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## Doctors Managing Concerns Policy And Procedures

<p><b>Associated Policies &amp; Documents:</b></p>	<ul style="list-style-type: none"> <li>• Attendance at Work Policy</li> <li>• Bullying and Harassment policy</li> <li>• Capability Policy</li> <li>• Complaints and Feedback Policy</li> <li>• Dealing with Abusive, Aggressive or Violent Patients' Policy</li> <li>• Disciplinary Policy</li> <li>• Doctors Rehabilitation &amp; Remediation of Performance Policy</li> <li>• Equality Diversity and Inclusion Policy</li> <li>• Flexible Working Policy</li> <li>• Grievance Policy</li> <li>• Incident Reporting, Management and Investigation Policy</li> <li>• Wellbeing Policy</li> </ul>
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## Equality Impact Assessment (EIA)

<p><b>Initial Equality Impact Assessment Carried Out</b></p>	<p><b>Yes</b></p>	<p><b>28 September 2022</b></p>

<b>Any Significant Impact Following EIA</b>	<b>No</b>	
<b>Full Equality Impact Assessment Required</b>	<b>No</b>	<b>Date Carried Out</b>
<b>Outcome of Full EIA</b>		<b>N/A</b>

## 1. Introduction

Connect Health requires high standards of conduct and performance from all colleagues. It is also committed to helping and encouraging colleagues to improve knowledge and skills and to learn from mistakes. This policy and procedure is designed to ensure that a fair, systematic and consistent approach is taken when conduct or capability of a doctor falls short of the required standard.

## 2. Policy scope

This policy applies to all employed by or contracted doctors within Connect Health whether on substantive, fixed term or locum contracts, or any other contractual arrangements including (but not limited to): sessional agreements, sub-contracts, training contracts (Health Education England), service level agreements, practicing privileges, self-employed, or any other engagement, honorary or voluntary work.

This policy takes precedence over the Connect Health Disciplinary Policy for the initial investigation of concerns, using both formal and informal approaches as described below. Following investigation, the Disciplinary Policy is then used for managing concerns about a doctor's conduct.

## Doctors

The General Medical Council (GMC) is a public body that maintains the official register of medical doctors within the United Kingdom. Its chief responsibility is to "protect, promote and maintain the health and safety of the public" by controlling entry to the register, and suspending or removing members when necessary. It also sets the standards for medical schools in the UK. Membership of the register confers substantial privileges under Part VI of the Medical Act 1983

GPs and GP locums working in primary care in the NHS in England are required to be on the GMC GP register and to be on the NHS performers list. Doctors in training working in primary care are required to be on the NHS performers list (but not the GMC GP register). The National Health Service (Performers Lists) (England) Regulations 2013 entrusts the responsibility for managing the performers lists (medical, dental and ophthalmic) to NHS England as the commissioner of primary care services. However, as the GPs are contracting with or providing a service to Connect Health separate to work requiring registration on the Performers List, they will be investigated using the MHPS framework. The Connect Health Chief Medical Officer and Responsible Officer will liaise with the NHSE Medical Director if required on a case-by-case basis in line with the Framework for Managing Performer Concerns, 2018, A practical guide for responding to concerns about medical practice, 2019.

Secondary care doctors are medical staff, including consultants, doctors and other non-training grade staff. This group also includes staff grade, associate specialist and specialty doctors, and doctors who may have trained as GPs but are not working in primary care.

Doctors working in community services will include GPs and secondary care doctors as described above as well as doctors that are neither on the primary care NHS performers list or a secondary care doctor.

This policy aims to ensure that, in line with the Equality Act 2010 and Connect Health's Equality, Diversity and Inclusion Policy, no employee receives less favourable treatment on the grounds of age, disability, race, gender, pregnancy and maternity status, religion and spiritual belief, sexual orientation, gender reassignment, marriage and civil partnership status. Our approach to investigating incidents as outlined in our incident reporting and serious incident policy is about promoting a just, fair and responsible culture which fosters learning and improvements as a result of errors. The fair treatment of colleagues supports a culture of fairness, openness and learning in the NHS by making colleagues feel confident to speak up when things go wrong, rather than fearing blame.

Where appropriate the NHS England "A just culture guide" will be used to encourage the consistent, constructive and fair treatment of colleagues involved in a patient safety incident.

[https://www.england.nhs.uk/wp-content/uploads/2021/02/NHS\\_0932\\_JC\\_Poster\\_A3.pdf](https://www.england.nhs.uk/wp-content/uploads/2021/02/NHS_0932_JC_Poster_A3.pdf)

### 3. Aims & Objectives

This document provides a procedure for dealing with concerns about the professional and personal conduct and capability of doctors employed by or contracting with Connect Health. (see Section 2). The policy covers:

- Action when a concern arises – the investigation process
- Restriction of Practice and Exclusion from Work
- Conduct Hearings and Disciplinary Matters
- Capability Issues
- Health Concerns about the doctors

These sections must be read in conjunction with the 'Maintaining High Professional Standards in the Modern NHS' (MHPS) (2005), and 'A practical guide for responding to concerns about medical practice' (2019). See links below:

[http://webarchive.nationalarchives.gov.uk/20130123204228/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4103586](http://webarchive.nationalarchives.gov.uk/20130123204228/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586)

Although the MHPS document was drafted and revised for NHS bodies in 2005, it remains the de facto standard for managing formal concerns about doctors providing services in support of NHS patients in NHS and independent sector providers.

<https://www.england.nhs.uk/wp-content/uploads/2019/03/practical-guide-for-responding-to-concerns-about-medical-practice-v1.pdf>

Concerns will be handled fairly and transparently, reflecting the overriding need to maintain patient safety while offering appropriate support and guidance to the doctors concerned.

The document provides an assurance to doctors that concerns about them, and their colleagues', performance will be dealt with in a fair and equitable manner, and in line with the guidance provided to the rest of the NHS by the Department of Health and Social Care (DHSC). It also ensures that those with a responsibility for managing doctors have clear guidelines by which to proceed once a concern is brought to their attention.

Issues involving locum agency colleagues will be addressed with the involvement of the Locum Agency. Doctors on agency contracts are professionally accountable for their conduct and actions and will be expected to co-operate with any disciplinary investigations or hearings.

## 4. Duties: Roles & Responsibilities

The main duties are provided in this section. However, additional duties are included within the text of the policy.

### Connect Health Board

The Board is responsible for ensuring the appropriate corporate and clinical governance of the organisation. Board members may be required to sit as members of an appeal or disciplinary panel. Therefore, information given to the Board will only be sufficient to enable the Board to satisfy itself that the procedures are being followed.

### Non-Executive Director

In cases where serious concerns are raised, the Chair of the Board, or their deputy, will designate a non-executive member to oversee the case and ensure the momentum is maintained; as well as overseeing the case manager and investigating officer during the investigation process.

Representations may be made to the designated Board member in regard to exclusion, or investigation of a case if these are not provided for by Connect Health's grievance policy. The designated Board member must also ensure, among other matters, that time frames for investigation or exclusion are consistent with the principles of Article 6 of the European Convention on Human Rights (which broadly speaking sets out the framework of the rights to a fair trial. (*Maintaining High Professional Standards in the Modern NHS, 2005, DH, amended version*)).

### Chief Executive Officer

The Chief Executive Officer will maintain oversight of serious disciplinary cases and will inform NHS England (London Region) what action is proposed to resolve exclusions of doctors. The Chief Executive Officer is accountable for ensuring that a case manager is appointed.

### Chief Medical Officer

The Chief Medical Officer:

- Will ensure that doctors are aware of their responsibility to comply with the policy and will decide on appropriate action.
- Must raise all serious concerns with the Chief Executive Officer.
- Will appoint a senior manager or clinician to act as the case manager to oversee the case on his/her behalf.
- Is responsible for appointing a case investigator.
- May make a referral to the Practitioner Performance Advice Service, part of NHS Resolution, or the General Medical Council (GMC)

## The Responsible Officer (RO)

The RO has overall responsibility for the effective implementation and operation of appraisals for all medical colleagues with a prescribed connection to the company. The RO makes a revalidation recommendation to the GMC every five years about each doctor with a prescribed connection to Connect Health. The role of the RO is distinct and complements that of the company's Chief Medical Officer.

The RO is responsible for:

- Ensuring appraisals are carried out to the appropriate standard and that information from all the doctor's roles are considered
- Monitoring doctors' conduct and performance
- Evaluating the fitness to practice of all doctors with whom the designated body has a prescribed connection
- Identifying and investigating concerns about doctors' conduct or performance
- Ensuring that appropriate action is taken in response to concerns
- Must raise all serious concerns with the Chief Executive Officer.
- May make a referral to the Practitioner Performance Advice Service, part of NHS Resolution, or the General Medical Council (GMC).

## Chief People Officer

The Chief People Officer will:

- Provide advice on employment matters.
- Ensure that the policy and procedure is reviewed and monitored for its effectiveness.
- Ensure that medical exclusions are kept under review.

## Service Contract Operations Managers, Clinicians in leadership roles, and Clinical and Educational Supervisors

Service Contract Operations Managers, Clinicians in leadership and managerial roles at any level within the company, and Clinical and Educational Supervisors will:

- Ensure that doctors are aware of the required standards of conduct and will handle any concerns in accordance with this policy and procedure.
- Encourage a culture in which incidents and complaints are addressed openly, with an emphasis on learning from mistakes.
- Where a concern about conduct has arisen, managers and clinical leads should bring the concern promptly to the attention of the doctor's line manager who will escalate if necessary to the relevant member of the Senior Leadership Team, and the Responsible Officer who will notify the Chief Medical Officer. Doctors may also notify the Responsible Officer or Chief Medical Officer directly about any concerns affecting the conduct, performance or health of their colleagues, in accordance with the regulatory guidelines relating to patient safety.

## **Doctors Responsibilities**

Doctors are personally accountable for their professional practice and have a duty to comply with their conditions of registration and professional codes of conduct. They must also comply with the company's rules related to counter fraud and maintain confidentiality and data security. Failure to do so may lead to disciplinary action under this policy and procedure.

Doctors are required, as part of their professional responsibility, to comply with this policy and procedure and to participate in any investigations into their conduct. This may include providing statements and/or attending hearings, even after they have left the company.

Where a concern about conduct has arisen, doctors should bring it promptly to the attention of their line manager who will escalate to the relevant member of the Senior Leadership Team, and the Responsible Officer who will notify the Chief Medical Officer. Doctors may also notify the Responsible Officer or Chief Medical Officer directly about any concerns affecting the conduct, performance or health of their colleagues, in accordance with the regulatory guidelines relating to patient safety.

## **People Team**

The People Team are responsible for advising clinical colleagues in the operation of all employment policies and procedures, and for attending meetings, case conferences and hearings where appropriate.

## **Director of Nursing, Clinical Governance and Risk**

The Director of Nursing, Clinical Governance and Risk's role is to advise and support the Responsible Officer in implementing this policy and procedure.

## **Head of Learning and Organisational Development**

The Head of Learning and Organisational Development will support the delivery of identified learning and development needs.

## **Employee Assistance Programme & Occupational Health Service**

However sensitively handled, investigating concerns are acknowledged to be extremely stressful and difficult. Where concerns are raised, colleagues will be made fully aware of the support provided by the Employee Assistance Programme & the Occupational Health Service. The Employee Assistance Programme & the Occupational Health Service offers a counselling service that can be accessed via self-referral. Employee Assistance and Occupational Health advice will be available for colleagues under investigation, whatever the contractual arrangements for the services they provide.

## **Trade Unions and Professional Organisations**

Representatives of recognised trade unions and relevant professional organisations will work jointly with the Connect Health's managers to ensure that the policy reflects Connect Health's and national standards, and is applied in a fair, consistent and timely manner.

Doctors have a right to be accompanied at any stage of this process by another employee of Connect Health; an official or lay representative of the British Medical Association (BMA), defence organisation or other indemnity organisation; a friend, partner or spouse, in line with the MHPS framework.

Such a representative may be legally qualified, but they will not be representing the doctors formally in a legal capacity.

The representative will be entitled to present a case on behalf of the doctors, address the panel and question the management case and any witness evidence. They will not be entitled to answer questions on the doctors' behalf.

## **Case Manager (may be Chief Medical Officer or nominated deputy, including an outsourced complaints investigation provider)**

Identifies the nature of the problem/concern on the information available and outlines the scope of the investigation by setting out Terms of Reference.

They are responsible for ensuring timescales are met and that the doctor is kept informed about the arrangements for the investigation, who is involved and how the case will be managed and will provide a regular report on exclusions to the Chief Executive Officer and the Chief Medical Officer.

The Case Manager decides how to progress the case based on the report prepared by the Case Investigator. If the case proceeds to a hearing the Case Manager would distil out of the report the salient points of their management case which would be presented at a hearing.

## **Case Investigator**

A Case Investigator is an appropriately trained individual who is commissioned by Connect Health to determine whether there is a problem to address in a doctor's performance. A Case Investigator may be commissioned internally if there is an appropriately trained individual, or they may also be commissioned from an external source to carry out an investigation.

The role of the Case Investigator is to lead the investigation, establish the facts, interview individuals involved and obtain written statements where necessary leading to the compilation of an unbiased and objective case management report of their findings.

*In summary*, the Case Manager outlines the scope of the investigation, and the Case Investigator undertakes an investigation according to the parameters of the Terms of Reference, reporting to the Case Manager, and prepares a report to be submitted to the Case Manager.

## **NHS Resolution**

NHS Resolution has two roles in respect of this policy.

### **1. Practitioner performance advice**

Practitioner Performance Advice (PPA) (formerly the National Clinical Assessment Service, NCAS) was established in 2001 and is now a service delivered by NHS Resolution through the Practitioner Performance

Advice Service to provide expertise to the NHS and independent sector providers treating NHS patients about resolving concerns fairly, share learning for improvement and preserve resources for patient care. The PPA also provides support in the form of mediation and team reviews where the issue may be of a collective nature and may include other professional groups.

The PPA currently advises on concerns for doctors, dentists and pharmacists only. Any individual assessments and action plans also only cover those groups. In some circumstances the case may require a performance assessment by the PPA covering both conduct and capability, depending on the circumstances of the case. If the issues are amenable to remediation PPA can provide support with the drafting of an action plan. The PPA will provide advice in respect of doctors working for Connect Health under any contractual arrangement with the doctor, providing that the service is provided for NHS patients.

The PPA service can be contacted at any stage of the concern and should be contacted for advice where a healthcare organisation is considering excluding, suspending or restricting a doctors' practice. Where patient safety is considered to be at risk or where there are allegations of serious misconduct, it is important for healthcare organisations to be able to take appropriate steps so that the situation can be investigated. The PPA will work with healthcare organisations to help them consider the options available to them to understand and address the concerns, and to help ensure that their decisions are reasonable and proportionate to the circumstances. Where exclusion, suspension or restriction is thought to be appropriate, Connect Health will continue to work with the healthcare organisation to routinely monitor the position and advise on good practice, taking account of local and national policy requirements.

## **2. The Clinical Negligence Scheme for Trusts (CNST)**

The Clinical Negligence Scheme for Trusts (CNST) handles clinical negligence claims against Connect Health where Connect Health directly holds a standard NHS Contract with an NHS commissioning body. If a complaint being dealt with under this policy is likely to be associated with a claim for clinical negligence against an individual working for Connect Health, this should be reported to the Chief Medical Officer and the Director of Nursing, Clinical Governance and Risk.

## **Commercial Clinical Negligence Insurer**

Connect Health has cover with a commercial insurer to handle clinical negligence claims against Connect Health where Connect Health holds a contract with a non-NHS body for the provision of services. In addition, any doctors working in such a service will need full indemnity from their medical defence organisation as this work is not covered by the Clinical Negligence Scheme for Trusts (see above). If a complaint being dealt with under this policy is likely to be associated with a claim for clinical negligence against an individual working for Connect Health, this should be reported to the Chief Medical Officer and the Director of Nursing, Clinical Governance and Risk.

## **General Medical Council (GMC)**

The General Medical Council regulates the registration of doctors and their licence to practice in the UK. The Responsible Officer liaises closely with the GMC's employment liaison advisor where concerns have been raised about doctors, where there may be a breach of professional standards or where rehabilitation and remediation are recommended by the GMC in order to return to independent practice.



## 5. Definitions

- **Concern:** Concerns arise where there is reason to believe that patient safety of care is being compromised by the practice of doctors or the systems, policies and procedures of the organisation in which they work. This policy is primarily concerned with the investigation and management of concerns of doctors.
- **Exclusion:** The term 'exclusion' from work is used to replace the word 'suspension' which can be confused with action taken by the GMC or regulator to suspend the doctor from the register pending a hearing of their case or as an outcome of the hearing.
- **Personal conduct:** Performance or behaviour of a doctors due to factors other than those associated with the exercise of medical skills.
- **Professional Conduct:** Performance or behaviour of a doctors arising from the exercise of medical skills.
- **Professional competence:** Adequacy of performance of a doctor arising from the exercise of medical skills and professional judgment.

## 6. Managing Concerns: Doctors

### Referral to the Practitioner Performance Advice team at NHS Resolution, the GMC and/or NHS England (London Region)

At any point, the concerns can be raised with the Practitioner Performance Advice service, whose role is to help improve patient safety by helping to resolve concerns about the professional practice of doctors. They provide expert [advice and support](#), [clinical and behavioural assessment](#) and [training](#) to the NHS. Advice is that NHS Resolution should be contacted with concerns about a doctor's performance at the earliest opportunity. (<https://resolution.nhs.uk/services/Doctors-performance-advice>).

The Practitioner Performance Advice service will be consulted where targeted retraining under the informal stages of the capability procedure is under consideration. If informal resolution is not considered appropriate, or has failed to resolve the concern, the matter will be referred to the Practitioner Performance Advice service prior to consideration by a capability panel. The focus of the Practitioner Performance Advice service's work is likely to involve performance difficulties which are serious and / or repetitive, or where informal processes have failed to resolve the problem. If the Practitioner Performance Advice service is asked to undertake an assessment of the doctor's practice, the outcome of a local investigation may be made available to inform this.

A doctor undergoing assessment by the PPA must co-operate with a request not to practice in the NHS or private sector other than in their main place of employment until the assessment is complete.

At any point in the process, where the case manager has reached the clear judgment that a doctor is considered to be a serious potential danger to patients or colleagues, that doctor must be referred to the GMC, whether or not the case has been referred to the Practitioner Performance Advice service. This should be done following discussion with the Chief Medical Officer and the Responsible Officer, and for doctors on the performers list the NHSE Regional Medical Director must be informed.

Consideration should also be given to whether the issue of an alert letter should be requested (see 'More Serious Concerns – Formal Approach' below).

## Action when a concern arises – the investigation process

The management of performance is a continuous process, which is intended to develop and improve the performance of all doctors.

Numerous ways exist in which concerns about a doctor's performance can be identified through which remedial and supportive action can be quickly taken before problems become serious or patients are harmed, and which need not necessarily require formal investigation or to resort to disciplinary policy.

Concerns may arise in several ways, for example:

- By other healthcare professionals, health care managers, students and non- clinical colleagues
- Review of performance against job plans, annual appraisal and revalidation
- Monitoring of data on performance and quality of care
- Clinical governance, clinical audit and other quality improvement activities
- Complaints from patients, carers or relatives of patients
- Information from the regulatory bodies
- Litigation following allegations of negligence
- Information from the police or coroner
- Court judgments

The above list is not exhaustive.

Where a concern about conduct has arisen, doctors should bring it promptly to the attention of their line manager or clinical lead and it should be managed in line with the organisation's leadership and clinical governance structure.

Doctors may also notify the Chief Medical Officer and Responsible Officer directly about any concerns affecting the conduct, performance or health of their colleagues, in accordance with Connect Health's Incident Reporting, Management and Investigation Policy and NHS England *A practical guide for responding to concerns about medical practice* (2019).

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

When establishing the level of concern, reference should be made to Appendix 1 – Assessment of Concern, which provides a guide to support the assessment process. The level of concern may change at different points in the process as further information becomes available, so it is helpful to refer to this guidance throughout the investigation.

Also, see Appendix 2: Process Flowchart summary and for the Appendix 3: NHS England Flowchart for visual summaries.

## Minor Concerns – Informal Approach

Connect Health recognises minor conduct issues can often be resolved informally between colleagues and their managers. Where appropriate, a note of any such informal discussions may be placed on file but will be excluded for the purposes of any future disciplinary hearings. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

It is important to tackle conduct and performance issues informally where possible. Minor issues should be dealt with through supportive action or remedial training so that they can be quickly resolved before they become serious, or patients are harmed.

Matters of minor misconduct may not require formal investigation. Where such issues arise, the line manager, relevant clinical lead, or clinical or educational supervisor should:

- Inform the Chief Medical Officer and Responsible Officer
- Arrange for informal discussion with the doctors concerned
- Decide on appropriate action following discussion with the doctors
- Keep a written record of the discussion, give a copy to the doctors and give them the opportunity to comment on the record.
- Implement agreed remedial action / training where necessary (Refer to the "Doctors – Rehabilitation and Remediation Policy")
- Keep the situation under review
- Inform Health Education England or its representatives where the concerns are about a doctor in training
- Inform the individual that failure to make the necessary improvements may result in formal disciplinary action being taken

The Chief Medical Officer or the Responsible Officer will discuss jointly and

- Consider informing the NHS England medical director if the doctor is on the GP performers list

## More Serious Concerns – Formal Approach

If there is a serious concern or the facts are unclear, the following procedure should be followed and see flow chart appendix 2:

- The concerns must be registered with the Chief Medical Officer and the Responsible Officer.
- The Chief Medical Officer may act as the case manager or delegate this responsibility where appropriate.
- If the doctor is on the performers list the Chief Medical Officer may choose to inform the NHS England Medical Director.
- All serious concerns must be registered with the Chief Executive, or their Deputy.
- The Chief Medical Officer is accountable for ensuring that a Case Manager is appointed.
- The Case Manager is responsible for appointing a case investigator who will be required to establish the facts.

- The Case Manager consults with the Chief People Officer.
- The Practitioner Performance Advice team should be contacted at an early stage. The initial approach to the Practitioner Performance Advice team should normally be made through the Chief Medical Officer or the Chief People Officer.
- Consideration will be given to whether some restriction of duties or immediate exclusion is necessary.
- In the rare event that there is a serious risk to patient safety or to colleagues in relation to the concerns identified about the doctor the GMC Employment Liaison Advisor and NHS Resolution's PPA should be informed. The PPA may consider the generation of an Healthcare Practitioner Alert Notice. In these circumstances Connect Health has a duty of care to inform the doctors' other employers, (NHS or non-NHS).
- Where Criminal action is suspected, either in the UK or abroad, this must additionally be reported to the police .
- In cases of suspected fraud, the Chief Financial Officer should be contacted. The Chief Executive Officer should be notified at the same time, and they will decide the appropriate way forward.
- If criminal charges unconnected to any Connect Health investigation are brought to the attention of the organisation, bearing in mind the presumption of innocence, consideration should be given as to whether the charges, if proven, could render the doctor unsuitable for employment or mean that they pose a risk to patients or colleagues.
- The doctors will be informed in writing by the case manager of the concerns or allegations, that a formal investigation will be undertaken and of their right to representation and this communication should include the name of the case investigator and the specific concerns or allegations.
- The Chairman of the Board, or their deputy, must designate a non-executive director (known as 'the designated member') to oversee the case.
- The Responsible Officer should be advised about the progress and outcome of any investigation and advice from regulators and other external bodies.

## Investigation

The case investigator is responsible for the detailed handling of the investigation. The purpose of the investigation is to establish the facts objectively and provide a report on the findings. The outcome of the investigation should be sufficient to enable the case manager to make a decision about further action. The case investigator or anyone sitting on a subsequent disciplinary panel must be appropriately trained and experienced and will also receive support from the People Team in carrying out the investigation. The Case Investigator does not necessarily require a clinical background, although this is preferable, but if not employed in a clinical role should consult with senior clinical colleagues where clinical issues require consideration as part of the investigation.

The Case Investigator must:

- Carry out the investigation in a timely manner, acknowledging organisational constraints.
- Ensure safeguards are in place during the investigation to maintain confidentiality as far as possible.
- Use a format for witness statements approved by Connect Health and ensure that statements are signed and dated.
- Collate evidence appropriately and anonymise patient information, ensuring data is gathered in

accordance with current legislation regarding the use of information and that patient confidentiality is maintained.

- Accurately record meetings and keep a file note of telephone conversations.
- Ensure there is sufficient evidence collected to enable the case manager to determine the appropriate next steps, including the establishment of a case to answer prior to a decision to convene a disciplinary/capability panel.
- Assist the designated non-executive director/board member and the responsible officer by providing updates on the progress of the case.
- Prepare a report to be submitted to the case manager, normally within 5 working days of the conclusion of the investigation, which will enable the case manager to decide on an appropriate course of action.

The doctor will be given the opportunity to put their view of events to the case investigator and may be accompanied at investigatory meetings. The companion may be a colleague from Connect Health or a representative of a trade union or professional association.

If, during the investigation it appears that the case involves more complex clinical issues than first anticipated, the case investigator must raise this with the case manager who should consider whether a doctor from an appropriate specialty should be invited to assist. The doctor should not be involved with the case other than in an advisory capacity. On advice from the case manager, Connect Health reserve the right to request the advice of a doctor from outside the company, at their sole discretion. If during the investigation the case investigator identifies other areas of concern, they should discuss this with the case manager, to review whether the Terms of Reference of the investigation require amendment. The doctor must be kept informed in writing of any changes.

## Investigation Report and Recommendations

The report of the investigation should give the case manager enough information to decide the way forward. The case investigator submits a report to the case manager normally within 5 working days of the conclusion of the investigation.

At this stage it should be decided if the issue is one of conduct or one of capability, or both (see definitions below).

## Action Following Local Investigation

When the report of the investigation has been received, the case manager must give the doctor an 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 statement in mitigation, should be received within 10 working days of the date of request. This deadline may be extended at the discretion of the case manager.

The purpose of receiving the doctor's comments is to ensure that the information in the report is as accurate as possible, prior to Conduct or Capability panel hearings or referral to NHS Resolution's Practitioner Performance Advice service. The case manager should decide what further action is necessary, taking into account the findings of the report, and the advice of the PPA.

### **Conduct Issues**

Conduct issues are subsequently dealt with in line with Connect Health's Disciplinary Policy and Procedures

whilst capability can be addressed through several options set out below. Conduct is when the behaviour of the doctor is the source of the concern. This can include failure or refusal to comply with the organisation's standards. Where an investigation identifies issues of professional misconduct as opposed to personal, the case investigator should additionally seek professional advice from a doctor in the same specialty who has not been involved in the case.

Professional misconduct is defined as actions or behaviours that do not comply with standards of professional behaviour laid down by professional regulatory bodies or failure to comply with Connect Health's clinical policies. All forms of misconduct should be dealt with under the organisation's Disciplinary Policy and Procedure.

### **Capability Issues**

Capability is the ability of the doctor to perform aspects of their role in question. This is demonstrated by a clear failure by an individual to deliver an adequate standard of care, or standard of management or clinical practice, through lack of knowledge, ability or consistently poor performance. There can be a few underlying reasons such as:

- Health problems
- Problems with the work environment
- Lack of clinical capability.

Wherever possible the aim should be to resolve issues of capability through ongoing assessment and support. If serious concerns regarding the safety of patients or colleagues arise during the investigation consideration should be given to, restriction of duty, exclusion, and or referral to the regulatory body.

The options available to the Case Manager once the investigation report is received include:

- No further action
- Employee Assistance Programme and referral to Occupational Health. This is available to colleagues providing services under any contractual arrangement
- Informal processes to correct performance with the assistance the Practitioners Performance Advice team if required
- Instigate capability procedures outlined above
- Refer to the NHS England regional medical director for GPs on the performers list, for consideration by the regional performance advisory group, (PAG).
- Restrictions on practice or exclusion from work

The doctor will be informed in writing of the outcome of the investigation and what the next steps will be.

## **Restriction of Practice and Exclusion from Work**

Where serious concerns arise about a doctor's conduct, performance or health, Connect Health will consider whether it is necessary to place temporary restrictions on their practice. This might be to amend or restrict their clinical duties or exclude the doctor completely from the workplace. Before a manager authorised to exclude a doctor (see below) agrees to this decision, the "Restriction of practice and exclusion from work" section in the "Maintaining High Professional Standards in the Modern NHS" document must be referred to and, where appropriate, complied with.

Exclusion of doctors from the workplace is a precautionary measure and not a disciplinary sanction. It should be used as an interim measure whilst action to resolve a problem is being considered and always be considered as a last resort. Exclusion will be on full pay.

Exclusion from the workplace is potentially justified where this cannot be done through other measures:

- To protect the interests of patients, Connect Health or other colleagues
- Where there are significant concerns about conduct or capability, pending investigation
- To assist the investigative process when the doctor's presence is likely to impede the process
- When a serious criminal charge has been brought
- To provide a cooling off period.

A full risk assessment must be completed before considering exclusion, taking into account initially the alternative options. A template and online resources from the PPA are available to aid this assessment (Appendix 1 – Assessment of Concern).

No doctors should be excluded from work other than through this procedure. Informal exclusions, including "gardening" or other leave should not be used as a means of handling an issue covered by this procedure.

## Managers Authorised to Exclude:

Managers who are authorised to exclude doctors are:

- Chief Executive Officer
- Chief Medical Officer
- Chief People Officer
- Director of Nursing, Clinical Governance and Risk
- A Service Contract Operations Manager or Head of Operations, if they have been authorised to do so by one of the above listed members of the Senior Leadership Team.

The Chief Medical Officer should be consulted before exclusion wherever practicable. If not practicable the situation must be discussed with the Chief Medical Officer and the Chief People Officer as soon as possible after a immediate exclusion has been applied. The Responsible Officer should be informed of the exclusion.

The Board has a responsibility for ensuring that these procedures are established and 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 these procedures.

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 procedures are being followed. Only the designated Board member should be involved to any significant degree in each review.

## Exclusion: Key Points

- For doctors NHS Resolution's Practitioner Performance Advice service (PPA) must be notified before formal exclusion.
- An initial immediate exclusion of no more than two weeks
- Appointment of a Board member to monitor the exclusion and subsequent action.

- Referral to PPA for formal assessment if part of the case management plan.
- Active review at 4-weekly intervals to decide renewal or cessation of exclusion.
- A right to request a return to work if a regular review is not carried out.
- Formal exclusion for periods of up to four weeks at a time.
- Ensure regular monthly reporting on the management of the case to the Chief Executive Officer and Board.
- A programme for return to work if not referred to disciplinary or capability procedures.

## Immediate Exclusion (up to two weeks)

The excluding manager should explain in broad terms why the exclusion is being made (*there may be no formal allegation at this stage*) and agree a date up to a maximum of 2 weeks away, at which time the doctor should return to the workplace for a further meeting. The case manager must advise the doctor of their rights, including to representation. The exclusion must be confirmed in writing as soon as possible and within 5 working days.

## Formal Exclusion (for periods up to four weeks)

A formal exclusion may be appropriate where there is a need to protect the interests of patients or other colleagues 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 is warranted to protect patients
- The presence of the doctor in the workplace is likely to hinder the investigation
- There are serious criminal investigations on-going

When informing the doctor of a formal 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 why exclusion is regarded as the only way to deal with the case. They should be given the opportunity to comment on the decision and propose alternatives to exclusion.

The formal exclusion must be confirmed in writing with a copy to the doctor's nominated representative, as soon as reasonably possible, stating:

- Effective date and time
- Duration (up to four weeks in the first instance)
- Content of the allegations
- Terms of the exclusion (e.g., exclusion from the premises)
- The need to remain available for work and any meetings relating to the investigation
- That a full investigation or other action will follow
- Arrangements for review of the exclusion.
- Allocation of a support person, not related to the investigation



- Advice about how to obtain support from Employee Assistance Programme

## Conditions of Exclusion

- The doctor must remain available for work during their normal contracted hours.
- The doctor must give Connect Health details about other employers or work, both NHS and private. Failure to supply relevant details may result in disciplinary action or referral to the GMC.
- Where Connect Health has placed restrictions on practice, the doctor will be expected to agree not to undertake work in that area of practice with any other employer or through any other service or contractual mechanism.
- It is the responsibility and duty of any doctor to immediately inform Connect Health or any other employer that they provide a service to, of any exclusions or restrictions to practice that they are subject to.
- They should also inform the case manager of any other organisation with whom they intend to undertake either voluntary or paid work and obtain prior consent before continuing it.
- The doctor should seek prior permission before taking annual leave or study leave. Permission will not be unreasonably withheld. If the doctor is not available for work and has not sought prior permission, this may be treated as unauthorised absence and pay withheld for the appropriate period.

In cases where disciplinary procedures or investigation is under way, exclusion may be extended until the matter is resolved, but should be reviewed regularly and renewed at four weekly intervals (see section Keeping Exclusions under Review).

If it is found that the allegations are without foundation or that the investigation can continue with the doctor working normally or with restrictions, the manager should lift the exclusion and make arrangements for the doctor to return to work with any appropriate support as soon as possible.

The Case Manager will encourage the doctor to accept counselling support and the opportunity to be given a mentor, coach or "buddy" to keep them in touch with professional developments affecting their practice. The doctor may also benefit from access to restorative supervision as a resource to further support and enable the doctor to utilise their critical thinking skills required for safe practice.

## Alternatives to Exclusion

Alternative options to exclusion include:

- Supervision of normal contractual clinical duties by an appropriate senior colleague
- Restriction from certain forms of clinical duties or locations
- Restriction of activities to administrative, research/audit, teaching and other educational duties
- With medical advice, sick leave for the investigation of specific health problems.

If the exclusion is likely to be lengthy the case manager will seek the advice of NHS Resolution's Performance Advice service for doctors as to whether there is an alternative way to handle the matter. However, even during a prolonged period of exclusion, the principle of regular review should be adhered to.

## Informing other Organisations

If there is concern that the doctors may pose a risk to patients, Connect Health has an obligation to inform other organisations including those in the NHS and private sector, of any restrictions on practice or exclusion and provide a summary of the reasons for it. Connect Health will need to consider the need to involve the Local Authority Designated Officer (LADO) if the doctor works with children, whilst undertaking their Connect Health role. Further information regarding the LADO is available from the Connect Health Safeguarding Manager.

The Information shared to support external organisations to make an informed decision about the doctor's continued work or employment will be proportionate, thereby ensuring Connect Health fulfills its statutory duties in terms of confidentiality, employment rights and public protection.

If it is believed the doctor is practicing in the NHS or in other private sector organisations in breach or defiance of an undertaking not to do so, the case manager/ Chief Medical Officer should contact the GMC and the Medical Director of NHS England (London Region) who may contact NHS Resolution to consider issuing an 'Alert Letter'.

## Keeping Exclusions under Review

The Case Manager will arrange for the exclusion to be reviewed and, where applicable, renewed at four weekly intervals. The doctor should receive written notification on each occasion when exclusion is reviewed. The exclusion will not be rendered invalid by the failure of the Connect Health to provide a letter of confirmation as long as the matter is being properly handled.

The case manager will provide a regular report on exclusions to the Chief Executive Officer, the Chief Medical Officer and the Responsible Officer. The Board will be kept informed of exclusions and their duration at the earliest opportunity. The Board is ultimately responsible for ensuring that the organisation's internal procedures are followed and that all reasonable efforts are made to resolve the situation as quickly as possible.

The Board should, therefore:

- Require a summary of the progress of each case at the end of each period of exclusion, demonstrating that procedures are being correctly followed and that all reasonable efforts are being made to bring the situation to an end as quickly as possible
- Receive a two monthly statistical summary showing all exclusions with their duration, number of times the exclusion had been reviewed and extended, within Connect Health's main suspension reporting statistics

Board members might be required to participate in disciplinary hearings or appeals. Therefore, information supplied should be limited to enable the Board to satisfy itself that cases are being handled appropriately.

Only the designated non-executive director should be involved to a significant degree in an individual case; he or she will not sit on any appeal panel involving the doctors. (Maintaining High Professional Standards in the Modern NHS, 2005).

All long-term exclusions (over three months) will be reported to NHS England (London Region). NHS Resolution's Practitioner Performance Advice service for doctors will review the case and advise the Connect Health on its handling of the case until the matter is concluded.

Normally there will be a limit of six months exclusion, except for those cases involving criminal or regulatory body investigations or serious conduct/capability issues where a complex investigation is under way. If there is no realistic prospect of a return to work until a matter is concluded, the Chief Executive Officer or the Chief Medical Officer will inform the doctor of the situation.

## **Action after 12 weeks' (3 months') formal exclusion**

After three months' exclusion the case manager will provide a report to the Chief Executive Officer and the Chief Medical Officer outlining the reasons for the continued exclusion and why restrictions on practice would not be an appropriate alternative. Connect Health will report the case to NHS England (London) informing them what action is being taken to resolve the situation.

The case will be referred to NHS Resolution's Practitioner Performance Advice service for doctors explaining why continued exclusion appropriate and what steps is are being taken to resolve the issues.

## **Action after 24 weeks' (6 months') formal exclusion**

After six months, a further position report will be made by the Chief Executive Officer or the Chief Medical Officer to NHS England (London Region).

This will set out:

- Reasons for the exclusion
- Dates of any hearings
- Projected timetable for completion of the process
- Whether retraining or other rehabilitation action is proposed
- Actual and anticipated costs of the exclusion.

If it is decided that the exclusion should come to an end, or there is a decision to restrict practice rather than exclude, the case manager must ensure there are formal arrangements in place for the return to work of the doctors. These may involve the appointment of a mentor, coach, clinical supervisor or 'buddy' who will report on the progress of re-integration to normal working.

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.

The case manager, designated Non-Executive Director and the Responsible Officer should also keep themselves informed of any difficulties with the progress of a doctor who has returned to work. Any ensuing difficulties must be handled pro-actively, with the aim of helping the doctor to resume their career successfully.

## **Conduct Hearings and Disciplinary Policy & Procedure**

### **Misconduct Procedure**

All issues regarding the misconduct of doctors will be dealt with under the Connect Health's disciplinary policy.

Connect Health will deal with any concerns about doctors with honorary contracts, contractors, or split contracts in liaison with the substantive employer. Where the case is associated with work undertaken on

behalf of Connect Health under any contractual arrangement (including a sessional agreement, sub-contract, training contract (Health Education England), service level agreement, practicing privileges, self-employed, or any other engagement, honorary or voluntary work not specified), the company reserves the right to take action under its own policies while keeping other employers informed.

If a doctor considers that their case has been wrongly classified as personal conduct, they can make representations to the designated Board member/Non- Executive Director. The doctor should follow the Connect Health's Grievance Procedure, where it applies to them, if they are not satisfied with the response from the Board member/Non-Executive Director.

Some cases will involve a mixture of conduct and capability issues. It is recognised that these cases can be complex and difficult to manage. If a case covers more than one category of problem, it will usually be combined under a capability hearing. There may be situations when it is necessary to pursue a conduct issue separately.

It is for the employer to decide on the appropriate way forward, having consulted NHS Resolution's Practitioner Performance Advice service for doctors and its own employment law specialist.

## **Professional Misconduct**

Professional misconduct has been described as conduct "arising from the exercise of medical skills". Conduct which shows that a doctor has acted negligently or without regard for patients, has breached a professional code of conduct or abused their professional position will be regarded as professional misconduct.

Where the alleged misconduct includes matters of a professional nature, the case investigator will obtain independent professional advice, which may involve consulting the PPA. Where a case involving professional misconduct proceeds to a hearing under Connect Health's conduct procedures, the disciplinary panel will include a senior professional member who is a qualified doctor from the relevant specialty and who is not currently employed in the same division or service contract.

## **Criminal Offences**

A doctor must inform Connect Health if they are under investigation, charged, cautioned or convicted of a criminal offence.

Where a Connect Health investigation establishes an alleged criminal action, it will be reported to the police. The organisation investigation may still proceed in respect of those aspects of the case which are not directly related to the criminal investigation under way or would not compromise it. Connect Health will contact the police to establish whether an investigation would impede the police investigation under way.

In cases of fraud, any escalation will be determined by the Chief Finance Officer in liaison with the Chief Executive Officer. Where the Trust has refrained from taking action pending the outcome of a court case, and the doctor is acquitted, Connect Health has a duty to investigate and, where necessary, take action to ensure that the individual concerned does not pose a risk to colleagues, patients, the reputation of the profession or the organisation.

Where a case involves allegations of abuse against a child, whether the child is a patient or not, it may be necessary to involve the local authority, social services and the police in the investigation.

The outcome of the investigation may result in a referral to the Disclosure and Barring Service, whether or not disciplinary action is taken.

## Disciplinary Hearing

The disciplinary hearing for the doctor will normally be heard by a member of the Senior Leadership Team or their nominated deputy. The Chair will also be advised by the Chief People Officer.

If the issue has been classified as professional misconduct, the panel will include a qualified doctor from the relevant specialty and not currently employed by the organisation.

Neither the chair nor the panel members will have been directly involved in the investigation.

The doctor may be accompanied at the hearing by a trade union representative, a member of a professional defence organisation, or a work colleague from Connect. The work colleague is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

The hearing is not a court of law and although the doctor's representative may be legally qualified the hearing will not be conducted in a legalistic or excessively formal manner. The representative may present the case on behalf of the doctors, address the panel, and question the management case, the witnesses and any written evidence. The representative may not answer questions put to the employee.

## Appeals Procedure

An appeal is not a re-hearing but an opportunity to review the decision taken at the disciplinary hearing.

The right of appeal concerns whether the procedures were correctly and fairly followed, and whether the disciplinary sanction was reasonable in the circumstances.

Appeals will be handled in accordance with Connect Health's Disciplinary Policy.

## Capability Issues and Procedure

Concerns about the capability of a doctors may arise from a single incident or a series of events, reports or poor clinical outcomes. The Chief Medical Officer and the Responsible Officer should be informed of all performance concerns and will consider, with the line manager, what action is appropriate to manage the issues, dependent on the nature and seriousness of the problem that has been notified.

Any concerns about capability relating to a doctor in a recognised training grade should be considered initially as a training issue and dealt with where appropriate via the clinical and educational supervisors and the college or clinical tutor, with close involvement of the postgraduate dean.

Matters which may fall under the capability procedure include:

- Out of date clinical practice
- Inappropriate clinical practice arising from a lack of knowledge or skills that puts patients at risk
- Incompetent or negligent clinical practice
- Failure to recognise limitations
- Inappropriate delegation of clinical responsibility
- Inadequate supervision of delegated clinical tasks

- Ineffective clinical team working skills
- Inability to communicate effectively.

This list is not exhaustive.

A serious concern about capability will arise where the doctor's actions have, or may, adversely affect patient care. The Chief Medical Officer will establish whether the issue is either serious, not serious or unsubstantiated, if necessary by instigating a preliminary investigation to establish the facts (see section 'Action when a concern arises – the investigation process').

Wherever possible, the aim will be to resolve issues of capability through on-going assessment and support such as re-training or counselling. NHS Resolution has a key role to play in providing advice and support for local action to support the remediation of a doctor and should be consulted. In addition, attention should be paid to the guidance in the "Doctors Rehabilitation and Remediation of Performance Policy" (currently in draft).

In the event that informal action is not considered appropriate, or local remediation has failed to address the performance problem, the matter will be referred to NHS Resolution Practitioner Performance Advice service before consideration by a capability panel.

Capability may be affected by ill health. Arrangements for dealing with concerns about health of a doctors are described below.

## Action Following Local Investigation

When the report of the investigation has been received, the case manager must give the doctor an opportunity to comment in writing on the factual content of the report produced by the case investigator. Comments in writing from the doctors, including any statement in mitigation, should be received within 10 working days of the date of request. This deadline may be extended at the discretion of the case manager.

The purpose of receiving the doctor's comments is to ensure that the information in the report is as accurate as possible, prior to consideration by a capability panel or NHS Resolution's Practitioner Performance Advice service (in the event that a request for assessment is made). The case manager should decide what further action is necessary, taking into account the findings of the report, and the advice of NHS Resolution. The case manager will need to decide, for example:

- Whether action is required to exclude the doctor or
- To place temporary restrictions on his/her clinical duties.

If Connect Health is considering excluding the doctor due to performance problems, NHS Resolution's Practitioner Performance Advice (PPA) service for doctors should be informed. It is particularly desirable to find an alternative to exclusion when PPA assessment is likely to be involved because it is more difficult to assess a doctor who has been excluded from practice than one who is working.

Where, after investigation, it is decided that a case covers both conduct and capability issues the issues should usually be combined under a capability hearing. It is, however, for Connect Health to decide on the most appropriate way forward having consulted with NHS Resolution's Practitioner Performance Advice service for doctors, the Chief People Officer and its own employment law specialist (where appropriate).

There may be occasions when a case has been considered by NHS Resolution's Practitioner Performance Advice service for doctors, but the advice of the 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 on the completed investigation report and informed by advice from NHS Resolution's Practitioner Performance Advice service for doctors whether the case should be determined under the capability procedure. If so, a capability panel will be necessary.

If the doctor does not agree to their case being referred to NHS Resolution's Practitioner Performance Advice service for doctors, a capability panel hearing will normally be necessary.

## Local Remediation of Poor Performance

A doctor's performance may be defined as below the required standard when they are unable to carry out satisfactorily the duties for which they were employed. This may relate to:

- Substandard work
- Insufficient output
- An inability to perform all work required to the requisite standard.

In some cases, there may have been changes to the required skill base to which the doctors has not been able to adapt.

If, following investigation and discussion with NHS Resolution's Practitioner Performance Advice service it is appropriate and there is no dispute about the facts, the clinical manager and case manager will discuss an action plan with the individual to help improve performance. The shortfall between the required standards and the doctor's performance will be clearly explained See Connect Health's "Doctors Rehabilitation and Remediation of Performance Policy" – in draft.

Some performance issues can be addressed through targeted training or experience and personal development e.g., if a doctor is new in post; learning a new procedure; or a doctor in training requires further experience or support. The improvement plan may require additional training, supervision, counselling, mentoring or coaching. The clinical manager must ensure that timescales set for improvement are adhered to and that performance is monitored regularly. In reviewing the re-training or improvement plan, the clinical lead or nominated supervisor will:

- Provide information about any continuing shortfall between the required standards and the doctor's performance
- Seek an explanation from the doctor as to the reasons for any on-going problems
- Explore the benefits of any further training or counselling
- Extend the period of improvement where appropriate.

If, at the end of the review period, the clinical lead or supervisor is satisfied that the doctor has achieved the required improvement, they will meet the doctor to confirm the outcome and will write a letter confirming the decision and notifying them that the performance level needs to be maintained.

In the event that local remediation has failed to address the performance problem, the matter will be referred to NHS Resolution's Practitioner Performance Advice service for doctors for consideration of formal performance assessment. The case manager will inform the doctors concerned of the decision.

# Capability Hearing: Pre-Hearing Arrangements

Where concerns about capability cannot be resolved by any other route, it will be appropriate to arrange a capability panel hearing. The pre-hearing arrangements will be as follows:

- The case manager must notify the doctor in writing of the decision to arrange a capability hearing. This notification should be made at least 20 working days before the hearing and include details of the allegations. This period will give the doctor sufficient notice to allow them to prepare themselves for the hearing
- All parties must exchange any documentation on which they intend to rely in the hearing, including witness statements, no later than 10 working days before the hearing
- Should either party request a postponement of the hearing, the case manager is responsible for considering the request and providing a reasonable response. Connect Health retains the right, after a reasonable period of not less than 30 working days, to proceed with a hearing in the doctor's absence, and will act reasonably in deciding to do so
- It is the doctor's responsibility to arrange for attendance of their representative (see above) and witnesses. Connect Health will facilitate this wherever possible
- A final list of witnesses will be provided by both parties not less than 2 working days before the hearing
- Witnesses may be accompanied at the hearing. If a witness chooses to be accompanied, the person accompanying them will not be able to participate in the hearing.

## Capability Panel

The capability hearing will normally be chaired by a member of the Senior Leadership Team. The panel will comprise a total of 3 people, normally 2 members of Connect Health's Board, or senior colleagues appointed by the Board for the purpose of the hearing. At least one member of the panel must be a doctor, who is not employed in the same division or service contract. As far as is reasonably possible, no member of the panel or advisors to the panel should have been previously involved in the case.

If not already represented on the panel, arrangements must be made for the panel to be advised by:

- A senior member of the People Team
- A senior clinician from the same or similar clinical specialty as the doctor concerned but from another division, service contract or external to Connect Health

Connect Health will decide the membership of the panel. A doctor may raise an objection to the choice of any panel member within 5 working days of notification. The organisation will consider such representation and will explain its reasons for reaching its decision.

## Conduct of Capability Hearing

The Chair will introduce all persons present and announce which witnesses are available to attend the hearing. The hearing is not a court of law and although the doctor's representative may be legally qualified the hearing will not be conducted in a legalistic or excessively formal manner. The representative may present the case on behalf of the doctor, address the panel, and question the management case and any written evidence. The representative may not answer questions on the doctor's behalf.



The panel and its advisers, the doctor, his or her representative and the case manager and/or case investigator, will be present at all times during the hearing. Witnesses will be admitted giving their evidence and answer questions and will then retire.

The hearing procedure will be as follows:

- The case manager or case investigator will present the management case or investigation findings and call any witnesses as necessary
- The procedure for dealing with witnesses attending the hearing is the same, i.e. the witness will 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 that called the witness may seek to clarify any points that have arisen during questioning but may not, at this point, raise new evidence.
- The chair will invite the case manager or case investigator to clarify any matters arising from the management case or investigation on which the panel requires further clarification
- The doctors and/or their representative will present their case, calling any witnesses
- The chair will invite the doctor and/or representative to clarify any matters arising from the doctor's case on which the panel requires further clarification
- The chair will invite the case manager to make a brief closing statement summarising the key points of the case
- The chair will invite the doctor and/or their representative 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 will adjourn to consider its decision

## Decisions on Capability Issues

The panel will have the power to make a range of decisions including the following:

- Adjourn the case pending further investigation
- Verbal warning that there must be an improvement in clinical performance within a specified timescale with a written statement of what is required and how it might be achieved. This will remain on the doctor's file for a period of 6 months
- Written warning that there must be an improvement in clinical performance within a specified timescale with a written statement of what is required and how it might be achieved. This will remain on the doctor's file for a period of one year
- Final written warning that there must be an improvement in clinical performance within a specified timescale with a written statement of what is required and how it might be achieved. This will remain on the doctor's file for a period of one year
- Dismissal on the grounds of capability.

It is also reasonable for the panel to make comments and recommendations on issues other than the competence of the doctor where these issues are relevant to the case e.g., issues around systems or procedures operated by Connect Health.

The decision of the panel will be communicated to the parties as soon as possible and normally within 5 working days of the hearing. The parties should not necessarily expect a decision on the day of the hearing. The decision must be confirmed in writing to the doctor and include:

- The reasons for the decision
- Clarification of the right of appeal
- Notification of any intent to make a referral to the GMC.

## Appeals Procedure in Capability Cases

Appeals must be submitted in writing within 10 working days of receipt the date of the written confirmation of the original decision to the Chief People Officer, setting out the reasons for the appeal.

The purpose of the appeal is to ensure that a fair hearing was given to the original case and a fair and reasonable decision reached by the hearing panel. The appeal panel has the power to confirm or vary the decision made at the capability hearing, or order that the case is re- heard.

The appeal can also hear new evidence submitted by the doctor and consider whether it might have significantly altered the decision of the original hearing. The hearing should take place within 25 working days of the date of lodging the appeal, wherever possible.

The appellant will need to set out the grounds of the appeal in writing within 10 working days of the date of the hearing. The manager presenting the case will outline the facts of the case and explain the reasons for the decision.

The doctors may be accompanied at the hearing (see above). It is the appellant's responsibility to ensure the availability of his or her representative and any witnesses.

## The Appeal Panel

A panel of three will hear the appeal. The members will be:

- An independent member trained or advised about the legal aspects of appeals
- The Board Chair or other non-executive director of Connect Health
- A qualified doctor who is not employed in the same division or service contract and who must also have appropriate training or experience in hearing an appeal.

The panel will be advised by:

- A senior member of the People Team
- A consultant from the same specialty or subspecialty as the doctors concerned but from another division, service contract or external to the Connect Health.

Appeal panel members will be required to declare any potential conflicts of interest prior to commencement of the hearing and as soon as identified.

The chair of the panel has the right to call witnesses but must notify both parties in advance of the hearing.

The panel will have all the documents available to it, including witness statements from the previous capability hearing, together with any new evidence.

## Conduct of the Appeal Panel

The chair will introduce the panel and explain the process for the appeal. Both parties will state their case to the appeal panel and will be subject to questioning by either party, as well as the panel.

When all the evidence has been presented, both parties will briefly sum up. At this stage, no new information may be introduced.

The panel will consider:

- Whether there has been a fair and thorough investigation of the issue
- Whether there was sufficient evidence arising from the investigation on which to base the decision
- Whether the capability procedure was correctly applied
- Whether the sanction applied was reasonable in the circumstances.

If, during the hearing, the panel determines that it needs to hear the evidence of a witness not available at the hearing, it has the power to adjourn the hearing to allow for a statement to be obtained from the witness and/or for the witness to be called to the adjourned hearing.

The chair may also determine that new evidence needs to be presented. Much will depend on the weight of the new evidence and its relevance.

The panel can decide whether to hear the new evidence as relevant to the appeal, if necessary, by adjourning the appeal, or whether the case should be reheard by a capability hearing panel.

The panel, after receiving the views of both parties, will retire to consider its decision. The panel can:

- Confirm the decision made at the capability hearing
- Vary the decision made at the capability hearing
- Order the case to be re-heard.

## Decision of the Appeal Panel

The decision of the appeal panel will be communicated in writing and will be received by the appellant and the case manager normally within 5 working days of the conclusion of the hearing.

## Termination of Employment

Where the doctor is an employee and where the appeal is against dismissal and the appeal is upheld, the doctor should be reinstated and must be paid, backdated to the date of termination of employment. Where the decision is to rehear the case, the doctor should also be reinstated, subject to any conditions or restrictions in place at the time of the original hearing and pay backdated to the date of termination of employment.

It may be in the interests of both the doctor and the Company, and in agreement with each other, that termination is concluded via a settlement agreement, which may be at any stage of this procedure as well as before, during or after reinstatement is ordered. The settlement agreement is for the protection of each party and will set confidentiality requirements, but it will not include clauses intended to cover up inappropriate behaviour or inappropriate services.

Records must be kept, including a report detailing the conduct and/or capability issues, the doctor's defence or mitigation, the action taken and the reasons for it.

## **Termination of Employment or Contract for Services with Conduct or Capability Issue Unresolved**

Where the employee leaves employment or ceases providing services under any other contractual arrangement before disciplinary procedures have been completed, the investigation must be taken to a final conclusion in all cases and capability proceedings must be completed wherever possible, whatever the personal circumstances of the employee concerned.

Every reasonable effort must be made to ensure the doctor remains involved in the process. If contact with the doctor has been lost, Connect Health should invite them to attend any hearing by writing to both their last known home address and their registered address (these may be the same).

Connect Health will make a judgment, based on the evidence available, as to whether the allegations about the doctor's capability are upheld. If the allegations are upheld, Connect Health must take appropriate action, such as requesting the issue of an alert letter and referral to the GMC, referral to the police or the Disclosure and Barring Service.

If, in exceptional circumstances, a hearing proceeds in the absence of the doctor for reasons of ill health, the doctors should have the opportunity to submit written submissions and/or have a representative attend in their absence.

## **Health Concerns about a Doctor**

A wide variety of health problems can have an impact on a doctor's conduct and clinical performance. The principle for dealing with a doctor who has health problems is that, wherever possible and consistent with public protection, they will be offered support to continue practice where appropriate.

A doctor with health problems will be treated in accordance with the Connect Health's Attendance at Work Policy. If there is an incident which points to a problem with the doctor's health, or the case manager wishes to exclude the possibility of health factors, the doctor will be referred to Occupational Health Services. The doctor will be expected to co-operate fully with any such referral in order to give Connect Health sufficient information to make an informed decision about appropriate action.

In cases where there is impairment of performance solely due to ill health, disciplinary proceedings will only be considered in exceptional circumstances, e.g., if the doctor refuses to co-operate with Connect Health to resolve the underlying situation such as refusing a referral to Occupational Health Services or NHS Resolution. In this situation the capability procedure will be followed. Connect Health will make reasonable adjustments to workplace conditions and facilities to ensure that a doctor with disabilities is able to continue to practice.

In some cases, retirement due to ill health or termination of contract due to incapacity may be necessary.

## **Handling Complex Health Issues**

The Occupational Health physician should agree a course of action with the doctor and send their

recommendations to the Chief Medical Officer.

A case conference may be necessary to agree a timetable for action. The case conference will include as appropriate the Chief People Officer or delegated senior People representative; case manager; line manager; the doctor and the Occupational Health physician.

The doctor is entitled to bring a representative to the meeting who may be another employee of Connect Health; an official or lay representative of the British Medical Association (BMA) or medical defence organisation; a friend, partner or spouse, in line with the MHPS framework.

For more information, see section above on representation.

Examples of action that might be taken include:

- Treatment (period of sick leave)
- Remove the doctor from certain duties
- Reassign to a different area of work
- Arrange retraining with appropriate advice from NHS Resolution and/or Health Education England
- Ill health retirement
- Reasonable adjustment to working conditions/processes
- Dismissal of employee or termination of other contractual arrangement on the grounds of capability

Unreasonable refusal to accept a referral, to co-operate with the Occupational Health Services or agreed action plan, may give separate grounds to pursue disciplinary proceedings.

If a doctor's ill health makes them a potential danger to patients and they do not recognise this or are not prepared to co-operate with measures to protect patients, then exclusion from work must be considered and the GMC must be informed, irrespective of whether they have retired on the grounds of ill health. NHS Resolution's Practitioner Performance Advice service for doctors may be approached to offer advice on any situation and at any point. Even early concerns may be referred as issues are easier to deal with before they escalate into serious problems. There may 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 Connect Health will refer the doctor to the Occupational Health Service.

## Reasonable Adjustments

Doctors are encouraged to inform Occupational Health Services and their line manager of any medical or psychological condition for which reasonable adjustments may be required. Connect Health will consider what reasonable adjustments could be made to the workplace conditions or other arrangements on the advice of the Occupational Health Service. Examples of reasonable adjustments may include:

- Adjustments to premises or facilities
- Re-allocation of some of the disabled person's duties
- Alteration of working hours or pattern of work
- Agreed absence for rehabilitation, assessment or treatment
- Acquisition or modification of equipment

- Provision of a reader or interpreter
- Modify procedures for testing or assessment.

Advice may be sought from specialist disability advisors where appropriate.

## 7. Training requirements

Training is available to support this policy for all managers and clinical leads who have responsibility for the supervision and management of doctors. Please contact the Responsible Officer or the Revalidation Support Officer.

## 8. Diversity and Inclusion

**Equality analysis** – is a way of considering the effect a policy may have on different groups. There are two reasons for this:

- to consider if there are any unintended consequences for some groups
- to consider if the policy will be fully effective for all target groups.

Connect Health is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat colleagues reflects their individual needs and does not unlawfully discriminate against individuals or groups on the grounds of any protected characteristic (Equality Act 2010). This policy aims to uphold the right of all colleagues to be treated fairly and consistently and adopts a human rights approach. This policy has been appropriately assessed. An equality analysis has been undertaken for this policy, in accordance with the Equality Act (2010).

## 9. Assurance and Monitoring Compliance

The effectiveness of this policy will be monitored via the following:

- Management supervision arrangements
- A summary being reported annually by the Responsible Officer or their nominated deputy to the Integrated Quality and Compliance Committee (IQACC).
- Equality Impact Assessments on the application of the policy will be carried out when the policy is being reviewed.

Standard/process/issue	Method	By	Group/meeting	Frequency
Monitoring of this policy for compliance with timescales will be on a case-by-case basis	As cases are likely to be few due to the number of colleagues employed that fall under this remit the monitoring will be done on a case-by-case basis.	Responsible Officer	IQACC	As is required on case-by-case basis

## 10. Consultation and Review

The following stakeholders were consulted about the policy and comments incorporated as appropriate.

- Marwan Al-Dawoud, National Sport and Exercise Medicine Doctor

- Paul Allan, Director of Operations
- Tom Bendinger, National Pain Consultant
- Ian Bernstein, Responsible Officer
- Elizabeth Butler, Non-executive Director
- Lesley Crosby, Director of Nursing, Clinical Governance and Risk
- Andrew Cuff, Head of MSK
- Bhaskar Dasgupta, National Rheumatology Consultant
- Mini Mangat, Head of Patient Engagement, Equality, Diversity and Inclusion Lead
- Andrew McAnelly, Head of Clinical Governance and Risk
- Steve Nawoor, National Clinical Lead
- Gail Sowden, Head of Pain
- Graeme Wilkes, Chief Medical Officer
- Becky Robson, Chief People Officer

This document will be placed on PolicyStat by February 2023. This policy will be available to all colleagues via the Connect Health Ltd company intranet.

This policy will be reviewed in 3 years' time in February 2026. It will be reviewed by the Responsible Officer.

## 11. References

- Department of Health *Maintaining High Professional Standards in the Modern NHS* (2005)  
[http://webarchive.nationalarchives.gov.uk/20130123204228/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4103586](http://webarchive.nationalarchives.gov.uk/20130123204228/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586)
- General Medical Council *Good Medical Practice*  
<https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice>
- General Medical Council *Principles of a good investigation*  
[https://www.gmc-uk.org/-/media/documents/dc11437-principles-of-a-good-investigation\\_pdf-75546780.pdf](https://www.gmc-uk.org/-/media/documents/dc11437-principles-of-a-good-investigation_pdf-75546780.pdf)
- NHS England *A practical guide for responding to concerns about medical practice* (2019)  
<https://www.england.nhs.uk/wp-content/uploads/2019/03/practical-guide-for-responding-to-concerns-about-medical-practice-v1.pdf>
- NHS England *A just culture guide*  
<https://www.england.nhs.uk/patient-safety/a-just-culture-guide/>
- NHS Resolution  
<https://resolution.nhs.uk/>

## 12. Appendices

### 12.1. Appendix 1 – Assessment of Concern

#### Risk assessment matrix

<https://www.england.nhs.uk/wp-content/uploads/2019/03/practical-guide-for-responding-to-concerns-about-medical-practice-v1.pdf>

# Using this risk assessment matrix

This risk assessment matrix is a tool to support and to provide a degree of objective backing to professional judgement. It is not a validated tool and does not replace professional judgement. The recommended approach is as follows:

1. *Before looking at the matrix*, consider the issue and form an opinion as to whether the associated risk is low, medium or high using your professional judgement.
2. Only after you have done this, refer to the matrix.
  - i. **Consequence:** Use Sections A or D to determine the consequence score<sup>2</sup> based on whether the consequence listed can reasonably be viewed as having resulted from the actions of the doctor. You should do this in terms of both the prompt which has occurred, and the potential consequence should the same prompt occur again. All events, actual or future, may have one consequence or several consequences (e.g., affecting patient care, adverse publicity, etc.). The score used to calculate the overall consequence is the row from which the highest numerical score is achieved, whether considering the initial prompt or potential future consequences.
  - ii. **Likelihood:** Use Section B to determine the likelihood score. This is the chance that the consequence described above will recur, or the frequency with which a similar incident has occurred in the preceding 12 months, whichever gives the greater score.
  - iii. **Risk Score:** Section C. Multiply the consequence score with the likelihood score to obtain the risk rating, which will be a score between 1 and 100. A score of 0-8 = low risk, 10-18 = medium risk, 20-100 = high risk.
3. Compare the risk rating you arrived at in 1 above with the rating you reached in 2. If they concur, accept the risk. If they do not, revisit both ratings until you are satisfied that the risk is correct. If you cannot reconcile your professional judgement with the score obtained using the matrix, you should discuss with others until you are satisfied that the risk rating you are applying is that which is most appropriate to the circumstances.
4. The matrix is designed to measure the risk associated with an incident, not an individual. Once the incident risk is established, a further judgement is needed to establish the extent to which the incident is attributable to the actions of an individual and hence whether or not it should be regarded as a concern about medical practice.

## Section A Common consequences

(See Section D for other consequences)

Actual Severity = Concerns/Incidents/Complaints/Claims Potential Severity = Risk Assessments/Near Miss

	2	4	6	10	20
Descriptor	Insignificant	Minor	Moderate	Major	Catastrophic
<b>Impact on the safety of patients, colleagues or public</b>	No or trivial impact on patient health No or trivial impact on	Minimal impact on patient health requiring no intervention or treatment	Minor impact on patient health, or intervention/ treatment required,	Moderate impact on patient health, or impact lasts longer than 28	Major impact on patient health, or impact is permanent or unexpected



<b>(physical/ psychological harm)</b>	colleagues	Colleague distress or injury not requiring time off work	resolves within one month Colleague distress or injury requiring time off work or light duties for 0–35 days	days – patient recovered Colleague distress or injury requiring time off work or light duties for >35 days with eventual recovery Major injuries/ Dangerous Occurrences reportable under RIDDOR	death Colleague distress or injury which prevents work for the foreseeable future. All Never Events (Defined elsewhere)
<b>Quality/ Complaints</b>	Little or no patient dissatisfaction	Unsatisfactory patient experience relating to attitude or patient expectations of care where care has been within the normal surgery protocols Justified formal complaint peripheral to patient care Error of process – minimal potential for patient harm	Unsatisfactory patient experience relating to attitude or patient expectations of care, where the care has been outside normal local protocols Justified formal complaint involving lack of appropriate clinical care, short term effects Error of process with potential for patient harm	Non-compliance with widely agreed national standards Justified multiple formal complaints. Serious mismanagement of care, long term effects Potentially criminal behaviour Legal Claim Ombudsman Inquiry	Totally unacceptable level or quality of treatment/ service, or overtly negligent or malicious behaviour by member(s) of team Probable or overt criminal behaviour
<b>Fitness to practise</b>	No indication of breach of GMP	Possible minor breach of GMP	Minor breach of GMP	Moderate breach of GMP	Major breach of GMP

## Section B – Likelihood

	1	2	3	4	5
<b>% Chance of recurrence of consequence in identified group in next 12 months</b>	1-5%	6-25%	26-50%	51%-75%	76-100%
<b>Number of times this has happened in the last 12 months</b>	0-2	3-6	7-14	15-30	31+

## Section C – Risk Score

Likelihood	Consequence				
	2	4	6	10	20
1	2	4	6	10	20
2	4	8	12	20	40
3	6	12	18	30	60
4	8	16	24	40	80
5	10	20	25	50	100

## Section D – Less Common Consequences:

	2	4	6	10	20
Descriptor	Insignificant	Minor	Moderate	Major	Catastrophic
<b>Objectives / Projects</b>	Insignificant project slippage Barely noticeable reduction in scope or quality	Minor project slippage Minor reduction in scope or quality	Serious overrun on project Reduction in scope or quality	Project in danger of not being delivered Failure to meet secondary objectives	Unable to deliver project Failure to meet primary objectives
<b>Service / Business Interruption</b> <b>Environmental Impact</b>	Threatened Loss / Interruption of service Minimal or no impact on the environment including contamination, not directly coming into contact with patients, colleagues or members of the public	Loss / Interruption of service Up to 1 hour Minor impact on the environment	Loss / Interruption of service 1 to 4 hours Moderate impact on the environment	Loss / Interruption of service 4 hours to 2 days Major impact on the environment including partial closure	Loss / Interruption of service More than 2 days Major impact on the environment including full closure
<b>Statutory duty/ inspections</b>	No or minimal impact or breach of guidance/ statutory guidance	Breach of statutory legislation reduced performance rating if unresolved	Single breach in statutory duty Challenging external recommendations/ improvement notice	Enforcement action Multiple breaches in statutory duty Improvement notices low performance rating. Critical	Multiple breaches in statutory duty Prosecution Complete system change required Zero performance rating Severely

				report	critical report
<b>Adverse Publicity / Reputation</b>	Rumours Potential for public concern	Local media coverage – short-term reduction in public confidence Element of public expectation not being met	Local media coverage – long term reduction in public confidence	National media coverage with <3 days service well below reasonable public expectation	National media coverage with >3 days service well below reasonable public expectation. MP concerned (questions in the house) Total loss of public confidence
<b>Finance including claims</b>	No obvious / small loss < £50	£50 - £500	£500 to £5000	£5000 to £50000	Over £50000

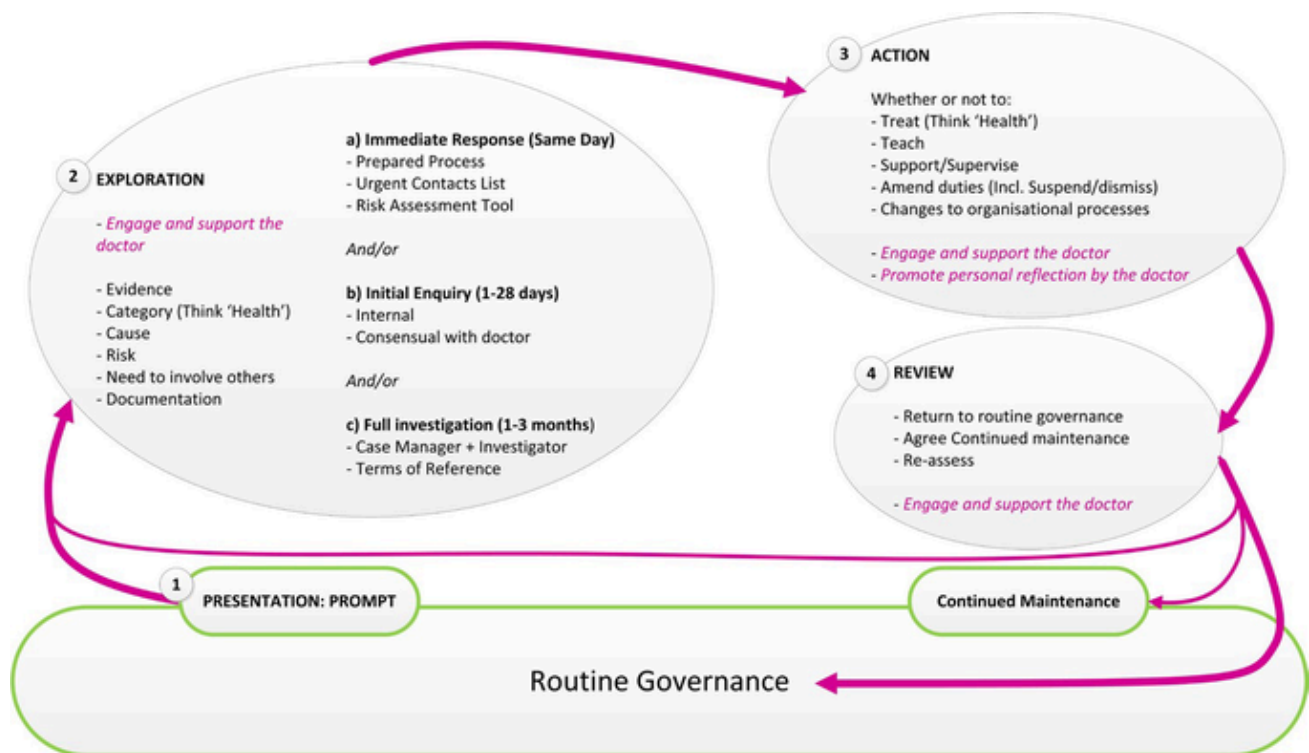
## 12.2. Appendix 2: Process Flow chart summary - Please see attachment

## 12.3. Appendix 3: NHS England Flowchart

A practical guide for responding to concerns about medical practice

### NHS England 2019

<https://www.england.nhs.uk/wp-content/uploads/2019/03/practical-guide-for-responding-to-concerns-about-medical-practice-v1.pdf>



### Guiding principles for responding to a concern about a doctor's practice

- Patients must be protected.
- Clinicians too must be safeguarded.
- All action must be based on reliable evidence.
- The process must be clearly defined and open to scrutiny.
- The process should demonstrate equality and fairness.
- All information must be safeguarded.
- Support must be provided to all those involved.

## 12.4. Appendix 4 – Equalities impact assessment

Question	Response
Name of policy/strategy/service redesign or activity	Doctors Managing Concerns Policy & Procedure
Summary of aims and objectives of the policy/strategy/service redesign or activity	This policy and procedure is designed to ensure that a fair, systematic and consistent approach is taken when conduct or capability of a doctor falls short of the required standard.
What involvement and consultation has been done in relation to this policy? (e.g. with relevant groups and stakeholders)	<ul style="list-style-type: none"> <li>• <b>Marwan Al-Dawoud</b>, National Sport and Exercise Medicine Doctor</li> <li>• <b>Paul Allan</b>, Director of Operations</li> <li>• <b>Ian Bernstein</b>, Responsible Officer</li> </ul>

				<ul style="list-style-type: none"> <li>• <b>Elizabeth Butler</b>, Non-executive Director</li> <li>• <b>Lesley Crosby</b>, Director of Nursing, Clinical Governance and Risk</li> <li>• <b>Andrew Cuff</b>, Head of MSK</li> <li>• <b>Bhaskar Dasgupta</b>, National Rheumatology Consultant</li> <li>• <b>Mini Mangat</b>, Head of Patient Engagement, Equality, Diversity and Inclusion Lead</li> <li>• <b>Andrew McAnelly</b>, Head of Clinical Governance and Risk</li> <li>• <b>Steve Nawoor</b>, National Clinical Lead</li> <li>• <b>Gail Sowden</b>, Head of Pain</li> <li>• <b>Graeme Wilkes</b>, Chief Medical Officer</li> <li>• <b>Amanda Williams</b>, Chief People Officer</li> </ul>
Who is affected by the policy/strategy/service redesign or activity?				All doctors working in any capacity under any contractual arrangement at Connect Health Ltd. The following have roles and responsibilities in relation to the policy: Chief Executive Officer, The Chief Medical Officer, The Responsible Officer, Service Contract Operations Managers, Clinicians in leadership roles, and Clinical and Educational Supervisors, Line Managers, Human Resources (People) Department, Employee Health Services
What are the arrangements for monitoring and reviewing the actual impact of the policy/strategy/service redesign or activity?				The Doctors Managing Concerns Policy & Procedure details what will be measured and how this will be measured, in order to monitor compliance and provide assurance. Reports containing the relevant information are sent to the relevant individuals/bodies, at the appropriate points in time.
<b>Protected Characteristic Group</b>	<b>Is there a potential for positive or negative impact?</b>	<b>Please explain and give examples of any evidence/data used</b>		<b>Action to address negative impact (e.g. adjustment to the policy)</b>
Age	No impact			
Disability	No impact			
Gender reassignment	No impact			
Marriage or civil partnership	No impact			

Pregnancy and maternity	Positive	Supportive measures in place for those on maternity leave	
Race	No impact		
Religion or belief	No impact		
Sexual orientation	No impact		
Sex (gender)	No impact		
<b>Additional Groups</b>	<b>Is there a potential for positive or negative impact?</b>	<b>Please explain and give examples of any evidence/data used</b>	<b>Action to address negative impact (e.g. adjustment to the policy)</b>
Refugees and asylum seekers	No impact	The policy would ensure that medical colleagues who are refugees and/or asylum seekers are supported appropriately and ensure equity and fairness without discrimination due to their nationality or related circumstances.	
Question			Explanation/ justification
Is it possible the proposed policy or activity or change in policy or activity could discriminate or unfairly disadvantage people?			No
Final Decision		Tick the relevant box	Explanation
No barriers identified, therefore activity will proceed			
You can decide to stop the policy or practice at some point because the data shows bias towards one or more groups			
You can adapt or change the policy in a way which you think will eliminate the bias			
Barriers and impact identified, however having considered all available options carefully, there appear to be no other proportionate ways to achieve the aim of the policy or practice (eg in extreme cases or where positive action is taken) Therefore you are going to proceed with caution with this policy or practice knowing that it may favour some people less than others, providing justification for this decision			

Date completed: 28.09.2022

Review date: at policy expiry (3 years from ratification)

Signed for working group:

*Jan. A. Bernstein*

Responsible Officer

Name: Dr Ian Bernstein

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## Attachments

[Appendix Two - Process Flowchart](#)

## Approval Signatures

Step Description	Approver	Date
Clinical Governance Group	Elaine Watson: Governance Officer	30 November, 2022
Policy Sponsor (Director of Clinical Governance and Risk)	Lesley Crosby	29 November, 2022
Author / Owner	Ian Bernstein: MSK Physician	29 November, 2022