to support our “Journey to Change”. Our ambition is to co-create safe and personalised care that improves the lives of people with mental health needs, a learning disability or autism. It helps us deliver our three strategic goals as follows: -

- This policy supports the trust to co- create a great experience for all patients, carers, and families from its diverse communities by ensuring the medical workforce provide a compassionate and professional level of service which is underpinned by early and effective interventions.
- This policy supports the trust to co-create a great experience for our colleagues by ensuring the workplace is fit for purpose. This policy aligns to the Trust values, so that people affected are treated with respect and compassion. Clearly defined roles and responsibilities are outlined as well as the need for appropriate support for those involved at any stage of the process.
- This policy supports the Trust to be a great partner through engagement and consultation in its implementation with local and national organisations including the British Medical Association, General Medical Council and NHS Resolutions.

2 Why we need this policy

2.1 Purpose

The purpose of this Policy is to provide a framework and processes to follow when considering assessing and managing identified concerns that affect medical staff including matters of conduct and capability.

2.2 Objectives

- To provide guidance and support to all involved in assessing and managing or subject to low level concerns.
- To outline the full medical disciplinary operational policy and to provide clarity on the investigation and subsequent process for those involved.
- To ensure relevant matters are dealt with according to the statutory framework set out in "Maintaining High Professional Standards in the Modern NHS".

3 Scope

3.1 Who this policy applies to

This policy applies to all medical staff employed by the Trust. However: -

- Concerns relating to the conduct or capability of a doctor in training, dependent on the circumstances, should be considered initially as training issues and be considered in conjunction with the relevant Post Graduate Doctor supervisor, the Director of Medical Education and the Postgraduate Dean.
- Concerns about the conduct or capability of doctors on placement with the Trust, will be referred to the relevant employing authority for further consideration in conjunction with the above. Any concerns that involve medical agency staff need to be brought to the attention of medical staffing who will address matters with the agency directly.



Respect

- Listening
- Inclusive
- Working in partnership



Compassion

- Kind
- Supportive
- Recognising and Celebrating



Responsibility

- Honest
- Learning
- Ambitious

3.2 Roles and responsibilities

Role	Responsibility
Chairman / Chief Executive	<ul style="list-style-type: none"> In agreement with the Chairman of the Board, the Chief Executive will appoint a designated board member to oversee the application of this policy. The Chief Executive must be notified of all serious concerns and will receive regular updates on all live cases from the Group Medical Director.
Designated Board Member	<ul style="list-style-type: none"> A Non-Executive Director (NED) of the trust appointed by the CEO in consultation with the Chairman to ensure that the processes set out in this policy are followed accordingly. The NED does not make decisions on any of the issues, such as whether or not to restrict or exclude a practitioner from work. The NED will be the point of contact for the doctor under investigation.
Executive/Group Medical Director (or Associate Medical Director acting on behalf of the Medical Director)	<ul style="list-style-type: none"> Has nominated authority from the Chief Executive to appoint a Case Manager within the Trust. The Group Medical Director will have overall responsibility for managing any restriction / exclusion procedures, providing regular update to the Trust Executive Board on the progress of these and any changes such as retraction / extension of investigation or exclusion. In the interest of ensuring patient safety the Group Medical Director will inform all other relevant employers of exclusion or restrictions of duties as applicable to a doctor's Scope of Practice and consider referral of the doctor to the General Medical Council.
Associate Director of Medical Development	<ul style="list-style-type: none"> Has responsibility to provide appropriate specialist guidance and support to all staff named under this policy in the identification and management of complaints and concerns about a doctors practice, devising specialist training and ensuring adherence to local policies and procedures and additional regulatory guidelines as relevant.
Lead Psychiatrists	<ul style="list-style-type: none"> Will primarily be involved in the management of any low-level concerns where reflection and or/remediation plans are put in place. It is expected that most concerns will be locally resolved. More serious concerns will be escalated as appropriate.
Case Managers	<ul style="list-style-type: none"> Will be a suitably appointed officer, who has responsibility for overseeing investigations into concerns about a doctor. This will normally be the clinical manager unless there is clear conflict in the role.
Case Investigators	<ul style="list-style-type: none"> Appointed by the Case Manager who holds responsibility for carrying out a formal investigation into concerns about a doctor. The Case Investigator must carry out appropriate and thorough investigation of the concerns as specified in the Terms of Reference issued by the Case Manager.
Individual Doctor	<ul style="list-style-type: none"> Individual doctors have a professional responsibility for maintaining their own conduct, health and capability, including working in accordance with the principles of Good Medical

	Practice and other GMC guideline; at all times conducting themselves in a professional and appropriate manner.
Doctors Companion / Representative	<ul style="list-style-type: none"> Doctors are entitled to accompaniment by either a representative or companion during the invocation of any proceedings under this policy. Such representation will not usually be able to represent a doctor in an official legal capacity, unless the concerns held about the practitioner are of such a nature that if proven, are likely to incur serious consequence such as criminal charge or barring from employment in the NHS.
Clinical Advisors	<ul style="list-style-type: none"> A specialist who provides expert clinical advice and guidance to the Case Investigator, where clinical issues arise that the case investigator cannot directly address.
NHS Resolution	<ul style="list-style-type: none"> Provides external advisory support to both organisations and practitioners in identifying concerns, establishing appropriate ways to intervene and investigate, in order to determine causation of the concern, alongside contributing towards mechanisms for Resolution that are in the interest of maintaining a high quality of and safe service user care.
Decision Making Group (DMG)	<ul style="list-style-type: none"> An advisory group of both clinical and non-clinical membership which will meet to consider any concerns raised involving doctors informed by the aforementioned individuals, in order to establish the level of concern and recommend appropriate intervention and Resolution to include whether or not more serious investigation, restriction to / exclusion from practice, is required. The DMG will provide assurance that measures are in place to effectively manage and resolve all known performance concerns for Medical Staff and demonstrate that any on-going concerns are being appropriately monitored and reviewed on a regular basis. It will provide consistent advice and guidance to Case Managers.

4 Policy

Tees, Esk and Wear Valleys NHS Foundation Trust is committed to embedding a Learning Culture. Healthcare reports and inquiries have highlighted the need for improvements in how we learn about how to make care as safe as it could be. This requires us to improve our learning about how day-to-day care is delivered and ways in which we need to adapt and adjust what we do to keep patients safe.

An emphasis needs to be placed on the early identification and management of low-level concerns (Section 4.2) and reflection. Dealing with such concerns in a timely, fair, and proportionate way can reduce or prevent further escalation. Effectively assessing the initial circumstances is highly important. Where possible and appropriate those who may be subject to the concerns should be able to contribute information to the process. The focus is very much on investigating and understanding the concerns first, changing questions from 'whom' to 'what' to get to a place of understanding.

4.1 General observations and actions to take when a concern arises

There are numerous ways for concerns about a doctor's performance to be identified;

- Concerns expressed by other NHS professionals, health care manager, students and non-clinical staff.
- Review of performance against job plans, medical appraisal, revalidation outcomes.
- Monitoring of data on performance and quality of care.
- Clinical governance, clinical audit and other quality improvement activities.
- Complaints about care by colleagues, patients or relatives of patients.
- Information from regulatory bodies (to include matters of fitness to practice).
- Litigation following allegations of negligence.
- Information received from the police or coroner.
- Court judgements.

A concern about a doctors practice can arise where a known issue or an incident causes or has the potential to cause harm to either a service user, staff member or the organisation; or where a doctor develops patterns of repeating mistakes in a manner inconsistent with Good Medical Practice.

There will be different levels of the concerns identified and not all will need or require formal investigation, restriction to / exclusion from practice or lead to a disciplinary sanction. In fact, the **vast majority of concerns will be low level in nature and will be dealt with in a supportive manner, using reflective practice.** Please consider that some concerns will have to be managed in line with this and other relevant Trust policies and procedures.

To ensure fairness and equality It is very important when considering this Policy that consideration is given to the potential impact of any health-related issues or protected characteristic:

- Race (including Gypsy and Traveller)
- Disability (includes physical, learning, mental health, sensory and medical disabilities)
- Sex

- Gender reassignment (Transgender and gender identity)
- Sexual Orientation (Lesbian, Gay, Bisexual and Heterosexual etc.)
- Age (includes, young people, older people – people of all ages)
- Religion or Belief (includes faith groups, atheism and philosophical belief's)
- Pregnancy and Maternity (includes pregnancy, women who are breastfeeding and women on maternity leave)
- Marriage and Civil Partnership (includes opposite and same sex couples who are married or civil partners)

Cultural issues, health related matters and the above protected characteristics can have a significant influence on the conduct, behaviour, and performance of staff. Therefore, it is important that regular assessments are made with staff involved at any stage of this policy in order to identify potential relevant factors and if necessary put in place adjustments or take action to ensure that individuals are effectively supported in maintaining the standards of conduct outlined and to enable full participation. For any advice or guidance on issues of equality or diversity contact medical development or members of the Equality, Diversity and Human Rights team.

4.1.1 Identifying the different types of concern

Although not an exhaustive list the following are examples of concerns that can arise;

Concerns relating to Health;

- Physical and mental health concerns e.g. depression, hypomania, anxiety, stress & exhaustion / burnout.
- Substance, alcohol misuse
- Indicators of cognitive impairment
- Decrease in manual dexterity
- Sight or speech impediment
- Long term health conditions
- Disability
- Illness during pregnancy

Concerns relating to Conduct;

- Poor / inappropriate communication with patients
- Poor / inappropriate communication with colleagues
- Poor / inappropriate communication with management
- Conflicting / inappropriate management styles
- Failure of / unresponsive to collaborative working
- Antagonistic leadership style.
- Deliberate disruptive behaviour e.g. inappropriate actions / inactions particularly those that have the potential to impact upon the overall delivery of patient care.

Concerns relating to Capability;

- Lack of clinical knowledge, competence
- Hesitance in / poor clinical decision making (including making a diagnosis)

- Prescribing errors
- Poor record keeping, not following guidelines, failing to work to policies and procedures.

Doctors own concerns;

- A doctor raises issues of concern about themselves, a colleague or an organisational matter.

Environmental Concerns;

- Organisational issues, including systems or process failures, lack of resources, such as poorly maintained equipment, inadequate secretarial support, computer equipment etc. unrealistic work demands, poor clinical management, poor support and substandard working environments.

Grievances

- Any Grievances should initially be dealt with through the Trustwide grievance procedure although in certain circumstances a concern may be an outcome from this.

4.1.2 What to do when a concern comes to light

Upon receipt of an allegation, complaint or when a concern is identified, it must be considered, and a decision made as to the nature and seriousness of it. A concern will normally be communicated to the Clinical Manager of the doctor in the first instance and an initial judgment made. This may involve a short fact-finding exercise to gather more details. If concerns are unfounded as it transpires at an early stage of investigation, then the process could be completed without the need to progress further. Advice should be taken from Medical Development/Staffing before proceeding.

Low level concerns (4.2) will normally be addressed through reflection or continuing professional development and will later be discussed as part of an appraisal conversation. There will be times when the Clinical Manager determines that the concern is not serious enough to warrant a formal investigation, but that a file note is necessary as a record. When the concern is considered more serious, or where there has been a triangulation of repeated minor concerns, the Decision-Making Group will meet. The role of the DMG is outlined in more detail below.

4.1.3 The responsibilities of the Decision-Making Group (DMG)

The DMG will seek to understand the concerns raised about the doctor and will use the Concern Categorisation Framework developed by the National Revalidation Support Team, as a guiding framework (Appendix 13). The DMG will consist of a Group Medical Director or Associate Medical Director, Medical Development (or Deputy) and the Clinical Manager. From time to time it might be necessary to invite a further member to attend the group to provide further details.

The DMG will seek to confirm the facts as they are known, establish the level of concern and provide an indication of the appropriate next steps to follow. This will include cases that require an initial assessment by the Clinical Manager as to whether there will be a formal investigation, a need to gather more facts, or whether the matter should be dealt with as a low-level concern.

In relation to formal investigations whilst it is the Case Manager who has accountability for the decision, the DMG will provide a consistent approach and barometer to consider all the options whilst ensuring it is fair and proportionate for the doctor involved. The DMG will re-convene at the

conclusion of the investigation and upon receipt of the report by the Case Manager. This additional process aims to provide support and professional expertise to the Case Manager so they are able to make an informed judgement about the next steps. The DMG members will not take any part in a subsequent hearing as a panel member or in a role that could be considered as a conflict of interest.

4.1.4 The responsibilities of the Trust

When concerns are raised, whether these are low level or more serious concerns, it can have a significant impact on the doctor and others involved. It is important that well-being is carefully considered. Support put in place need to be discussed and agreed with the individuals in question and would include contact with Employee Support. The Doctor should be met with regularly and provided progress updates and feedback. As in 4.1 this will include considerations of the potential impact of matters of health, culture or in relation to protected characteristics.

Confidentiality is a significant concern as doctors may disclose some very sensitive information. If this occurs provide reassurance and ensure that information disclosed is managed in line with the principles outlined in the Information Governance procedures.

Whilst we have outlined the support that is available to colleagues going through this process, it is acknowledged that the Trust must have good support and governance as well as having checks and balances to ensure the decisions that have been made are fair and proportionate. Subsequent feedback will be requested from all those involved in a process outlined in this policy and considered by medical development. It is the aim that all low-level concerns will be reflective in practice and part of the normal cycle for doctors and that these issues will be discussed at appraisal.

4.1.5 Recording concerns that are raised

A record will be kept about concerns raised within the scope of this policy. Access to this information will be restricted to Medical Directors, Associate Medical Director, Medical Development and appropriate Clinical Managers. As a minimum the details to be recorded will include:

- Date and type and general level of concern raised
- Brief summary of action & current progress
- Date of review

Records that are kept may be considered when similar concerns appear again and in this instance, the Clinical Manager will review the data available and decide whether the matter proceeds to a DMG. In respect of clinical academics, discussions will take place with the relevant University.

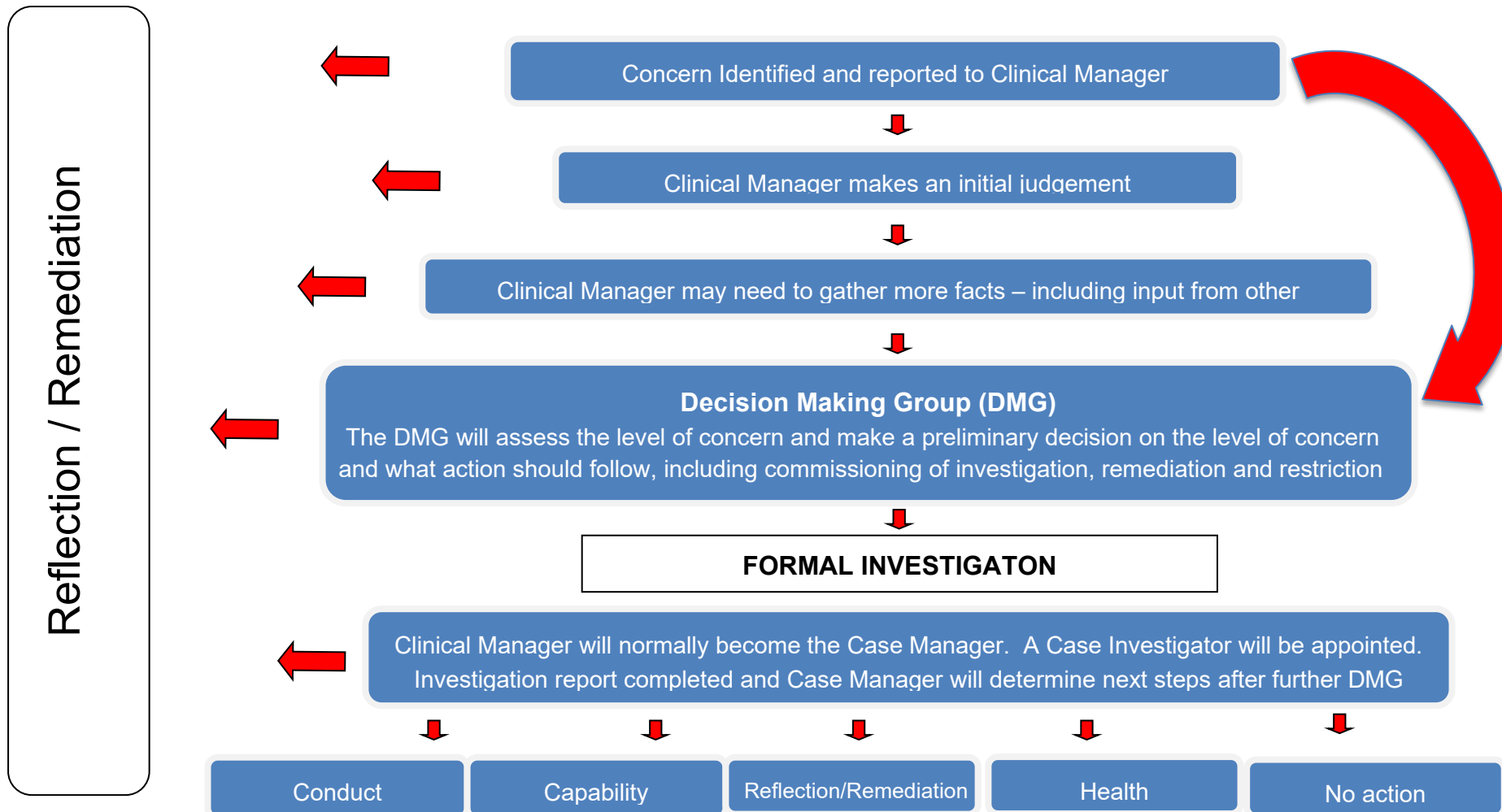
4.1.6 The Right to be accompanied

At any stage in a conduct, capability or ill health procedure relating to a doctor (including the management of low level concerns, the doctor may be accompanied by a companion. The doctor's companion may be a colleague, a friend or a representative who may be from or retained by a trade union or defence organisation and who may or may not be legally qualified.

In a formal hearing under this policy, a representative then acting in a formal legal capacity will be entitled to present a case on behalf of the doctor, address the panel and question the management of the case and any witness evidence. It is the doctor's responsibility to arrange any companion or representative that they wish to attend either a meeting or hearings relating to capability or conduct and to ensure that they are able to attend at the relevant place, date and time etc.

Non-availability of a companion or representative should not therefore be permitted to substantially delay matters; meetings or hearings should only be postponed due to a companion's or representatives non-availability if they can be re-arranged at a mutually convenient date and time usually within an appropriate timescale.

4.1.7 Process Flowchart – Action to take



4.2 Low Level Concerns - Using reflection and remediation

4.2.1 Low level concerns in practice and recording

There are several potential means of managing low level concerns outlined in this section and the role of the Clinical Manager is to assess the most appropriate in relation to the circumstances under consideration in consultation with Medical Development. These include assisted mediation, remediation and action plans. The activities may be introduced as a result of an initial identified area of concern or implemented as an outcome following a formal process. Some suggested frameworks and documentation specific to the interventions have been included as appendices, however a low-level concerns form needs to be completed in every case and forwarded to Medical Development for recording and monitoring Appendix 6 by the Medical Manager. Medical Development will need to be advised upon the successful conclusion of the activity as well as in the event of any repeat of or escalation in behaviour.

4.2.2 Reflective Practice

Reflection is a fundamental practice and professional undertaking. Reflection can be such a subconscious activity that it can be hard to be aware of it in order to write it down, but when using reflection to consider how we should engage and deal with concerns that may arise, appraisers will be able to help reflection through active listening, careful questioning and feedback. The appraisal discussion is an important trigger to generate new reflective insights which can be captured in the appraisal summary. Reflection and Remediation are both important aspects of how we deal with low level concerns. Colleagues are encouraged to use reflective practice for all concerns that are raised and when concerns are slightly more serious in nature to those, but still not at a stage for them to be dealt with on a formal basis. The means of dealing with low level concerns need to address the individual matters proportionately and effectively.

4.2.3 Assisted Mediation

Dependent on the circumstances, mediation is a source of support. Assisted mediation brings together the parties concerned to help them find a mutually acceptable way forward that enables a better professional working relationship. Assisted mediation is an independent, voluntary and confidential process in which trained medical colleagues will work with parties on an impartial basis to help resolve difficulties which are impacting on professional relationships at work. Mediation will normally work best when both parties have an acceptance of a joint problem, are likely to agree to be mediated and genuinely want to move forward, the issue does not relate to contractual or employment requirements and that both parties are fit to attend voluntarily.

The Trust has access to external experts through NHS Resolution, where they provide confidential and tailored services to assist with the complex challenges that behavioural disruption can cause.

4.2.4 Remediation

Remediation is the interventional process for addressing concerns that may relate to the knowledge, skills and behaviours of a doctor which provides help to encourage a return to safe practice. It may include interventions such as; management advice, formal mentoring, further training, re-skilling or rehabilitation. Whilst safety is the paramount consideration in any remediation, re-skilling or rehabilitation framework, the Trust will also act in the interest of the individual staff member, ensuring consideration of both physical and mental wellbeing throughout the duration of the programme.

Therefore the process of remediation should always be developmental, not punitive, with any programme being focused, discrete and with clearly defined and balanced parameters between all parties.

The termination of a programme should be the last resort and prior to terminating any programme, a range of alternative options should be considered. When a programme is terminated, or if there are signs that progress of a doctor is not satisfactory, it may be necessary to provide additional support to the doctor. Circumstances that may lead to a termination of the programme include (but are not exclusive to ;)

- Unreasonable refusal of the doctor to engage in the remediation process.
- Inability to achieve the required objectives in the programme despite appropriate amendments to accommodate circumstance.
- The failure of a doctor to maintain or achieve safe standards of clinical care throughout the programme.
- Medical advice if continuation of the programme is likely to negatively impact the wellbeing of the doctor.

4.2.5 Action plan

Action plans are developed following a careful review of each case, taking into account service needs, the practitioners working environment and their areas for development, such as leadership, patient/colleague interaction or other behavioural issues. The plan will be structured with clear goals with timescales and include an agreed end date. This written plan will be shared with the doctor and the completion of it the responsibility of the doctor. They must understand what they need to achieve, the timescale by which achievement is required and the methods involved so that they will be able to demonstrate that they have successfully completed the programme so this can be signed off by the nominated supervisor.

The action plan will be a developmental and educational contract between the doctor and the Trust. It will describe how the doctors identified needs should be addressed and the outcomes must be practical, feasible and affordable. The action plan will be clear and detailed in terms of:

- Personal objectives
- Support arrangements
- Process for monitoring and review/re-assessment
- Expected outcomes

A template to use when agreeing the principles of the plan can be found at Appendix 8. When creating an action plan, there are a number of different options for intervention that will need to be determined based on the concerns raised. These can include supervision, development and the scope of the doctor's work. Interventions that could be considered include:

Intervention	Example
Supervised practice	
Work-based assessments	Case based reviews Mini Cex OSCEs / OSATS / POOT Video recording Simulation Multi source feedback
Educational activities	Tutorials Workshops Course E-learning Focused reading Language/communication skills based activities
Specialist interventions	Behavioural coaching Health interventions Counselling (career & therapeutic)
Practice support	Mentoring Vocational rehabilitation Protected learning and development time

4.2.6 Conclusion of the Action Plan

Medical Development will be updated regularly throughout the period of the plan and at the conclusion. A meeting will take place at the end of the set time scales for the supervisor to update on progress and confirm whether or not the identified objectives have been met. If the doctor has not met the objectives at the end of the agreed timescale a collective decision is taken as to whether there is:

1. Further period of time agreed to meet actions
2. The matter is referred to DMG for consideration of capability/conduct proceedings
3. There is a change in job plan (restricted duties)
4. Regulatory involvement
5. Health professional alert notices

4.3 Serious Concerns

4.3.1 Establishing that a concern is serious

A serious concern will normally arise when the Clinical Manager has gathered preliminary facts and this will normally involve an initial assessment of the nature of the concerns and its seriousness. In some cases the concerns may immediately go to the DMG. The DMG will be chaired by the Group Medical Director (or Deputy) and a representative from Medical Development, and include the Clinical Manager. The DMG may have regard to information supplied by the police or NHS Counter Fraud. Restrictions to practice, Exclusion and NHS Resolution involvement will be considered and a Case Manager and Case Investigator appointed.

The DMG will take into account in its decision making process whether the Clinical Manager is a non-medical member of staff and the relevance or otherwise on the need for any further initial investigation.

Below is a table outlining who would normally perform the role of a case manager for different positions in the Trust.

Subject	Case Manager
Group Medical Director	Chief Executive/Executive Medical Director
Associate Medical Directors	Group Medical Director
Lead Psychiatrist	Associate Medical Director or the Group Medical Director
Other medical staff	Clinical Supervisor, Lead Psychiatrist or Care Group Director

The duty to protect patients is paramount. At any point in the process where the Case Manager has reached an initial judgement that a doctor is considered to be a potential danger to patients or staff, the doctor must be referred to the GMC, and the DMG convened, whether or not the case has been referred to the NHS Resolution. In addition, consideration must be given as to whether the issue of an alert letter should be requested.

When serious concerns are raised about a doctor, the DMG will also 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 the Exclusion of the doctor from the work place.

All serious concerns must be investigated quickly and appropriately and a clear audit route established for initiating and tracking progress of the investigation and resulting action. The concerns will be registered with the Chief Executive. The Chair of the Trust will appoint a Designated Board Member to oversee the case and ensure that momentum is maintained.

4.3.2 Restrictions of practice and exclusion from work

When serious concerns are raised about a doctor, the DMG 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 doctor from the workplace.

The DMG must ensure that:

- exclusion from work is used only as an interim measure whilst action to resolve a problem is being considered;
- where a doctor is excluded, it is for the minimum necessary period of time and not more than four weeks without further review;
- A brief report of any exclusion will be provided to the Chief Executive and Board of Directors
- A detailed report is provided when requested to the Designated Board Member who will be responsible for monitoring the situation until the exclusion has been lifted.

4.3.3 Managing the risk to patients

Exclusion of a doctor from the workplace is a temporary expedient. Exclusion must be viewed as a precautionary measure and not a disciplinary sanction. Exclusion from work will be reserved for the most serious circumstances.

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 doctor's presence could impede the gathering of evidence.
- To protect the doctor

4.3.4 Alternative ways to manage risks and avoid exclusion

Consideration will always be given to alternative ways that can be used to avoid exclusion. These include:

- The feasibility of the Group Medical Director or a Lead Psychiatrist supervising the doctor's normal contractual clinical duties;
- Restricting the doctor to specified clinical duties;
- Restricting the doctor's 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 if the doctor has a specific health problem.

In cases relating to the capability of a doctor, consideration should be given to whether an action plan to resolve the problem is appropriate having regard to the seriousness of the concern and whether it can be agreed with the doctor. If the nature of the problem and a workable remedy cannot be determined in this way, the Case Manager should seek advice from and consider the appropriateness of a referral to NHS Resolution. They will assess the problem in more depth and give advice on any action necessary.

4.3.5 The exclusion process

The DMG cannot exclude the doctor for more than four weeks at a time. The justification for continued exclusion must be reviewed on a regular basis by the DMG and before any further four-week period of exclusion is imposed.

4.3.6 Key responsibilities of managing exclusion

The DMG has overall responsibility for managing the exclusion process and for ensuring that cases are properly managed. In the rare cases where immediate exclusion is required, the DMG must discuss the case at the earliest opportunity following exclusion.

The doctor will be promptly informed of any decision to exclude by either the Group Medical Director or Associate Medical Director and representative from Medical Development. Where this is not possible, the Lead Psychiatrist may inform the doctor of the decision made. The nominated person must explain why the exclusion is being made and this may need to be in broad terms if no formal allegation has been made at this stage. They will agree a date up to a maximum of two weeks away at which the doctor should return to the workplace for a further meeting. The nominated person must advise the doctor of their rights, including rights of representation to the Designated Board Member.

The DMG will ensure a Case Manager is appointed following exclusion if one has not already been appointed. The DMG will also ensure a Case Investigator is appointed.

4.3.7 Role of Designated Board Member

Representations may be made to the Designated Board Member in regard to exclusion. The Designated Board Member must ensure that time frames for investigation or exclusion are justified, proportionate and necessary in the circumstances.

4.3.8 Immediate exclusion

An immediate time limited exclusion may be necessary where there has been

- a critical incident when serious allegations have been made; or
- there has been a break down in relationships between a doctor and all or a significant proportion of the medical team; or
- the presence of the doctor is likely to hinder the investigation.
- for the doctors own protection

Such exclusion will allow more measured consideration to be undertaken. This period should be used to carry out a preliminary situation analysis, to contact NHS Resolution for advice and to convene a DMG if one has not already been convened.

4.3.9 Formal exclusion

Formal exclusion may only take place after the DMG has first considered whether there is a case to answer and whether there is reasonable and proper cause to exclude. NHS Resolution must be consulted where formal exclusion is being considered and if a Case Investigator has been appointed he or she must produce a preliminary report as soon as is possible to be available for the DMG. This preliminary report is advisory to enable the DMG to decide on the next steps as appropriate.

The report should provide sufficient information for a decision to be made as to whether:

- the allegation appears unfounded: or
- there is a potential misconduct issue;
- or there is a potential concern about the doctor's capability; or
- the complexity of the case warrants further detailed investigation
- exclusion is required for the doctors own protection

Formal exclusion must only be used where:

(a) 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,
- For the doctor's own protection

(b) The presence of the doctor in the workplace is likely to hinder the investigation.

Full consideration should be given as to whether the doctor could continue in or (in cases of an immediate exclusion) return to work in a limited capacity or in an alternative, possibly non-clinical role, pending the Resolution of the case.

When the doctor 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 doctor. The doctor 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 doctor should be given the opportunity to state their case and propose alternatives to exclusion (e.g. further training, referral to Occupational Health, referral to the NHS Resolution with voluntary restriction).

Formal exclusion must be confirmed in writing as soon as is reasonably practicable with the letter stating the effective date and time, duration (up to 4 weeks), the broad nature of the allegations,

the terms of the exclusion (e.g. exclusion from the premises and the need to remain available for work) and that a full investigation or what other action will follow. The doctor should be advised that they may make representations about the exclusion to the Designated Board Member at any time after receipt of the letter confirming the exclusion.

In cases when disciplinary or capability matters are being followed, exclusion may be extended for four-week renewable periods until the completion of the process 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. The exclusion should usually be lifted and the doctor allowed back to work, with or without conditions placed upon the employment, as soon as the original reasons for exclusion no longer apply.

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 the NHS Resolution 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.

If at any time after the doctor has been excluded from work, the investigation reveals that either the allegations are without foundation or that further investigation can continue with the doctor working normally or with restrictions, the Case Manager must lift the exclusion, inform NHS Resolution and make arrangements for the doctor to return to work with or without appropriate restrictions and with any appropriate support as soon as practicable.

4.3.10 Exclusion from premises

A doctor should not be automatically barred from the premises upon exclusion from work. The Case Manager must always consider whether a bar from the premises is absolutely necessary. There are certain circumstances, however, where the doctor should be excluded from the premises. This could be, for example, where there may be a danger of tampering with evidence, or where the doctor may be a serious potential danger to patients or other staff or from patients or other staff. In other circumstances, however, there may be no reason to exclude the doctor from the premises. The doctor 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.

The Case Manager should consider whether it is appropriate to make arrangements for the doctor to 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 in the Trust. A mentor could also be appointed for this purpose if a colleague is willing to undertake this role. In the event a member of staff has been excluded they will be allowed to attend Trust premises including their normal location of work for the purposes of their own or families health care.

4.3.11 Keeping in contact and availability for work

As exclusion under this policy should be on full pay, the doctor must remain available for work with the Trust during their normal contracted hours. The doctor 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. Consent is required from the Case Manager if the doctor wishes to take annual leave or study leave. Failure to abide by these conditions will lead to suspension of salary and disciplinary action.

4.3.12 Informing other organisations

In cases where there is concern that the doctor may be a danger to patients, the Case Manager has an obligation to inform such other organisations including the private sector, of any restriction on practice or exclusion and provide a summary of the reasons for it. Where restrictions on practice have been placed on the doctor, the doctor may offer to undertake not to perform any work in that area of practice with any other employer. In such circumstances the Case Manager should take such an undertaking into account in deciding whether it is necessary to inform other organisations.

Where the Case Manager believes that the doctor is practising in breach of an undertaking not to do so, he or she should contact the GMC and NHS Resolution to consider the issuing of an alert letter. This is in addition to any further action the Case Manager may decide is appropriate including a disciplinary investigation and a referral to the DMG to consider whether Exclusion is appropriate.

4.3.13 Keeping exclusions under review

Informing the Board

The Chief Executive and Board must be informed about exclusion at the earliest opportunity. The Board has a responsibility to ensure that the Trust's internal processes are being followed. The Medical Staffing team will:

- Provide a summary of the progress of each case together with a monthly statistical summary showing all exclusions with their duration and number of times the exclusion had been reviewed demonstrating that processes are being correctly followed and that all reasonable efforts are being made to bring the situation to an end as quickly as possible;

Regular review

The Case Manager must review the exclusion before the end of each four week period and report the outcome to the Chief Executive and the Board. This report is advisory and it would be for the Case Manager to decide on the next steps as appropriate. The exclusion should usually be lifted and the doctor 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 doctor will be entitled to return to work at the end of the four-week period if the exclusion is not actively reviewed.

Only the Designated Board 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 doctor, and/or the needs of the investigative process continue to necessitate exclusion and give full consideration to the option of the doctor returning to limited or alternative duties where practicable.

The Chief Executive and the Board will review exclusion before the end of each 4-week period and after three exclusions, NHS Resolution will be called for any appropriate advice and the Designated Board Member informed.

The next section outlines the activities that must be undertaken at different stages of exclusion.

First and second reviews (and reviews after the third review)

Before the end of each exclusion (of up to 4 weeks,) the Case Manager must review the position.

- The Case Manager decides on next steps as appropriate, taking into account any views of the doctor. Further renewal may be for up to 4 weeks;
- The Case Manager submits an advisory report of outcome to Chief Executive and the Trust Board. Board members may be required to sit as members of a disciplinary or appeal panel. Therefore, information given to the Board should only be sufficient to enable the Board to satisfy itself that the processes are being followed.
- Each renewal is a formal matter and must be documented as such;
- The doctor must be sent written notification on each occasion.

If the Doctor has been excluded for three periods:

- A report must be made to the Chief Executive and Board outlining the reasons for the continued exclusion, 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 Chief Executive must report to NHS Resolution and the Designated Board member.
- The report must formally explain:
 - why continued exclusion is appropriate
 - what steps are being taken to conclude the exclusion, at the earliest opportunity;

6 months review

If the exclusion is likely to be extended over six months a further report must be made by the Chief Executive to NHS Resolution outlining:

- the reason for continuing the exclusion;
- anticipated time scale for completing the process;
- actual and anticipated costs of exclusion.

NHS Resolution will form a view as to whether the case is proceeding at an appropriate pace and in the most effective manner and whether there is any advice they can offer.

Normally there should be a maximum limit of 6 months exclusion, except for those cases involving criminal investigations of the doctor concerned. The Trust and NHS Resolution will actively review those cases at least every six months. When an exclusion decision has been extended for 12 months in total, the Chief Executive must inform NHS Resolution of what action is proposed to resolve the situation. This should include dates for hearings or give reasons for the delay.

4.3.14 The role of the Board and Designated Board Member

The Board is responsible for designating one of its non-executive members as a Designated Board Member under this policy.

The Designated Board Member's responsibilities include:

- Receiving reports and reviewing the continued exclusion from work of the doctor;
- Considering representations from the doctor about his or her exclusion;
- Considering any representations about the investigation;

4.3.15 Returning to work

If it is decided that the exclusion should come to an end, there must be formal arrangements for the return to work of the doctor. It must be clear whether clinical and other responsibilities are to remain unchanged or what the duties and restrictions are to be and any monitoring arrangements to ensure patient safety. Medical managers should meet in advance with the doctor and agree a support plan to be in place upon their return.

4.3.16 Doctor facing conduct or capability proceedings becoming unwell

If an excluded doctor facing conduct or capability proceedings becomes ill, they will be subject to the Trust's usual sickness absence procedures. The sickness absence procedures take precedence over the capability and conduct process and the Trust will take reasonable steps to give the doctor time to recover and attend any hearing. Where the doctor's illness exceeds 4 weeks, they must be referred to the Occupational Health Service. The Occupational Health Service will advise the Trust on the expected duration of the illness and any consequences it may have for the capability or conduct process and will also be able to advise on the doctor's capacity for future work an outcome of which could be retirement on health grounds. Should employment be terminated as a result of ill health, the investigation may still be taken to a conclusion and the Trust form a judgement as to whether the allegations are upheld.

If, in exceptional circumstances, a hearing proceeds in the absence of the doctor, the doctor will have the opportunity to submit written submissions and/or have a representative attend in his or her absence.

4.4 The Case Manager and Case Investigator

4.4.1 Case Manager

The Case Manager will normally be the Clinical Manager appointed by the DMG. If the Clinical Manager has been extensively involved in the concern or is likely to be interviewed by the Case Investigator on any matter of substance, the DMG will appoint an alternative Case Manager.

The Case Manager is responsible for ensuring that the investigation is conducted fairly and efficiently and they will ensure that they:

- Act as a co-ordinator between the doctor, the Case Investigator and others interviewed.
- Ensure confidentiality, proper documentation of the process and ensure access to any documentation required by the Case Investigator.
- Ensure the doctor and witnesses have appropriate support.
- Have no conflict of interest or appearance of bias.
- Are not involved in the investigation detail itself.
- Write the terms of reference for the Case Investigator.
- Discuss the case with NHS Resolution
- Ensure that support is made available to those involved in the investigation (as outlined).

The first stage of the NHS Resolution's involvement in a case is exploratory – an opportunity to discuss the problem with an impartial outsider, to look afresh at the problem, see new ways of tackling it, possibly recognise the problem as being more to do with work systems than the doctor performance, or see a wider problem needing the involvement of an outside body other than the NHS Resolution.

NHS Resolution can also undertake a formal clinical performance assessment when the doctor, the Case Manager and NHS Resolution agree that this could be helpful in identifying the underlying cause of the problem and possible remedial steps.

4.4.2 Appointing a Case Investigator

An appropriately experienced or trained person will be appointed by the DMG as the Case Investigator.

The Case Manager will draft the terms of reference for the case that will be given to the Case Investigator. A member of the Medical Development team will support the drafting of this document.

The terms of reference may include:

- Issues to be investigated
- Boundaries of the investigation
- List of likely witnesses to be interviewed

-
- Period under investigation
 - Timescale for completion of investigation and submission of a report

The doctor concerned must be informed promptly in writing by the Case Manager, when it has been decided that an investigation is to be undertaken, the name of the Case Investigator and provided with a copy of the terms of reference. The doctor should also be provided with a copy of this policy and advised the doctor cannot leave the country without the prior consent of the Case Manager. The doctor must be given the opportunity to see any documents if the doctor so requests relating to the case prior to any interview. The doctor must also be afforded the opportunity to put their view of events to the Case Investigator and given the opportunity to be accompanied by the Doctor's Companion at any such meeting.

4.4.3 The role of Case Investigator

The Case Investigator will be responsible for leading the investigation into the allegations or concerns about a doctor, establishing the facts and reporting the findings. A checklist outlining the key responsibilities of the role is in appendix 3.

The Case Investigator:

- must formally involve a medical adviser where a question of clinical judgment is raised during the investigation process. Where no other suitable senior doctor is employed by the Trust, a senior doctor from another Trust should be involved.
- must ensure that confidentiality is respected whilst ensuring that the doctor is aware of the case the doctor has to meet.
- must ensure that a written record is kept of the investigation.
- must co-operate with the Designated Board Member if required to do so.

Ensure that evidence that may be supportive as well as unsupportive of the doctor is gathered

The Case Investigator will not make the decision on what action should be taken.

At any stage of this process or subsequent disciplinary action the doctor may be accompanied in any interview or hearing by the Doctors Companion.

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.

In situations where further concerns or evidence is identified, the Case Investigator will inform the Case Manager and a decision taken as to whether the terms of reference should be amended.

The Case Investigator should attempt to complete the investigation within 8 weeks of appointment and submit their report to the Case Manager within a further 5 working days. Any extension must be agreed by the Case Manager and the doctor informed of this extension in writing.

In cases where the doctor admits the allegations and provides a written statement to this effect, then it may be possible to go straight to a determination by the Case Manager without the need for a full investigation. However the Case Manager must always seek advice from Medical Development in such cases as even where an individual admits the allegations it may still be necessary to carry out a full investigation.

If whilst under investigation an individual becomes unwell and subsequently goes on sick leave, the investigation will continue whilst advice is obtained from Occupational Health as to whether the individual is fit to participate. The Case Manager will bear in mind that the question is not whether the doctor is fit for work but whether the doctor is fit to attend an investigatory meeting.

The Case Manager may give consideration to allowing the doctor to answer questions in writing if the doctor is unfit to attend an investigatory and, if necessary, a disciplinary meeting.

In considering any adjournments, the Case Manager will bear in mind the need to conclude the investigation promptly whilst permitting the doctor the opportunity to put forward the doctor's explanation.

4.4.4 Writing the report

The report of the Case Investigator should give the Case Manager sufficient information to make a decision whether the case should be referred to a panel.

The report template, appendix 10 must be used as the structure to present the findings.

4.4.5 Determining the next steps

Before making a decision whether the case should be referred to a panel the Case Manager must give the doctor the opportunity to comment in writing on the factual content of the report produced by the Case Investigator. Comments in writing from the doctor, including any mitigation, must be submitted to the Case Manager within 10 working days of the date of receipt of the request for comments. In exceptional circumstances the deadline for comments from the doctor may be extended.

The Case Manager will convene a DMG. The DMG will provide rigor, challenge and support to the Case Manager that will ensure the approach is fair and that matters are dealt with in a consistent manner. The Case Manager will decide what further action is necessary, if any, taking into account the findings of the report, any comments that the doctor has made and any advice from NHS Resolution.

The options include:

- Formal hearing
- The report and/or comments from the doctor now require restrictions on practice or exclusion from work.
- Reflective practice

-
- Assisted mediation
 - Remediation
 - No action to be taken

There may be occasions when a case has been considered by NHS Resolution, but the advice of its assessment panel is that the doctor'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 NHS Resolution advice, whether the case should be determined under the capability procedure.

If the doctor does not agree to the case being referred to the NHS Resolution, a panel hearing will normally be necessary.

4.4.6 Procedure to establish a hearing

- The Case Manager must notify the doctor in writing of the decision to arrange a panel hearing. This notification should be made at least 20 working days before the hearing and include details of the allegations, the Case Investigators report, and the doctors statement, if any. The letter should set out the date, time and venue of the hearing plus who will be on the panel and the witnesses the Trust will call (unless their identity should be protected). The doctor should be advised of the right to be accompanied by the Doctor's Companion.
- The doctor must supply copies of any documentation, including witness statements, on which the doctor wishes to rely no later than 10 working days before the hearing together with information as to the identity of the Doctor's Companion and any witnesses, that the doctor intends to call.
- Witnesses who have made written statements at the inquiry stage may, but will not necessarily, be required to attend the hearing unless either party notifies the other in good time of the need for their attendance. 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.

4.4.7 Confidentiality

The Trust will maintain confidentiality at all times. No press notice will be issued, nor the name of the doctor 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.

Personal data released to the Case Investigator for the purposes of the investigation must not be disproportionate to the seriousness of the matter under investigation. The Trust will operate consistently with the guiding principles of the Data Protection Act.

4.5 The Case Manager and Case Investigator

4.5.1 Dealing with matters of conduct

The Trust has shared values and behaviours that it expects to be followed by all staff. This sets out acceptable standards of conduct and behaviour expected. Similar expectations are set out by the GMC and are outlined in the GMC 'Good Medical Practice' and 'Good Doctors, Safer Patients' and lapses are considered to be "misconduct".

Misconduct can cover a very wide range of behaviour. Examples of misconduct will vary greatly and are outlined in appendix 4. Similarly the ACAS Code of Practice provides a non-exhaustive list of examples. Acts of misconduct may be simple and readily recognised or more complex and involved.

Each case must be investigated, but as a general rule no employee should be dismissed for a first offence, unless it is one of gross misconduct.

It is for the Trust to decide upon the most appropriate way forward, and this may include guidance from NHS Resolution and an employment law specialist.

4.5.2 Action when investigations identify possible criminal acts

Where an investigation establishes a suspected criminal action in the UK or abroad this must be reported to the police. The Case Manager will decide, based on the circumstances, whether to proceed, considering whether an investigation would impede a police investigation. In cases of fraud, the Counter Fraud & Security Management Service must be contacted.

4.5.3 Dealing with matters of capability

The causes of adverse events should not automatically be attributed to the actions, failings or unsafe acts of an individual alone.

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.

4.5.4 Hearing Panel composition

The process for capability and conduct concerns will follow the same format and process but panel members will differ as outlined below:

Issues of conduct

- One of either the Group Medical Director/Associate Medical Director/Care Group Director (Chair and Determining Manager)
- A doctor of the same specialty as the doctor under investigation not employed by the Trust (professional conduct matters only. This member is excluded if the case is one of personal misconduct) as a non-voting advisor.
- The panel will be supported by a non-voting member of medical staffing.

Issues of capability concerns

- One of either the Group Medical Director/Associate Medical Director/Lead Psychiatrist
- Care Group Director
- A Non-Executive Director of the Trust.
- A medically qualified member who is not employed by the Trust. 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.

The Panel will determine the outcome collectively, if necessary by majority vote. The panel will be supported by a non-voting member of medical staffing.

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.

Failure to attend a hearing

If the doctor fails to attend a hearing, reasonable steps should be taken to establish the reason and, in the absence of any justifiable reason, the panel retains the right, to proceed with the hearing in the doctor's absence if in the panel's opinion it is reasonable to do so.

Should the doctor's ill health be such the panel's decides the hearing will be adjourned the Trust will implement its usual absence procedures and involve Occupational Health.

Multiple adjournments should not be permitted and if the doctor is unable to attend the hearing due to, for example, ill health, consideration should be given to other methods to permit the doctor to make representations on the evidence, for example a written statement.

If evidence is contested and the witness is unable or unwilling to attend, the panel should consider reducing the weight given to the evidence.

4.5.5 The procedure at the hearing

The hearing should be conducted as follows:

- The Panel (and its advisers as necessary), the doctor, the Doctor's Companion and the Case Manager will be present at all times (save in exceptional circumstances) during the

hearing. Witnesses will be admitted only to give their evidence and answer questions and will then retire.

- The Chair of the panel will be responsible for the proper conduct of the proceedings including any reasonable adjustments required. The Chair should introduce all persons present and announce which witnesses are available to attend the hearing.
- The Chair will inform everyone at the hearing that the use of digital recording is not permitted.
- In the event of late evidence being presented, the Panel should consider whether to admit the same or not and if it is to be admitted wholly or in part whether the hearing should also be adjourned to allow the other party adequate time to prepare.
- 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 process for dealing with any witnesses attending the hearing shall be the same and shall reflect the following:

4.5.6 Order of presentation

The Case Manager presents the management case including the calling of any witnesses. The procedure for dealing with witnesses shall be undertaken for each witness in turn and at the end of this each witness shall be allowed to leave.

- The witness shall confirm any written 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 raise new evidence.
- The Chair shall invite the Case Manager to clarify any matters arising from the management case on which the panel requires further clarification.
- The doctor and/or the Doctor's Companion shall present the doctor'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 Chair shall invite the Case Manager to make a brief closing statement summarising the key points of the case.
- The Chair shall invite the doctor and/or the Doctor's Companion to make a brief closing statement summarising the key points of the doctor's case. Where appropriate this statement may also introduce any grounds for mitigation.

The Panel shall then retire to consider its decision. The Panel if it thinks fit may recall any witness or require other evidence to be produced to it but both parties must be given adequate time to consider any such evidence. The Panel will deliberate in private only recalling both parties to clear points of uncertainty on evidence already given.

4.5.7 Decision

The Panel has the power to make a range of decisions including the following:

- No action required
- Remediation is necessary.
- Written warning (coupled with an improvement plan setting out a specified time scale with a statement of what is required and how it might be achieved in cases of capability).
- Final written warning (coupled with an improvement plan setting out a specified time scale with a statement of what is required and how it might be achieved in cases of capability).
- Termination on notice
- Termination forthwith for gross misconduct

Before deciding what form of action should be taken, if any, the Panel should consider:

- The employees live disciplinary record and;
- Any mitigating circumstances which make it appropriate to lessen the severity of the penalty; and
- The action taken in similar cases in the past; and whether the proposed action is reasonable in the circumstances

A record of remediation agreements and written warnings should be kept on the doctor's personnel file but should be removed after the specified period.

The decision of the Panel/Determining Manager should be communicated to the parties as soon as possible and normally within 5 working days of the hearing.

The decision must be confirmed in writing to the doctor. The document will include:

- the allegations against the doctor
- the decision(s) of the Determining Manager/Panel
- the reasons for the decision
- the disciplinary sanction imposed and the rationale for the level of sanction
- the timescale over which the disciplinary action is effective if appropriate
- any special conditions applying to the disciplinary action, e.g. in cases of poor performance an action plan setting out the improvements that are expected, timescales for improvements, supervision requirements, review periods
- the consequences of any further misconduct/failure to improve performance to a satisfactory level.
- notification that the details of the disciplinary action taken will be retained on file
- notification of the right of appeal against the decision in accordance with section 7 of this policy and procedure.

4.6 The Appeals Procedure

4.6.1 The appeal process

Where the appeal is against dismissal, the doctor should not be paid from the date of dismissal until the determination of the appeal. Should the appeal be upheld, the doctor should be reinstated and must receive backdated pay to the date of termination of employment less any payments the doctor has received in the interim.

4.6.2 Grounds of appeal

The Panel has power to consider an appeal on none or more of the following grounds:

- The penalty was excessive
- All or part of the allegations should not have been found proven.
- There was a breach of policy that materially affected the outcome.
- New evidence has become available that was not reasonably available at the time of the hearing and it would have materially affected the outcome.

4.6.3 Timing of the appeal

It is in the interests of all concerned that appeals are heard speedily and as soon as possible after the original hearing. The following timetable will apply in all cases:

- Appeal by written statement to be submitted to the Associate Director of Medical Development within 25 working days of the date of the written confirmation of the original decision. Any appeal raised should clearly identify the reasons for requesting an appeal
- The Trust will use its best endeavours to ensure the appeal hearing takes place within 25 working days of date of lodging appeal.
- The appeal outcome will be communicated to the doctor within 5 working days of the conclusion of the hearing.

Any application for any extension of time must be made to the Chair of the Panel.

4.6.4 The appeal panel

The Panel will consist of three members.

- The Chair or Deputy Chair of the Trust
- A Non-Executive Director of the Trust who has not been previously involved.
- A doctor of the same specialty as the doctor appealing but not employed by the Trust.

The Panel will be supported by a non-voting member of medical staffing or HR.

4.6.5 Powers of the appeal panel

The appeal Panel has the right to call witnesses of its own volition, but will 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.

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.

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.

4.6.6 Conduct of appeal hearing

The format of the appeal hearing will mirror that of the hearing itself. The doctor may be represented. The Panel shall consider and make its decision in private.

4.6.7 Decision

The decision of the appeal Panel shall be in writing to the doctor and shall be copied to the Case Manager normally within 5 working days of the conclusion of the hearing.

- The appeal Panel will determine one or a combination of the following decisions:
- That the original decision(s) was correct
- That the original decision (s) was not correct
- That the original decision(s) was not appropriate, and impose a lesser sanction.
- That the original decision was not appropriate and impose a higher sanction.
- That the original decision(s) was not appropriate, and withdraw the sanction.

The decision of the appeal Panel is final.

4.6.8 Action following the hearing and appeal process

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

Careful consideration needs to be given in managing and supporting individuals that have been subject of the process, not only the Dr under investigation but witnesses involved. Once matters have been concluded if necessary, a re-introduction plan should be implemented to effectively support individuals back into their professional capacity. This would include considering the impact of a Dr being exonerated and any findings or recommendations following formal sanctions and involve the management team of the Dr and medical staffing in their creation and monitoring.

4.6.9 Termination of employment with performance issues unresolved

Where a doctor leaves employment before disciplinary processes have been completed, the investigation must be completed wherever possible whatever the personal circumstances of the doctor concerned.

Every reasonable effort must be made to ensure the doctor remains involved in the process. If contact with the doctor has been lost, the Case Manager will invite them to attend any hearing by writing to their last known home address. The Determining Manager or Panel will make a judgement, based on the evidence available, as to whether the allegations about the doctor's conduct or capability are upheld.

4.6.10 Handling concerns about a doctor's health

A wide variety of health problems can have an impact on a doctor's clinical performance. These conditions may arise spontaneously or be as a consequence of work place factors such as stress.

The principle for dealing with doctors with health problems is that, wherever possible and consistent with reasonable public protection, they should be treated, rehabilitated or re-trained and kept in employment, rather than be lost from the NHS.

4.6.11 Retaining the services of doctors with health problems

At this stage, the Trust sickness absence procedure will be followed and a referral made to the Occupational Health Service to gain advice. The outcomes may include:

- sick leave for the doctor
- remove the doctor from certain duties;
- reassign the doctor to a different area of work;
- arrange re-training or adjustments to their working environment, with appropriate advice from the NHS Resolution and/or deanery, and /or under the reasonable adjustment provisions in the Equality Act 2010

4.6.12 Reasonable adjustments

At all times the doctor will be supported by the Trust and the Occupational Health Service who should ensure that the doctor is offered reasonable resources to get back to practise where appropriate. The Trust should consider what reasonable adjustments could be made to their workplace or other arrangements. Consider the Trust workplace adjustments procedure for further guidance.

4.6.13 Examples of reasonable adjustment

- Making adjustments to the premises;
- Re-allocate some of the doctors duties to another;
- Transfer a doctor to an existing vacancy;
- Alter the doctor's working hours or pattern of work;
- Assign the doctor to a different workplace;
- Allow the doctor absence for rehabilitation, assessment or treatment;
- Provide additional training or retraining;
- Acquire/modify equipment;
- Modifying procedures for testing or assessment;
- Providing a reader or interpreter;
- Establish mentoring arrangements.

In some cases retirement due to ill health may be necessary. Ill health retirement should 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 this is appropriate.

4.6.14 Handling health issues

Where there is an incident that points to a problem with the doctor's health, the incident may need to be investigated to determine the health problem. If the report recommends Occupational Health involvement, the nominated manager must immediately refer the doctor to a qualified, usually a consultant, occupational physician with the Occupational Health Service.

NHS Resolution should be approached to offer advice on any situation and at any point where the Trust is concerned about a doctor.

A referral to the Occupational Health physician should be made by the Clinical or Case Manager. Confidentiality must be maintained by all parties at all times.

If a doctor'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 and referral to the professional regulatory body must be undertaken, irrespective of whether or not they have retired on the grounds of ill health.

In those cases where impairment of performance is solely due to ill health, formal 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 NHS Resolution. In these circumstances the Trust will continue to move through the relevant stages outlined in this policy.

There will be circumstances where a doctor 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 is expected to refer the doctor to the Occupational Health service for assessment as soon as possible. Unreasonable refusal to accept a referral to, or to co-operate with, the Occupational Health service under these circumstances, may give separate grounds for pursuing disciplinary action.

4.6.15 Guidance on agreeing terms of reference for settlement on termination of employment

In some circumstances, terms of settlement may be agreed with a doctor if their employment is to be terminated. The following good practice principles are set out as guidance for the Trust:

- Settlement Agreements must not be to the detriment of patient safety.
- It is not acceptable to agree any settlement that precludes either appropriate investigations being carried out and reports made or referral to the appropriate regulatory body.
- Payment will not normally be made when a member of staff's employment is terminated on disciplinary grounds or following the resignation of the member of staff.

Expenditure on termination payments must represent value for money. For example, the Trust should be able to defend the settlement on the basis that it could conclude the matter at less cost than other options. A clear record must be kept, setting out the calculations, assumptions and rationale of all decisions taken, to show that the Trust has taken into account all relevant factors, including legal advice. The audit trail must also show that the matter has been considered and approved by the remuneration committee and the Board. It must be able to stand up to district auditor and public scrutiny. Approval prior to any settlement must be obtained from the appropriate authorities.

- Offers of compensation, as an inducement to secure the voluntary resignation of individual, must not be used as an alternative to the disciplinary process.
- All job references must be accurate, realistic and comprehensive and under no circumstance may they be misleading. Any Settlement Agreement should not include the provision of an open reference.
- A Settlement Agreement must not include clauses intended to cover up inappropriate behaviour or inadequate services.
- Where a settlement is agreed, details must be recorded with Medical Staffing.

5 Definitions

Term	Definition
Low Level Concern	Performance or conduct issues with limited risk of potential harm or escalation and would not meet the criteria of a formal disciplinary investigation.
Reflective Practice	The ability to reflect on one's actions so as to engage in a process of continuous learning.
Assisted Mediation	Assisted mediation is an independent, voluntary and confidential process in which trained medical colleagues will work with parties on an impartial basis to help resolve difficulties which are impacting on professional relationships at work.
Remediation	Remediation is the interventional process for addressing concerns that may relate to the knowledge, skills and behaviours of a doctor which provides help to encourage a return to safe practice.

6 Related documents

Health and Safety Policy
 Grievance Procedure
 Whistle Blowing Policy
 Bullying and Harassment Reporting and Resolution Procedure
 Trust Disciplinary Procedure
 Workplace Adjustments Procedure
 Equality, Diversity and Human Rights policy

7 How this policy will be implemented

- This policy will be published on the Trust's intranet and external website.
- Line managers will disseminate this policy to all Trust employees through a line management briefing.

Implementation Action Plan				
Activity	Expected outcome	Timescale	Responsibility	Means of verification/ measurement
Initial briefing and awareness (EMD Bulletin)	General awareness of Policy for all medical staff	6 months	EMD	Circulation of bulletin
Implement training for clinical managers	New course created "Medical Managers Leadership Programme" to enable all clinical managers demonstrate competence in implementing this policy.	Within 1 year of starting post	Medical staffing	ESR monitoring

7.1 Training needs analysis

Staff/Professional Group	Type of Training	Duration	Frequency of Training
Medical managers	Medical Managers Leadership Programme	2 year rolling programme.	Upon commencement of medical leadership role

8 How the implementation of this policy will be monitored

Auditable Standard/Key Performance Indicators		Frequency/Method/Person Responsible	Where results and any Associate Action Plan will be reported to, implemented and monitored; (this will usually be via the relevant Governance Group).
1	Reviewed and monitored by Medical staffing lead via yearly workforce report	Annually	LNC/Medical Staffing Directorate
2	Number of medical staff subject to early identification of low-level concerns	Annual report by Medical staffing lead	Sent to LNC/Medical Staffing Directorate Governance group

3	Number of medical staff subject to successful management of low-level concerns intervention	Annual report by Medical staffing lead	Sent to LNC/Medical Staffing Directorate Governance group
4	Number of medical staff subject to restriction or exclusion from practice	Annual report by Medical staffing lead	Sent to LNC/Medical Staffing Directorate Governance group
5	Percentage of clinical managers successfully completing training	Annual report by Medical staffing lead	Sent to LNC/Medical Staffing Directorate Governance group
6	Audit report of medical staffing	Sent to Medical staffing by external auditor	Review Medical Staffing Directorate Governance group

9 References

GMC Fitness to Practice

DH Tackling Concerns Locally

The Medical Profession (Responsible Officers) Regulations 2010

NHS Resolution Handling concerns about a Doctor's behaviour and conduct

NHS Resolution Handling concerns about doctors' health

NHS Resolution How to conduct a local performance investigation

NHS Resolution Back on track framework for further training

NHS Resolution Handling performance concerns in primary care

NHS Resolution Professionalism - dilemmas and lapses

NHS Resolution Handling Concerns about the Performance of Healthcare Professionals

NHS Resolution Understanding Performance Difficulties in Doctors

NHS Resolution What to do if you have concerns about a colleague's performance

NHS England Guidance on Revalidation

10 Document control (external)

To be recorded on the policy register by Policy Coordinator

Date of approval:	15 June 2022	
Next review date:	15 June 2025	
This document replaces:	HR-0008-v4 Medical Remediation and Disciplinary Policy	
This document was approved by:	Name of committee/group	Date
	LNC meeting	10 May 2022
This document was ratified by:	Name of committee/group	Date
	Management Group	15 June 2022
An equality analysis was completed on this document on:	March 2022	
Document type	Public	
FOI Clause (Private documents only)	n/a	

Change record

Version	Date	Amendment details	Status
v 5	15 June 2022	<p>The previous version titled “Medical Remediation and Disciplinary Policy” focussed on the statutory NHS “Maintaining High Professional Standards” guidance and relevant elements of the Trust Disciplinary Policy. This version has added guidance around initial assessment, identification and management of low-level concerns and the role of the Decision-making group. The name of the policy is to become “Managing Concerns Affecting Medical Staff” to reflect the broader issues.</p> <p>Changes have been made to job titles, roles, and responsibilities in relation to the re-structure process.</p>	Ratified

Appendix 1 - Equality Analysis Screening Form

Please note: The Equality Analysis Policy and Equality Analysis Guidance can be found on the policy pages of the intranet

Section 1	Scope
Name of service area/directorate/department	Medical Directorate
Title	Dealing with concerns affecting Medical Staff
Type	Policy
Geographical area covered	Trustwide
Aims and objectives	<p>The aim of this Policy is to provide a framework and processes to follow when considering assessing and managing identified performance concerns that affect medical staff</p> <p>Objectives:</p> <ul style="list-style-type: none"> To provide guidance and support to all involved in assessing and managing or subject to low level concerns. To outline the full medical disciplinary operational policy and to provide clarity on the investigation and subsequent process for those involved. <p>To ensure relevant matters are dealt with according to the statutory framework set out in "Maintaining High Professional Standards in the Modern NHS".</p>
Start date of Equality Analysis Screening	Jan 2022
End date of Equality Analysis Screening	March 2022

Section 2	Impacts
Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?	Primarily the Medical workforce but potentially all Trust staff and service users could be impacted by this Policy.
Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or	<ul style="list-style-type: none"> Race (including Gypsy and Traveller) No

<p>Business plan impact negatively on any of the protected characteristic groups?</p>	<ul style="list-style-type: none"> • Disability (includes physical, learning, mental health, sensory and medical disabilities) NO • Sex (Men, women and gender neutral etc.) NO • Gender reassignment (Transgender and gender identity) NO • Sexual Orientation (Lesbian, Gay, Bisexual and Heterosexual etc.) NO • Age (includes, young people, older people – people of all ages) NO • Religion or Belief (includes faith groups, atheism and philosophical beliefs) NO • Pregnancy and Maternity (includes pregnancy, women who are breastfeeding and women on maternity leave) NO • Marriage and Civil Partnership (includes opposite and same sex couples who are married or civil partners) NO • Veterans (includes serving armed forces personnel, reservists, veterans and their families) NO
<p>Describe any negative impacts</p>	
<p>Describe any positive impacts</p>	

Section 3	Research and involvement
<p>What sources of information have you considered? (e.g. legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.)</p>	<p>Yes, considered. Also includes Maintaining High Professional Standards in the Modern NHS (“MHPS”)</p>
<p>Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the protected groups?</p>	<p>Yes</p>
<p>If you answered Yes above, describe the engagement and involvement that has taken place</p>	<p>A draft of the Policy has been circulated to member on the LNC which includes representatives from the BMA and all grades of Doctor. A working group was formed to consult with and provide feedback which has been considered. A further draft was subsequently signed off by the LNC on 01/02/22, again on 10 May 2022. Also has had six week trust wide consultation.</p>

If you answered No above, describe future plans that you may have to engage and involve people from different groups	
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Section 4	Training needs
As part of this equality analysis have any training needs/service needs been identified?	Yes
Describe any training needs for Trust staff	Medical managers will have training provided in relation to the Policy as part of their ongoing leadership programme.
Describe any training needs for patients	n/a
Describe any training needs for contractors or other outside agencies	n/a

Check the information you have provided and ensure additional evidence can be provided if asked

Appendix 2 – Approval checklist

	Title of document being reviewed:	Yes/No/ Not applicable	Comments
1.	Title		
	Is the title clear and unambiguous?	Y	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Y	
2.	Rationale		
	Are reasons for development of the document stated?	Y	
3.	Development Process		
	Are people involved in the development identified?	Y	
	Has relevant expertise has been sought/used?	Y	
	Is there evidence of consultation with stakeholders and users?	Y	LNC + LNC subgroup + trust wide consultation
	Have any related documents or documents that are impacted by this change been identified and updated?	n/a	Note title to be updated on related documents
4.	Content		
	Is the objective of the document clear?	Y	
	Is the target population clear and unambiguous?	Y	
	Are the intended outcomes described?	Y	
	Are the statements clear and unambiguous?	Y	
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?	Y	
	Are key references cited?	Y	
	Are supporting documents referenced?	Y	
6.	Training		
	Have training needs been considered?	Y	
	Are training needs included in the document?	y	
7.	Implementation and monitoring		

	Title of document being reviewed:	Yes/No/ Not applicable	Comments
	Does the document identify how it will be implemented and monitored?	y	
8.	Equality analysis		
	Has an equality analysis been completed for the document?	Y	
	Have Equality and Diversity reviewed and approved the equality analysis?	Y	
9.	Approval		
	Does the document identify which committee/group will approve it?	y	LNC and Management Group
10.	Publication		
	Has the policy been reviewed for harm?	Y	
	Does the document identify whether it is private or public?	Y	Public
	If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	n/a	

Appendix 3 – Checklists to support roles

- Clinical Manager
- Case Manager
- Case Investigator
- Determining Manager
- Designated Board Member & Chief Executive

Role of Clinical Manager:

Step 1 – Immediate Action	
Upon receipt of an allegation/complaint/concern, a decision will be taken as to whether it is felt this should be looked at further. This should be done in consultation with Medical Development. A short fact find may or may not be necessary.	
If no further action required, write file note and pass to Medical Development for central recording.	
If it is deemed low level concerns – meet with doctor to discuss further and set an action plan with clear targets and timescales. Copy of action plan to be sent to Medical Development for monitoring.	
Set up a further meeting to review action plan at the end of the timescales set. If action plan not met, Clinical Manager must consider next steps (see section 3)	
If it is deemed a serious concern it must be raised with Medical Development ASAP who will convene a DMG (Go to Step 3)	
Step 2 – DMG	
The DMG will decide whether a formal investigation is required, whether further facts need to be gathered or whether medical remediation is appropriate or indeed whether the matter should have been closed at the point of the case discussion.	
Consider whether Exclusion or restrictions to practice are necessary.	
If no further action is required, a file note must be written and forwarded to Medical Development for records.	
If remediation is required, follow section 3 titled low level concerns.	
If concerns are serious, follow section 4 and remember that NHS Resolution involvement must be considered at this point.	
Step 3 – Formal Investigation	
The DMG will identify an appropriate Case Manager for the formal investigation. This will normally be the Clinical Manager.	
If the Clinical Manager is unable to be Case Manager (for example the Clinical Manager may be an important witness of fact in any subsequent investigation then the Clinical Manager should make arrangements to brief the Case Manager.	
The DMG will identify an appropriate Case Investigator.	
Should the concerns be of a clinical nature, a ‘Clinical Advisor’ will be identified by the DMG to support the Case Investigator.	

Role of Case Manager:

Step 1 – Immediate Action	
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The Case Manager will be given a brief from the Clinical Manager, if it is not the same person, or from the DMG.	
If immediate exclusion is in place, ensure a preliminary situation analysis is carried out so next steps are understood.	
If formal exclusion, ensure that the Case Investigator provides a preliminary report as soon as possible, to allow the Case Manager to produce progress reports for the Board and Designated Board Member.	
Discuss the case with NHS Resolution and whether an informal approach can be taken to address the problem.	
Write and agree terms of reference for the Case Investigator to follow (see 4.4). This will be formed by the allegation/s and will be written with the support of Medical Development. The terms of reference will also include a clear audit route established for initiating and tracking progress of the investigation.	
Create a time line for key stages and decisions in the process and agree update process/timings with Doctor.	
Ideally the Case Investigator will discuss the case with the Case Manager at two weekly intervals. At this point and throughout the investigation, consideration should be given to whether Occupational Health support is necessary.	
Step 2 – Write to the Doctor	
Give the names of the Case Investigator and the Designated Board Member (where applicable)	
Provide a copy of the terms of reference.	
Provide copy of “dealing with concerns” policy	
Provide details of the access to counselling service and Occupational Health	
Advise the doctor they can’t leave the country without the Case Manager’s consent (which will not be unreasonably withheld).	
Investigation Report	
The investigation should be completed within 8 weeks of notifying the doctor of the allegations/concerns/complaint.	
The investigation report should be produced within 5 working days from completion of investigation.	
Upon receipt of the investigation report, but before making a decision, the Case Manager must give the doctor the opportunity to comment in writing on the factual content of the report produced.	
Step 3 – Determining the Next Steps	
Case Manager must then decide what further action is necessary, taking into account the findings of the report, comments from doctor and any advice from NHS Resolution. Options could include to develop a remediation plan; a formal hearing; restrictions on practice, Exclusion from work pending a formal hearing or no action to be taken. (Full details in 6.6)	
Step 4 – Prior to Hearing	
Write to doctor to confirm arrangements for hearing and attach copy of investigation report and the doctor’s statement.	
Case files should be submitted at least 20 working days before the Hearing.	
The letter must set out the details to include; date, time, venue and who will be in attendance and their roles at the meeting.	
Doctor must be told of the right to be accompanied by the Doctor’s Companion.	
Step 5 - Hearing	
Present the case to the Hearing panel detailing allegations/concerns and outcome of investigation report.	
Call any witnesses	
Step 6 – Lifting Exclusion or Restrictions following the hearing	

If the doctor has been excluded or had restrictions on duties placed upon them, meet to discuss their return to work/duties. (Discuss any necessary updating/training as well as emotional support).	
<p>KEY NOTE:</p> <p>At any point in the process where the Case Manager has reached the clear judgement that a doctor is considered to be a serious potential danger to patients or staff, that doctor must be referred to the regulatory body, whether or not the case has been referred to the NHS Resolution, consideration must be given to whether the issue of an alert letter should be requested.</p>	

Role of Case Investigator:

Step 1 – Immediate Action	
Arrange meeting with Case Manager to discuss the case.	
The Case Manager will provide clear terms of reference for the case. You must ensure that this is fully understood.	
Be mindful of potential breaches of confidentiality and that safeguards are in place throughout the investigation.	
Step 2 – Investigation	
Meet with relevant witnesses/individuals in relation to case (inform them that all statements and notes of interviews will be provided to doctor).	
If questions of clinical judgement are needed, liaise with the Clinical Adviser. If none has been appointed contact the Case Manager.	
Ensure sufficient written statements collected All statements to be in the witnesses own words, and reasonable steps taken to ensure they are signed and dated or approved in some other manner (for example an e-mail confirming the contents are true).	
Interview the doctor (who may be accompanied by the Doctors Companion) and take reasonable steps to ensure the statement is signed and dated or approved in some other manner and any witnesses reasonably identified by the doctor.	
Consider the need to interview further witnesses or re interview existing witnesses and take reasonable steps to ensure that any statement(s) are signed and dated or approved in some other manner	
In cases of formal exclusion, a preliminary report will be required asap by the Case Manager to enable them to decide on the next steps taken.	
Assist the Designated Board Member in reviewing the progress of the case should they make contact.	
Where further concerns are identified during the investigation the Case Investigator must speak to the Case Manager so a decision can be taken as to whether the terms of reference should be expanded or amended.	
Step 3 – Drafting the Investigation Report	
Use the investigation report template. Pass the final report to Case Manager within 5 working days of investigation being completed.	
The report should give sufficient information in order for Case Manager to make a decision (see 6.6 for details).	
Key Timescales:	
Investigation to be completed within 8 weeks of appointment	
In exceptional circumstances an extension may be required and this is agreed by the Case Manager and doctor informed of extension in writing.	

Role of Determining Manager (for conduct related issues):

Step 1 – The Hearing	
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Confirm the reasons for the hearing and outline the process for the meeting making sure that the doctor is aware of their right to be accompanied.	
If matters are raised during the hearing that you need to consider further or require further investigation, you should adjourn the hearing to allow this to happen. When hearing resumes the doctor must have an opportunity to hear and respond to any new information	
Adjournments can be requested by either side during the hearing.	
The hearing will also consider any grievances/concerns raised in relation to the process undertaken if they are not resolved at an earlier stage in the process by the Case Investigator or Case Manager.	
Step 2 – Failure of the Doctor to Attend Hearing	
If the doctor fails to attend, reasonable steps should be taken to establish the reason and, in the absence of any justifiable reason, the hearing will go ahead in their absence.	
Where, however, there is a justifiable reason or the doctor or their representative cannot be contacted, reasonable steps should be taken to advise them of an alternative date for the hearing. Advise them that a further failure to attend will result in a decision being made in their absence.	
Step 3 – The Decision of the Hearing	
Determine whether on the balance of probabilities any of the allegations are proven (it should be noted that the burden of proof in disciplinary cases is “on the balance of probability”).	
Determine whether the individual is performing at a satisfactory level on the balance of probabilities and if not does the doctor realise and accept that there is a problem with their work performance.	
Before deciding what form of disciplinary action should be taken, if any, the Determining Manager should consider: <ul style="list-style-type: none"> • The doctor’s “live” disciplinary record and whether they have been made fully aware of the standards required; and • Any mitigating circumstances which make it appropriate to lessen the severity of the action; and • The action taken in similar cases in the past (HR or Medical Staffing will be able to assist), and • Whether the proposed action is reasonable in the circumstances • If a decision can be reached the same day the doctor or their representative may be advised verbally of the outcome of the disciplinary hearing • Alternatively write to the doctor within 5 days, confirming the decision taken 	

Role of Designated Board Member and Chief Executive

Role of Designated Board Member	
Step 1 - Appointment	
The Chair will be approached by Medical Development and briefed about the case.	
The Chair will approach a non-executive board member and they will be appointed to oversee the case and ensure momentum is maintained.	
Medical Development will be informed of the name of the board member.	
Should Exclusion Occur:	

A detailed report is provided when requested to the Designated Board Member and they will be responsible for monitoring the situation until the Exclusion has been lifted.	
The Designated Board Member must ensure that the time frames for investigation or Exclusion are consistent with the principles of article 6 of the European convention on human rights.	
The Designated Board Member is also responsible for considering any representations from the doctor as regards exclusion or the conduct of the investigation	
The Designated Board Member has a responsibility for ensuring that the policy is followed. It is also responsible for ensuring the proper corporate governance of the organisation, and for this purpose reports must be made to the Board under this policy.	
Board members may be required to sit as members of a disciplinary or appeal panel. Therefore, information given to the board will only be sufficient to enable them to satisfy themselves that the policy is being followed. Only the Designated Board Member will be involved to any significant degree in each review.	

Role of Chief Executive:	
Once a serious concern is raised about a doctor this will be registered with the Chief Executive.	
When an Exclusion decision has been extended three times, the Chief Executive will ensure NHS RESOLUTION have been approached for advice and explain to the Designated Board Member why an extension should be granted will inform the relevant Health Education Board of what action is proposed to resolve the situation.	
Key Timescales:	
Initial Exclusion – 2 weeks	
Exclusion must not be for more than 4 weeks at a time	
Reviews must take place before the end of each 4 week period	
A summary of progress of each case is required at the end of each period of Exclusion.	

[Remember at any stage of the process to consider the potential for reasonable adjustments for attendees.](#)

Appendix 4 – Examples of misconduct / gross misconduct

In the interest of good employee relations, this summary seeks to inform employees how particular issues are viewed by the Trust to ensure that employees and managers understand how issues may be addressed.

This document describes examples of misconduct which the Trust considers to be sufficiently serious as to warrant disciplinary action. It must be noted that the following lists are **purely illustrative and not exhaustive** since employment will also be governed by local workplace rules, practices and policies. The publication of these rules will not restrict the right of the Trust or any of its managers to determine what stage of the policy is appropriate in the light of the circumstances of each individual case, including summary dismissal.

For the sake of brevity, every type of misconduct referred to below is not necessarily repeated in every section. A particular type of misconduct may be treated as misconduct or gross misconduct depending on the facts of the case, and any impact upon patients will be taken into account.

Part 1 – Misconduct

Breaches of the following rules usually warrant the issue of a written warning, final written warning or dismissal with notice; depending upon the circumstances (Dismissal with notice for misconduct will normally be as a result of repeated warnings):

- a) unacceptable behaviour/conduct towards patients
- b) unauthorised absence
- c) abuse or misuse of sickness pay/leave provisions
- d) abuse or misuse of study leave provisions
- e) breach of contract/terms and conditions of employment
- f) participating without authority in other employment, trade, business or profession which is prejudicial to, or which adversely affects, employment with the Trust
- g) private trading on Trust premises without permission (by Management) – whether or not for personal profit
- h) failure to carry out reasonable instructions given by management effectively and in a timely manner
- i) failure to report incidents in line with the policies and procedures of the Trust
- j) unacceptable conduct contrary to any NHS policies, guidelines and standards as amended from time to time
- k) any harassment or bullying of staff.
- l) any conduct or performance bringing the NHS/the Trust into public disrepute (including inappropriate use of social media)
- m) any breach of the Trust's standing orders and financial standing instructions
- n) breach of the Trust's IT security policies
- o) any breach of directorate, department or human resource policy rules or procedures
- p) failure to adequately perform duties of individual job descriptions
- q) misuse or abuse of facilities or time off provisions granted to Trade Unions and Professional Organisations
- r) breach of the Health and Safety rules and/or statutory regulations regarding Health and Safety
- s) failure to ensure the safe keeping of personal identifiable information or commercially sensitive information.
- t) failure to protect and ensure the safekeeping of Trust property including lease cars.
- u) carelessness or negligence in the performance of duties.
- v) Breaches of the Trust Values and Behaviours

Part 2 – Gross Misconduct

The following are examples of gross misconduct that may warrant summary dismissal (dismissal without notice), even for a first offence:

- a) dishonesty relating to employment matters (e.g. fraudulent use of flexi time system, fraudulent travel/subsistence claims, dishonestly obtaining permission for authorised absence, collusion in attempting to take unauthorised absence)
- b) gross fundamental breach of contract/terms and conditions of employment (including the Trust Values and Behaviours)
- c) theft of any NHS or Trust property, or theft of any other property belonging to another whilst on duty or the removal of NHS or Trust property from the premises without authorisation to do so
- d) malicious or reckless damage to NHS property or the property of others whilst on duty
- e) fraud – any deliberate falsification of records or any attempts to defraud the Trust or any patient, member of staff or member of the public
- f) assault, intimidation, threatening behaviour, physical abuse or verbal abuse upon a patient, member of staff or member of the public
- g) professional misconduct
- h) the receiving or offering of bribes
- i) committing a criminal offence whilst on duty or whilst acting on behalf of the Trust or off duty if it is of a nature that the Trust loses confidence in the employee.
- j) failing to inform the Trust of any arrest or charge in connection with any criminal offence or served with a summons on criminal charges (excluding parking offences or minor motoring offences)
- k) illegal possession, use, or distribution of drugs
- l) incapacity to perform duties due to the influence of alcohol, solvents or drug abuse
- m) any serious carelessness or negligence in the performance of duties including that which threatens the health and safety of patients, visitors, or staff, including a failure to or an unreasonable delay to report a serious incident
- n) any harassment or victimising a Whistle Blower, or deliberate attempts to cover up concerns
- o) breach of confidentiality – disclosure of privileged and confidential information to unauthorised persons or organisations.
- p) serious misrepresentation, or providing false or misleading information in any application for employment or deliberately withholding personal information, including qualifications held and legal charges or offences not covered by exemption under the Rehabilitation of Offenders Act, at the time of appointment or at any time during employment
- q) seeking and receiving gifts/gratuities for services rendered in the course of employment or otherwise (see Standards of Business Conduct)
- r) intentional or serious breach of the Trust's Equality and Diversity Policy.
- s) serious breach of health and safety rules and/or statutory regulations regarding health and safety
- t) ill treatment, abuse, or mishandling of patients
- u) gross insubordination
- v) withdrawal of statutory qualifications required for the post or failure to register/reregister.
- w) misuse, carelessness or negligence in the use of an occupational Smart Card
- x) serious breach of the Trust's policy regarding the safety of person identifiable information.
- y) vexatious or malicious complaints not made in good faith
- z) accessing with intent or forwarding pornography using the Trust's systems

Appendix 5 – Determining appropriate disciplinary sanction

In determining the appropriate disciplinary sanction, the nature and seriousness of the offence needs to be considered. In the case of minor offences and poor performance, disciplinary sanctions will normally be progressive.

For all disciplinary sanctions short of dismissal or an alternative to dismissal there will be a specified period of time during which any further misconduct/failure to improve performance to a satisfactory level of any type will normally lead to further disciplinary action being taken, usually at the next level. The various levels and periods of time are indicated below:

Oral Warning

Oral agreement that there must be an improvement within a specified time scale with a written statement of what is required and if appropriate how it might be achieved.

Written Warning

Depending on the circumstances of each particular case the warning may be operational for a period of **between 6 and 18 months**, after which time the warning will be considered to be spent. A written warning may be issued in the case of:

- misconduct,
- where there is a recurrence of misconduct and the doctor has previously been counselled as part of the informal process or,
- where an doctor's performance does not improve within the review period following informal processes aimed at improving performance.

Final Written Warning

The warning will be operational for a period of between 12 and 24 months. A final written warning may be given if there is:

- a recurrence of misconduct within the period of another warning,
- an doctor's performance does not improve within the review period or lapses again during the period of a written warning.
- Misconduct / poor performance of such a serious nature that only one warning should be given

Dismissal

Dismissal is the ultimate step that can be taken by the Trust in the disciplinary process. Doctors will not normally be dismissed without a previous warning except in the case of gross misconduct. The Trust has the right to pay in lieu of notice.

Summary Dismissal

Summary dismissal is the termination of an individual's employment with the Trust without notice and should only be used in cases of gross misconduct

Dismissal is appropriate when:

- Circumstances have resulted in written warning(s) being issued in accordance with the Trust policies and the doctor's response is regarded as inappropriate, inadequate or insufficient.
- Particular circumstances are such that the Determining Manager/Panel considers that the doctor should not continue in employment as the offence constitutes gross misconduct.

Alternatives to Dismissal accompanied by a Final Written Warning

An alternative to dismissal will be considered in all cases where the disciplinary outcome is that dismissal should take place but there are mitigating circumstances to take into account.

The Determining Manager/Panel may decide to offer to transfer the individual to a vacant post elsewhere in the Trust. This will be accompanied with a final written warning.

If an alternative to dismissal is refused this should be recorded and the doctor will be dismissed.

Reporting to Professional Bodies

Depending upon the seriousness of the offence, the Trust may be obliged to inform the professional body at any stage of the formal policy.

Where a Determining Manager/Panel finds it necessary to recommend referral to a professional body the doctor must be notified in writing of the intention to do so.

Reporting to other Agencies

The Trust will also involve the Safeguarding Children or Safeguarding Vulnerable Adults Procedures where appropriate. This should be done as soon as the allegations are first received. This could include:

- The Trust will make appropriate referrals to the Independent Safeguarding Authority
- The Trust will report matters involving suspected criminal / illegal activity to the police and/or NHS counter fraud.
- Where appropriate the Trust will request the NHS North of England to issue an Alert letter

Appendix 6 – Low Level Concerns File Note

Date:	Name:	CD/ACD:
1. Issue Raised:		
2. Summary of Discussion:		
3. Action/Learning:		
<p><i>A copy of this file note will be sent to the Medical Development Manager for recording in your personal file.</i></p> <p><i>This will also be noted on your appraisal supporting information to be discussed with your appraiser at your next appraisal meeting.</i></p> <p><i>PLEASE TICK BOX 14 IN YOUR APPRAISAL DOCUMENTATION.</i></p>		
<p>Please return form to: Medical Development Manager via email – Elaine.corbyn@nhs.net</p>		

Appendix 7 – Common types of remediation

Supervision

- supervised practice
- formative work based assessments, case-based reviews, mini-clinical evaluation exercises (Mini-CEX), objective structured, clinical examinations (OSCE), on-site assessment and training (OSAT), video recording, simulation, patient and colleague feedback

Development

- Educational activities

Re-training and re-skilling activities including tutorials, workshops, courses, e-learning, focused reading, language/communication skills-based activities

- Specialist interventions

Behavioural coaching, occupational, psychological and specialist health (mental health and addiction) interventions, counselling (career or therapeutic), boundary awareness, cultural competence

- Doctor support

Mentoring, vocational rehabilitation, protected learning and development time, career guidance, financial advice

- Organisational support

Human resource, legal advice, team or workplace mediation

Scope of work

- amendment/restriction of aspects of scope of work

The hallmarks of an appropriate, effective intervention

- Tailored to the problem
- Suits the individual's learning style
- Results in genuine, long lasting change
- Requires an acceptable investment of time, money, energy or other resources
- Makes a quantifiable difference
- Clarity and client engagement are essential
- Personality, motivation and organisational factors all impact on individual performance

(Source: RST Supporting Doctors to Provide Safer Healthcare: Responding to Concerns about a doctor's practice v1 March 2012)

Appendix 8 – Action Planning example

This template provides a way for a doctor and the Trust to consider systematically how an action plan might be constructed. The document should be confidential.

REMEDIATION ACTION PLAN PREPARED FOR DR XXXX – DATE

It is a requirement of implementing this remediation action plan that meetings are held between Dr XXXX and the Clinical Manager Dr XXXX at regular intervals (how often would you want)?

This action plan must also be discussed as part of the Appraisal process, focusing on any outstanding areas for improvement.

Issue or Concern to be Addressed	Action to be Taken to Address	Timescales for Action	Evidence of Action Taken	Clinical Manager Review	
				Date	Comments

Appendix 9 – Template for Investigation Report

INVESTIGATION IN RELATION TO MEMBER OF STAFF

INVESTIGATION REPORT

Date of investigation report

Name of investigating officer
Investigating Officer

CONTENTS

SECTION 1 - TERMS OF REFERENCE (*including allegations and terms of reference pro forma and any amendments made by the Case Manager*)

SECTION 2 – BACKGROUND

2.1 Background Information

- Events surrounding the allegation(s)
- Evidence reviewed (*personal file, interviews, statements, datix forms, CCTV etc*)

SECTION 3 - TIMELINE

SECTION 4– FINDINGS (*referencing appendices where necessary*)

3.1 Allegation and finding

3.2 Allegation and finding etc

SECTION 5 – ADDITIONAL RELEVANT FINDINGS

(Eg review any disc sanctions on file, management issues, any mitigation discovered throughout the investigation.)

SECTION 6 – CONCLUSIONS

Summary of the findings

LIST OF APPENDICES (any policies referred to must be included, statements, interview notes, datix forms etc)

SECTION 1 – TERMS OF REFERENCE

1.1 Terms of reference (including allegations and terms of reference pro forma and any amendments made by the Case Manager)

SECTION 2 – BACKGROUND

2.1 Events Surrounding the Allegations

Summary of what was happening at time

2.2 Evidence reviewed

Staff Interviewed

List names of all staff interviewed and dates of interviews

Name	Role (at time of events)	Date Interviewed

Other Evidence Reviewed

Bullet point list of all other documents you may have reviewed, including floor plans, written statements, personal files, policies etc

SECTION 3 - FINDINGS

3.1 Allegation:

- **Insert wording of allegation**

3.2 Findings in relation to the above allegation:

The section should provide a bullet pointed summary of the key findings of the investigation, and how findings relate to each other. This should **not** simply be quotes from the investigation interviews.

E.g. There is general agreement that X was said, however person Y also recalls
There is clear contradiction between the people interviewed about the events that occurred.
Person X clearly believes Y, but person Z and A disagree with this position

All findings included in this section should be referenced to the evidence the findings were drawn from in the appendices

Summarise of the main points of the findings.

- Remember that you are not making a decision on whether or not something is or isn't upheld, you are just presenting the facts as you have gathered them and what they tell you

SECTION 4 SUMMARY OF ADDITIONAL FINDINGS

4.1 Summary of additional finding *(If there are any)*

SECTION 5 - TIMELINE

Date	Event
	Include: <ul style="list-style-type: none"> • Dates of interviews • Dates important letters were sent • Dates of meeting • Date investigation started • Date investigation report completed • Dates of any occ health referrals/appointments etc • Dates of any other important contact • Account for any delays throughout the investigation • Include meetings held by commissioning manager to update doctor

LIST OF APPENDICES

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Appendix 10 – The role of NHS Resolution

NHS Resolution helps improve patient safety by helping to resolve concerns about the professional practice of doctors, dentists and pharmacists in the UK and overseas. They provide expert [advice and support](#), [clinical assessment](#) and [training](#) to the NHS and other healthcare partners. They can be contacted at different stages of this process to offer specialist help and advice and the Case Manager, in conjunction with medical development, will ensure they are contacted accordingly.

NHS Resolution state that 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. The NHS Resolution's processes are aimed at addressing all of these, particularly where local action has not been able to take matters forward successfully. The NHS Resolution methods of working therefore assume commitment by all parties to take part constructively in a referral to the NHS Resolution. For example, its assessors work to formal terms of reference, decided on after input from the doctor and the referring body.

The focus of the NHS Resolution's work is therefore likely to involve performance difficulties which are serious and/or repetitive. That means:

- Performance falling well short of what doctors could be expected to do in similar circumstances Alternatively or additionally, problems that are ongoing.
- In cases where it becomes clear that the matters at issue focus on fraud, specific patient complaints or organisational governance, their further management may warrant a different local process.
- Where the Trust is considering excluding a doctor it is important for the NHS Resolution to know of this at an early stage, so that alternatives to Exclusion are considered.
- A doctor undergoing assessment by the NHS Resolution must if asked give an undertaking not to practise in the NHS or private sector other than their main place of NHS employment until the NHS Resolution assessment is complete

Failure to co-operate with a referral to NHS Resolution may be seen as evidence of a lack of willingness on the part of the doctor to work with the Trust on resolving performance difficulties.

If the doctor 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.

Appendix 11 – The Decision Making Group

THE INITIAL CONCERN

(This Information is to be given to Medical Development for monitoring purposes following the DMG)

Members of the DMG (please state)	
Date of DMG meeting:	
Doctor's Name	
Grade/Role:	
Locality:	
Speciality:	
Base:	
Clinical Manager's Name:	
Nature of Issue/Concern/Event:	
Date of Incident or when issue/concern was raised:	
Date Doctor Spoken To (if applicable):	
DMG recommendation of next steps (please detail): <ul style="list-style-type: none"> • No Further Action • Low Level Concern • Remediation Action Plan • Formal Investigation Required 	
If a Formal Investigation is required please state who the Case Manager and Case Investigator will be.	
Any Other Relevant Information you can provide.	

Appendix 12 – Concern Assessment Framework

Gauging the level of concern

KEY	LOW LEVEL INDICATORS	MODERATE LEVEL INDICATORS	HIGH LEVEL INDICATORS
Could the problem have been predicted?	Unintended or unexpected incident		
What degree of interruption to service occurred?	No interruption to service		Significant incident which interrupts the routine delivery of accepted practice (as defined by Good Medical Practice to one or more persons working in or receiving care)
How likely is the problem to recur?	Possibility of recurrence but any impact will remain minimal or low. Recurrence is not likely or certain	Likelihood of recurrence may range from low to certain	Likelihood of recurrence may range from low to certain
How significant would a recurrence be?		Low-level likelihood of recurrence will have a moderate impact (where harm has resulted as a direct consequence and will have affected the natural course of planned treatment or natural course of illness and is likely or certain to have resulted in moderate but not permanent harm). Certain level likelihood of recurrence will have a minimal or low impact	Low-level likelihood of recurrence will have a high impact (where severe or permanent harm may result as a direct consequence and will affect the natural course of planned treatment or natural course of illness such a permanent lessening of function.
How much harm occurred?	No harm to patients or staff and the doctor is not vulnerable or at any personal risk.	Potential for harm to staff or the doctor is at personal risk. A member of staff has raised concerns	Patients, staff or the doctor have been harmed.

KEY	LOW LEVEL INDICATORS	MODERATE LEVEL INDICATORS	HIGH LEVEL INDICATORS
	No requirement for treatment beyond that already planned.	about an individual which requires discussion and an action plan.	
What reputational risks exist?	Organisational or professional reputation is not at stake but the concern needs to be addressed by discussion with the practitioner.	Organisational or professional reputation may be at stake.	Organisational or professional reputation is at stake.
Does the concern impact on more than one area of Good Medical Practice	Concern will be confined to a single domain of GMP May include one of the following clinical incidents, complaints, poor outcome data which requires discussion and perhaps action.	Concern affects more than one domain of GMP. May include one of the following; clinical incidents, complaints, poor outcome data which requires discussion and perhaps action.	May include a serious untoward incident or complaint requiring a formal investigation. This includes criminal acts and referrals to the GMC.
What factors reduce levels of concern?	De-escalation from moderate to low. Reduction to low or minimal impact. Reduction in the likelihood of recurrence. Evidence of completion of effective remediation.	De-escalation from high to moderate. Reduction in impact to moderate. Reduction in the likelihood of recurrence. Evidence of insight and change in practice.	
What factors increase levels of concerns?		Escalation from low to moderate. Increase in impact to moderate. Likelihood of recurrence is certain. No evidence of insight or change in practice.	Escalation from moderate to high. Increase in impact to severe. Increase in likelihood of recurrence. No evidence of remorse, insight or change in practice.
How much intervention is likely to be required?	Insight, remorse and change in practice will be evident.	Insight, remorse and change in practice may be evident.	Remediation will only be achieved through specialist support.

KEY	LOW LEVEL INDICATORS	MODERATE LEVEL INDICATORS	HIGH LEVEL INDICATORS
	<p>Remediation is likely to be achieved with peer support.</p> <p>The individual doctor has no other involvement in incidents or has outstanding or unaddressed complaints and concerns.</p> <p>The remediation plan should take no longer than four weeks to address.</p>	<p>Remediation is likely only to be achieved through specialist support.</p> <p>The remediation plan should take no longer than three months to address.</p>	<p>The remediation plan will take upwards of three months to address and may include a planned period of supervised practice.</p>