

PLEASE NOTE: Printed copies of this policy may not be the current version. Please refer to the Trust Policy Library for the current, approved version.

**CONDUCT CAPABILITY, ILL HEALTH AND APPEALS POLICIES AND PROCEDURES
FOR MEDICAL PRACTITIONERS (MHPS)**

Key Points	
Policy and procedures on the management of Conduct, Capability and Ill Health concerns for Medical and Dental Staff	

Version:	Version 4
Lead Author:	Deputy Director of HR & OD
Executive Lead:	Medical Director and Director of HR&OD
Date Approved by Policy Approval Group	October 2019
Policy Category:	Human Resources
Review Date:	October 2020
Target Audience:	All Medical & Dental Staff Managers of Medical & Dental Staff

Document Control	
Previous Version Information:	
Previous Title:	Conduct, Capability and Ill Health and Appeals Policy and Procedures for Medical Practitioners
Previous Approval Date:	November 2014
Relevant to CQC requirements:	Yes
Relevant to Information Governance Toolkit:	No
Other External Assessments	No
Consultation:	
Individual(s) Consulted:	BMA Full Time Officer
Department(s) Consulted:	HR & OD
Committee / Group(s) Consulted:	Local Negotiating Committee
Amendments Made:	Updates to role titles and names of external bodies
Keywords:	Conduct, Capability, Disciplinary, Ill Health
Related Trust Documents:	
<ul style="list-style-type: none"> • Grievance Policy and Procedure • Sickness and Attendance Management Policy 	

CONTENTS

1	INTRODUCTION	3
2	SCOPE	3
3	AIMS AND OBJECTIVES	4
4	DUTIES AND RESPONSIBILITIES	4
5	DEFINITIONS	5
6	ACTION TO BE TAKEN WHEN A CONCERN ARISES	6
7	EXCLUSIONS OR RESTIRCTIONS ON PRACTICE	12
8	CONDUCT PROCEDURE.....	20
9	CAPABILITY PROCEDURE	30
10	HANDLING CONCERNS ABOUT A PRACTITIONERS HEALTH	36
11	RIGHT TO BE ACCOMPANIED	41
12	TRAINING REQUIREMENTS.....	42
13	CONFIDENTIALITY	42
14	COMMUNICATION AND CONSULTATION.....	42
15	MONITORING ARRANGEMENTS.....	43
16	EQUALITY IMPACT ASSESSMENT.....	44
17	REFERENCES	45
	APPENDIX A – Authorisations.....	46
	APPENDIX B – Checklist On Excluding / Restricting Practice When Concerns First Arise.....	47
	APPENDIX C – Template Letter To Send To Practitioner Being Immediately Excluded/Restricted From Practice	48
	APPENDIX D – Case Manager’s Initial Assessment Report.....	50
	APPENDIX E – Terms Of Reference For Case Investigator	51
	APPENDIX F – Framework For Case Investigator’s Report	52
	APPENDIX G – Checklist On Making A Formal Exclusion/ Restricting Practice.....	54
	APPENDIX H – Guidance To Classification Of Disciplinary Offences.....	55
	APPENDIX I - Managers With Authority To Sanction.....	56

1 INTRODUCTION

- 1.1 In order to comply with Maintaining High Professional Standards in the NHS (HSC 2003/12 'MHPS'), Great Ormond Street Hospital for Children NHS Foundation Trust (the Trust) has put in place this policy and accompanying procedure.
- 1.2 This policy and accompanying procedure applies to all doctors and dentists (referred to as the "practitioners") employed by the Trust. These procedures supersede all previous Trust and Department of Health procedures including HC(90)9, HC(82)13, HSG(94)49 and HM(61)112 in respect of their application to practitioners employed by the Trust.
- 1.3 The right of appeal to the Secretary of State held by some employees under paragraph 190 of their Terms and Conditions of Service is also abolished and replaced by the appeal rights contained in this procedure.

2 SCOPE

2.1 This policy applies to the following staff groups:

- All Medical and Dental Staff – where the individual holds a contract (permanent, fixed term, bank locum or honorary) with GOSH

2.2 This policy does not apply to the following staff groups:

- All non-Medical and Dental GOSH employed staff - where the individual is directly employed by GOSH either on a fixed term or permanent contract;
- Board Members – Member of the Trust Board. Specifically the Chair, Non-Executive Directors and Executive Directors
- Governors – Member of the Council of Governors
- Contractors – individuals on-site at GOSH, who are employed by an external contracting company including consultancy work;
- Agency staff – individuals on-site at GOSH who are employed via an agency on the NHS Agency Framework;
- Non-Medical and Dental Honorary contract holder – individuals engaged via a GOSH Honorary contract;
- Non-Medical and Dental Bank staff – individuals with a GOSH bank contract;
- Volunteers - individuals employed via the GOSH volunteer programme.
- Students - students on placement within the Trust as part of their educational programme
- Observers – those over the age of 18 and wish to observe a department within GOSH
- Young visitors programme – those on placements in the different clinical areas of GOSH who are between 16-17 years of age
- Work experience candidates – students who are gaining work experience within the Trust
- Research Placements – those holding a research contract issued by the research and governance team or an Honorary contract if they are undertaking both Research and Clinical work

3 AIMS AND OBJECTIVES

3.1 The purpose of this policy and procedure is to ensure that the Trust has a process for handling concerns about the conduct, performance and health of all medical and dental employees.

3.2 This policy provides guidance on:

- Action to be taken when a concern about a doctor or dentist first arises (Section 6)
- Procedures for considering whether restrictions need to be placed on a doctor or dentist's practice or exclusion is considered necessary (Section 7)
- Guidance on conduct hearings and disciplinary procedures Section 8)
- Procedures for dealing with issues of capability (Section 9)
- Arrangements for handling concerns about a practitioner's health (Section 10)

4 DUTIES AND RESPONSIBILITIES

"Case Manager" is the person who has responsibility for overseeing investigations into concerns about a practitioner. Their duties are to:

- On first hearing about these concerns needing to decide whether they should be formally investigated.
- Notify the practitioner in writing of such investigation.
- Consider (with the Director of HR&OD (or nominated Deputy) and Chief Executive) whether to immediately restrict a practitioner's duties or exclude them from work or take some other form of protective action.
- Upon receipt of the case investigator's report consider whether a formal procedure should be started (for instance a disciplinary hearing). At this stage, they will also consider whether any immediate restrictions or exclusion should be continued.
- Review any exclusion and determine after careful thought whether it should be continued.
- Prepare reports on each exclusion before the end of each four week exclusion period.
- Liaise with and seek the advice of NHSR PPA as set out in this policy.

"Case Investigator" is the person who is responsible for carrying out a formal investigation into concern(s) about a practitioner. They:

- Must carry out a proper and thorough investigation into the concerns.
- Involve an appropriately qualified clinician to investigate clinical concerns if they do not have such qualifications.
- Ensure that appropriate witnesses are interviewed and evidence reviewed.
- Ensure that any evidence gathered is carefully and accurately documented.
- Keep a written record of the investigation, the conclusions reached and the course of action agreed with the Medical Director and Director of HR &OD (or nominated Deputy).
- Meet with the practitioner in question to understand the practitioner's case.
- Prepare a report at the conclusion of the investigation providing the case manager with enough information to decide how to take it forward.
- Provide updates and assistance to the Designated Board Member on the progress of the investigation.
- Provide factual information to assist the Case Manager in their review of any exclusion.

"Designated Board Member" is a non-executive director of the Trust who ensures that the processes set out in these guidelines are being followed but does not make decisions on any issues such as whether to exclude from work. They:

- Ensures that the investigation is being carried out promptly and in accordance with these guidelines.
- Acts as a point of contact for the practitioner, making their self available after due notice if the practitioner has significant concerns about the progress of the investigation or any exclusion from work.

"Clinical Adviser" is the person who provides clinical advice and guidance to the Case Investigator if relevant where clinical issues arise. They will have appropriate specialist skills to advise. Where no such person is available or is precluded from advising (for instance if they raise the concerns) the Trust will seek to identify a person outside its employment to advise.

Individual Practitioners; It is the responsibility of all practitioners to self-report deficits in their individual performance level. Deficits arise from an individual's inability to fully meet the requirements of their role and may be caused by a variety of factors such as insufficient training and support, ill health or the impact of personal or work based circumstances. Self reporting is a positive way for staff to obtain support and to ensure that the quality of the service and/ or the safety of our patients are not in any way compromised. All staff with concerns about their ability to fully perform in their job role must report to their supporting Consultant, Clinical Tutor, Medical Director as soon as this is realised. Staff who have concerns about their health and the impact it may be having on their performance should also refer to the provisions on self reporting included in the Trust's Sickness and Attendance Management Policy.

NHS Resolution Practitioner Performance Advice (NHSR PPA) formerly the National Clinical Assessment Service (NCAS) was established in 2001 and is now a service delivered by NHS Resolution under the common purpose, to provide expertise to the NHS on resolving concerns fairly, share from learning for improvement and preserve resources for patient care. There are a number of references within this procedure to NHSR PPA. Where the involvement of NHSR PPA is appropriate it should be consulted at an early stage in the relevant procedure. NHSR PPA can assist in clarifying the nature of the concern, with what the appropriate way forward should be, assist with decisions on restriction of practice or exclusion and with providing clinical performance assessment.

5 DEFINITIONS

Conduct: behaviour within the workplace or outside of the workplace (where it affects the Trust or the employee's ability to carry out their role).

Misconduct: Inappropriate / unacceptable conduct. An act of misconduct that is not serious enough to be considered 'gross misconduct' but is more than minor. This may also be repeated minor misconduct that has not been resolved following informal action. Typically this is a result of failure to meet the expected standards of conduct as stipulated in the Trusts policies, procedures and reasonable management expectations (see examples listed in appendix H). For research posts this may be action or behaviour that falls short of the standards of ethics, research and scholarship required to ensure that the integrity of research is upheld.

Gross Misconduct: Act(s) of misconduct that is serious enough on its own to justify the employee's summary dismissal (see examples listed in appendix H)

Exclusion: Removal from the workplace.

Conduct hearing: A formal meeting within which information relevant to the alleged misconduct are considered. At the conclusion, a decision is reached about whether to uphold the allegations and if relevant, what sanction to issue.

Adjournment: A temporary break within the formal disciplinary hearing, this can be requested by management side, staff side or the panel.

Sanction: The outcome issued at the conclusion of a formal hearing where allegations are upheld. Not all hearings lead to sanctions being issued.

Summary dismissal: Where allegations of gross misconduct are upheld, following a formal disciplinary hearing, which leads to an employee's contract of employment being terminated without payment of statutory or contractual notice period.

Dismissal: A panel decision to terminate an employee's contract of employment with the payment of either statutory or contractual notice or payment in lieu of notice (PILON).

6 ACTION TO BE TAKEN WHEN A CONCERN ARISES

6.1 Raising concerns about a practitioner

6.1.1 Concerns about a practitioner can be raised in a variety of ways, for example by other NHS professionals, annual appraisals, clinical audit, via the Freedom to Speak Up Guardian, complaints by patients or relatives of patients, information from regulatory bodies, information from the police or Coroner and litigation.

6.1.2 It is recognised that unfounded and malicious allegations about a practitioner can cause lasting damage to career prospects and reputation. The Trust will investigate all concerns thoroughly and properly and will be assisted in doing so by the full cooperation of the practitioner.

6.1.3 If an employee has a serious concern about the conduct or capability of a practitioner, or a patient or relative raises a concern with an employee, they should immediately report it to their Line Manager. It is then for that Line Manager to urgently notify such concern to the Chief Executive or Medical Director. Common sense needs to be applied to whether such concerns are sufficiently serious that they need to be reported. If a Line Manager is in any doubt, they should err on the side of caution and report it to the Chief Executive or Medical Director. If necessary, the Line Manager may consult with the Director of HR&OD (or nominated deputy) prior to notifying the Chief Executive.

6.2 Appointment of a Case Manager

Once a serious concern has been raised with the Chief Executive or Medical Director, they must

ensure that a Case Manager is appointed. Where the concern relates to a practitioner who is not a consultant, the Medical Director may designate an appropriate Chief Of Service, Deputy Chief of Service or Specialty Lead as Case Manager. The Clinical Tutor should be involved at this stage if the practitioner is a doctor in training. The Case Manager must be the Medical Director where the concern relates to a consultant. In other cases the Medical Director may delegate this role to a senior manager to oversee the case on their behalf, however, the Medical Director remains responsible for appointing the Case Investigator. In the event that the Case Manager has had prior substantive involvement in the issue, another Chief of Service or Medical Director (as appropriate) from within the Trust or another Trust may be nominated by the Chief Executive. The Chairman of the Board must designate a non-executive member 'the Designated Member' to oversee the case and ensure that momentum is maintained.

6.3 Restrictions on practice or exclusions

6.3.1 When serious concerns are raised about a practitioner the possibility of restrictions being placed on the practitioner or their exclusion must be urgently considered by the Case Manager. This decision will depend upon the nature and severity of the concern in question. The duty to protect patients is paramount in making such an assessment. If at any point in the process the Case Manager concludes the practitioner is a serious potential danger to patients or staff the practitioner must be referred to the regulatory body (GMC/ GDC). Consideration should be given to the issuing of an alert letter.

6.3.2 In implementing any decision on restrictions or exclusion, the provisions for restriction and exclusion described in Section 7 of this policy must be followed.

6.4 Timescale for the Case Manager's recommendations

There will be situations where it is necessary to exclude a practitioner or restrict their practice immediately. The Case Manager must consider this first. Where immediate action is not required, the question of what further steps should be taken remains. The Case Manager should aim where possible to reach a decision as to their recommendation of using either the informal or formal disciplinary route to the Medical Director or, if the Medical Director is the Case Manager, to the Chief Executive, within **5 working days** of the concern being reported to them, as well as to the Clinical Tutor and Postgraduate Dean if the practitioner is a trainee.

6.5 The Case Manager's initial assessment

6.5.1 Within 5 working days the Case Manager should carry out a short initial assessment to establish the nature and seriousness of the concern and whether it can be resolved without resort to formal disciplinary procedures. This assessment includes a preliminary determination of whether the concern may be classified as one of conduct or capability. This will not be the final decision on classification and must be reviewed on receipt of the Case Investigator's report. This initial assessment may include short interviews with key witnesses and review of medical notes as well as review of any other documents relevant to the concern raised.

6.5.2 In order to reach a decision regarding which route should be pursued the Case Manager should consult with and seek guidance from the Chief Executive, the Director of HR & OD (or nominated deputy), Medical Director (if they are not the Case Manager) and/or Postgraduate Dean (if the practitioner is a trainee) and the NHSR PPA (see Appendix A and B.) Having had these discussions

the Case Manager should decide whether an informal approach can be taken or whether a formal investigation is needed which necessitates the appointment of a Case Investigator to carry out a full investigation.

- 6.5.3 The recommended course of action and reasons for it should be detailed in a brief report, “The Initial Assessment Report”. Guidance on the format and required content for the Case Manager’s report is at Appendix E.

6.6 **The Case Manager’s recommendations**

- 6.6.1 Action in the event that minor shortcomings are identified

Minor shortcomings shall initially be dealt with informally. The practitioner’s Line Manager will be responsible for discussing the shortcomings with a view to identifying the causes and offering help to the practitioner to rectify them. Such counselling will not in itself represent part of the disciplinary procedure, although a note that counselling has occurred should be made.

- 6.6.2 Situations in which ill health was a contributing factor

In situations where a person’s ill health is a significant contributory factor to their conduct or performance then separate procedures for dealing with ill health and capability would be used. Further guidance can be obtained from the Capability Procedure at Part 6 below.

- 6.6.3 Action in the event of a pattern of behaviour

If a particular pattern of inappropriate behaviour/sub-standard performance has been identified, managers are referred to Appendices I and J of this policy for further guidance.

Any new, unrelated shortcomings arising during a counselling or review period may be identified, and acknowledged as a separate issue but may be reviewed concurrently.

6.7 **If serious concerns have not arisen**

If the matter is deemed to be less serious then informal investigations or processes (not involving a Case Investigator) may be initiated. This might involve seeking to agree an NHSR PPA clinical assessment with the doctor in question.

6.8 **If serious concerns are raised**

- 6.8.1 Appointment of a Case Investigator

If a serious concern has been raised warranting formal investigation the Case Manager, must after discussion with the Chief Executive, the Medical Director and Director of HR & OD(or nominated deputy), appoint a suitably trained and qualified case investigator. The seniority of the Case Investigator will depend upon the seniority of the practitioner concerned. If the practitioner has not been immediately excluded, the Case Manager will consider whether restrictions on or exclusion from practice are appropriate at this stage (see Section 7).

6.8.2 Terms of reference

When a Case Investigator is appointed, the terms of reference for the investigation should be determined by the Case Manager, usually in consultation with the Director of HR&OD (or nominated deputy). Guidance on devising terms of reference is set out at Appendix F.

6.8.3 Informing the Practitioner

As promptly as possible after the decision to carry out a formal investigation is taken (which should generally be no later than five working days after the Case Manager's Initial Assessment Report has been finalised), the practitioner should be notified in writing of:

- The fact that an investigation is to be carried out;
- The specific allegations or concerns and any related documentation;
- The name of the Case Investigator and where relevant any clinical adviser;
- The list of people to be interviewed by the Case Investigator;
- The practitioner's right to present their view of events to the Case Investigator
- Their right to be accompanied.

6.9 Carrying out an investigation

6.9.1 Time limit for carrying out the investigation

The Case Investigator should complete their investigation within **4 weeks** of their appointment and submit the report to the Case Manager within a further **5 working days**.

In circumstances where a Case Investigator cannot meet the four-week target, they should, as soon as this is realised, notify in writing both the Case Manager and then the practitioner in question explaining the reasons why. A revised timetable should be provided in addition to an explanation and agreed with the Case Manager and practitioner. Every effort will be made to ensure all investigations are concluded as quickly as possible within the required timescales. However for very complex issues this may not be possible and a revised timetable will be issued.

6.9.2 Procedure for carrying out the investigation

The Case Investigator has a wide discretion in how they carry out the investigation so long as they establish the facts in an unbiased way and acts in an independent and impartial manner. Investigations are not intended to secure evidence against the practitioner and the Investigator should be aware that the evidence they collect may exonerate a practitioner or provide a basis for resolving the issue.

The Case Investigator must:

- Involve a senior member of the medical or dental staff who has not been previously involved in the issue being investigated where clinical judgement issues arise. This may be someone from another Trust if no one suitable is available at GOSH;
- Ensure that safeguards are in place so that breaches of confidentiality are avoided throughout the investigations. Patient confidentiality needs to be maintained but the disciplinary panel

will need to know the details of the allegations. It is the Case Investigator's responsibility to judge what information needs to be gathered and how - within the boundaries of the law – that information should be gathered;

- Ensure that there are sufficient written statements collected to establish a case prior to a decision to convene a disciplinary panel and where oral evidence rather than written evidence is obtained ensure that it has sufficient weight in the investigation report;
- Ensure that the individual's whose statements are obtained consent to giving evidence before the disciplinary panel and if appropriate the disclosure of the statement to the GMC;
- Disclose the evidence in the case to the practitioner with sufficient time prior to their attendance before the Case Investigator to comment upon it;
- Give the practitioner an opportunity to present their case with representation;
- Ensure that a written record is kept of the investigation the conclusions reached and the course of action agreed by the Director of HR&OD (or nominated deputy) with the Medical Director;
- Must assist the designated Board Member in reviewing the progress of the case.

It is not part of the Case Investigator's function to make the decision on what disciplinary action should be taken.

It is not part of the Case Investigator's function to make the decision on whether the practitioner should be excluded from work and they may not be a member of any disciplinary or appeal panel relating to the case.

The Case Investigator should seek assistance from a senior member of the HR Department where appropriate and may in some circumstances request external professional legal advice.

Where concerns are considered a Serious Incident in line with the Trust's Incident Reporting and Management Policy, the Case Investigator should liaise with the Quality and Safety Team to agree the approach to be taken to such investigations.

6.9.3 Action in the event that new issues arise during the course of the investigation

In the event that new issues of concern arise during the investigation, the Case Investigator will inform the Case Manager in writing of the nature of the concern that has arisen and supply the supporting evidence. The Case Manager, in consultation with the Director of HR&OD (or nominated deputy), will decide whether to amend the terms of reference to cover the new issues of concern. In the event that the terms of reference are to be varied, the Practitioner will be provided with the amended terms of reference in the form set out at Appendix E together with an explanation of why the terms of reference were varied.

Where, during the course of the investigation, it appears that the case involves more complex clinical issues than expected, the Case Manager should consider whether an independent practitioner from another body should be invited to assist.

The time limit for completion may be reviewed to take into consideration the time required to explore the new issues fully. The Case Investigator should, however, still strive to complete their investigation within four weeks of the terms of reference being amended.

6.10 **The Case Investigator's Report**

6.10.1 The content of the Case Investigator's Report

Once the investigation has been completed the Case Investigator must prepare their written report, with the Clinical Adviser's assistance if necessary. Guidance on the content and format of the report is provided at Appendix G. The report should provide the Case Manager with enough information to decide whether:

- no further action is needed;
- restrictions on practice or exclusion from work need to be considered (see Section 7);
- there is a case of misconduct to put to a conduct panel (see Section 8);
- the matter should be dealt with under the capability procedures (see Section 9);
- there are performance concerns to be further explored with the NHSR PPA. If this route is to be taken further guidance is available at paragraphs 18 onwards of MPHS;
- there are concerns about the practitioner's health to be considered by the Occupational Health department (see Section 10);
- the concerns should be referred to the General Medical Council ("GMC") or General Dental Council ("GDC").

6.10.2 The right of the practitioner to comment on the factual parts of the report in conduct and capability cases

Before a final report into concerns about conduct or capability is provided to the Case Manager, the Case Investigator must provide the factual parts of their report to the practitioner for comment. The practitioner has **10 working days** from the date of receipt of the request in which to comment in writing on the report including any mitigation. In exceptional circumstances, for example in complex cases or due to annual leave, the deadline for comments from the practitioner should be extended.

If the practitioner (or their representative) fails to provide their comments within the 10 working day time limit or such other time limit as may be agreed with him/her, the Case Investigator will finalise their report, recording the fact that it has not been possible to obtain the practitioner's comments.

6.11 **Decision of the Case Manager on receipt of the Case Investigator's Report**

Once the report is completed it must be provided to the Case Manager who will then decide what further action is necessary taking into account the findings of the report, any comments that the practitioner has made and the advice of NHSR PPA. The Case Manager should discuss the report with the Chief Executive and Director of HR&OD (or nominated deputy), with the Clinical Tutor and Postgraduate Dean if the practitioner is a trainee, as well as with NHSR PPA.

The Case Manager will write to the practitioner enclosing a copy of the report. The letter must set out the Case Manager's decision and the reasons for it.

7 EXCLUSIONS OR RESTRICTIONS ON PRACTICE

7.1 Introduction

This part of the policy sets out the procedure to be followed when excluding a practitioner from employment. The word 'suspension' should not be used any longer lest it lead to confusion with sanctions imposed by the GMC or GDC. Exclusion is a last resort and can only be justified on the grounds set out below. Before a decision is taken to exclude any practitioner, all other options must have been thoroughly explored, for example restricting a practitioner's duties, obtaining undertakings or supervision by a Medical or Chief of Service. Exclusion is not a disciplinary sanction and its purpose is to protect the interests of patients or staff and/or to assist the investigative process where there is a clear risk that the practitioner's presence would impede the gathering of evidence. Exclusion must always be used in a proportionate manner to the seriousness of the concern and the risk presented by the practitioner. Where the concern is one of capability consideration should be given to whether an action plan can be agreed with the practitioner to resolve the issue.

MHPS requires that the Trust apply the following principles:

- Exclusion from employment is used as an interim measure only whilst action to resolve a problem is being considered;
- Exclusion is for the minimum period necessary and for no longer than **4 weeks** at a time;
- Extensions of exclusions are reviewed and a brief report provided to the Chief Executive and board;
- A detailed report is provided to the Designated Board Member if requested.

7.2 Roles of Officers

7.2.1 Power to exclude or restrict a Practitioner

The Chief Executive has overall responsibility for managing exclusions and restrictions and for ensuring that cases are properly managed.

A decision to exclude or restrict a practitioner can only be made by:

- the Chief Executive (or anyone acting in that capacity);
- the Medical Director (or anyone acting in that capacity);
- Nominated managers of an appropriately senior level such as Chief Of Service for practitioners below the grade of consultant.

7.2.2 Responsibilities of individual officers in the event of a restriction or exclusion

7.2.2.1 The Case Manager

It will usually be for the Case Manager to review the need to exclude or restrict a practitioner and to report on progress to the Chief Executive Officer or Designated Board Member. A decision to exclude a practitioner will only be made once it has been decided that there are significant concerns about the practitioner's conduct or capability and the conditions set out in paragraph 4 below have been satisfied.

The Case Manager will review the exclusion or restriction with the Designated Board Member and Chief Executive as set out below, taking account of the factual information provided to him/her by the Case Investigator.

7.2.2.2 The Designated Board Member

The Designated Board Member shall oversee the exclusion or restriction process. This role will include ensuring that the applicable time limits are complied with, as well as receiving representations on the process or procedure leading to the exclusion or restriction.

7.2.2.3 The Case Investigator

The Case Investigator shall from time to time provide factual information to assist the Case Manager as may be relevant in reviewing the need for exclusion and making reports on progress to the Chief Executive or Designated Board Member.

7.3 **The restrictions that can be imposed on the practitioner**

If a serious concern is raised about a practitioner, the Case Manager must consider at the outset if temporary restrictions on the practitioner's practice are necessary. There are four alternative types of restriction:

- Obtaining voluntary undertakings from the practitioner on what they will and will not do;
- Placing the practitioner under the supervision of a Clinical or Medical Director;
- Amending or restricting clinical duties; and
- Restriction to non-medical duties.

7.3.1 Sick leave for the investigation of specific health problems

In cases relating to the capability of a practitioner, consideration should be given to whether an action plan to resolve the problem can be agreed with the practitioner. Advice on the practicality of this approach should be sought from NHSR PPA. If the nature of the problem and a workable remedy cannot be determined in this way, the Case Manager should seek to agree with the practitioner a referral of the case to NHSR PPA, which can assess the problem in more depth and give advice on any action necessary

If there is evidence that concerns are related to the practitioner's health, the Trust's Occupational Health Department should become involved at an early stage to help with the investigation of specific health problems and to advise the Case Manager accordingly (see Section 10).

7.4 **Where exclusion may be justified**

Exclusion is a temporary expedient reserved for exceptional circumstances. It is not a disciplinary sanction. Alternatives to exclusion must always be considered in the first instance. Exclusion is only potentially justified where:

- There has been a critical incident where serious allegations have been made; or
 - There has been a breakdown in relationships between a colleague and the rest of the team;
- or

- The presence of the practitioner is likely to hinder the formal investigation. The key factors in any decision to exclude are:-
 - the protection of staff or patient interests; or
 - to assist the investigative process when there is a clear risk that the practitioner's presence would impede the gathering of evidence

7.5 **The process for deciding whether to exclude or restrict**

There are two types of exclusion: immediate exclusion dealt with in paragraph 7.6 below, and formal exclusions which are dealt with under paragraph 7.7. In addition, restrictions of practice may be imposed.

Before reaching the decision to exclude, whether immediately or formally, it is important to seek NHSR PPA's assistance. However, ultimately the decision on restriction(s) or exclusion rests with the Trust's authorised officers. Where the officers of the Trust disagree with NHSR PPA, the reasons for this divergence in view should be carefully recorded in writing.

Any decision to exclude formally should be discussed by the Chief Executive and the Director of HR&OD. The Designated Member should be informed of any such decision. A decision to exclude immediately should, where practicable, follow the same procedure, although, in the event that this is not practicable, the designated officer shall discuss the decision as soon as practicable with the Chief Executive and the Director of HR &OD (or nominated Deputy), and confirm that decision to the Designated Member.

7.6 **Immediate exclusion**

7.6.1 The right to exclude immediately

Immediate exclusion is permitted to protect the interests of patients and/or staff and to assist the gathering of evidence in the investigative process but only if one of the following has occurred:

- A critical incident where serious allegations have been made;
- There has been a breakdown in the relationship between a colleague and the rest of the team;
- The presence of the practitioner is likely to hinder the investigation.

In a circumstance referred to above, where no alternative is deemed appropriate, the practitioner may be excluded immediately to allow preliminary consideration of the concern by the Case Manager and Case Investigator. The practitioner should be informed as to the reasons for exclusion and a date must be agreed a maximum of **two weeks** from the initial exclusion to hold a further meeting. The practitioner must be informed of their right to representation (see para 7.6.3 below).

7.6.2 The initial period of immediate exclusion

An immediate exclusion can be for a maximum of two weeks following which a decision whether to exclude formally must be made in accordance with the procedure set out below.

7.6.3 Meeting with the practitioner

The practitioner should be informed at a meeting that they are being excluded immediately

together with the broad reasons for the exclusion. A date should be agreed to meet again within the **two weeks** commencing on the date of the exclusion. This period will be used to carry out the preliminary situation analysis, to contact NHSR PPA for advice and to convene a case conference. The meeting should be immediately followed by a letter confirming the outcome of that meeting.

Appendix C is a form to be completed on making an initial assessment of what measures to take. Appendix D is a template letter to send to a practitioner in these circumstances.

7.7 Formal decisions to exclude or restrict practice

7.7.1 The right to exclude formally

A formal exclusion can only take place after:

- A preliminary report has been prepared by the Case Investigator which confirms whether there is misconduct/capability concern or further investigation is warranted;
- The Case Manager, if possible, provisionally assesses whether there is a case to answer and then, at a case conference, whether there is reasonable and proper cause to exclude;
- A meeting has been held with the practitioner in accordance with paragraph 7.6.3; and
- NHSR PPA has been consulted.

7.7.2 Justification of the decision to exclude formally

Formal exclusion can only be justified where there is a need to protect patient or practitioner concerned and/or their colleagues pending the outcome of a full investigation of:

- Allegations of misconduct;
- Concerns about serious dysfunction in the operation of clinical services;
- Concerns about lack of capability or poor performance; or
- Seriousness that it is warranted to protect patients
- Where the practitioner's presence is likely to hinder investigations.

Other options such as restrictions of practice must be considered. Exclusion is to be used only where it is strictly necessary for the reasons set out above.

7.7.3 Considerations in a decision to exclude formally

The checklist set out at Appendix C should be completed where considering a formal exclusion/restriction.

7.7.4 Meeting with the practitioner

The practitioner should be informed of the exclusion in a meeting with the Medical Director and/or the Case Manager. An HR Manager should be present at this meeting where possible. The practitioner must be told the nature of the allegations and, where practical, a witness should be present at this meeting. Where this is not possible the reasons should be documented. The reasons for the exclusion must be explained and the practitioner shall have an opportunity to state their case and propose alternatives to exclusion such as referral to NHSR PPA with voluntary restriction.

7.7.5 Confirming formal exclusion in writing

Formal exclusion must be confirmed in writing to the practitioner within **five working days** of the decision being taken. This letter must state:-

- the duration of the exclusion;
- the nature of the allegations being made;
- the terms of the exclusion;
- a full investigation or other action will follow; and
- that the Designated Board Member may receive any representation on the exclusion at any time from the practitioner and their companion after receipt of the letter confirming the exclusion (See Appendix D – Template letter to send to a practitioner in these circumstances).

A formal exclusion can last for an initial maximum of **four weeks** at which point it must be reviewed.

The exclusion period may be extended for further periods of up to **4 weeks** at a time in cases where disciplinary procedures are being followed and a return to work is considered inappropriate.

If the Case Manager considers that the exclusion will need to be extended over a prolonged period outside of their control (for example because of a police investigation), the case must be referred to NHSR PPA for advice as to whether the case is being handled in the most effective way and suggestions as to the appropriate way forward. However, even during this prolonged period the principle of four-week "renewability" must be adhered to.

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

7.8 Exclusion from Trust premises

7.8.1 Practitioners should not be automatically barred from the premises as a result of exclusion. A Case Manager must decide if exclusion from Trust property is necessary in the circumstances. It will be necessary where there is a risk the practitioner will tamper with evidence or seek to influence colleagues or where the practitioner may be a serious potential danger to patients or other staff. Patient safety must come first; if there is a risk of disruption to clinical services by the practitioner's presence, they should not be allowed on Trust premises. Where possible, an excluded practitioner should be allowed on Trust premises for continuing professional development purposes, to retain contact with colleagues or to take part in clinical audit and to remain up to date with developments in their field of practice or to undertake research or training. They should always be allowed on Trust premises as a parent of a patient undergoing treatment at the Trust.

7.8.2 As an alternative to complete exclusion from Trust premises, the Case Manager may consider a limited exclusion from certain parts of Trust premises. In the event that such exclusion is put in place but then breached by the practitioner, a full exclusion may be substituted.

7.9 Practitioner's duties if excluded

7.9.1 Exclusion under this policy should usually be on full pay, therefore the practitioner must remain available for work with their employer during their normal contracted hours. In exceptional circumstances the Case Manager may decide that payment is not justified because the practitioner is no longer available for work (e.g. abroad without agreement).

7.9.2 An excluded practitioner will be given 24 hours' notice to return to work. They must be available to assist the Case Investigator during these hours. They must obtain permission to take annual or study leave from the Case Manager. They must inform the Case Manager of any voluntary or paid work undertaken and obtain consent from the Case Manager to continue.

7.9.3 The Case Manager should make arrangements to ensure that the practitioner can keep in contact with colleagues on professional developments, and take part in Continuing Professional development (CPD) and clinical audit activities with the same level of support as other doctors or dentists in their employment. A mentor could be appointed for this purpose if a colleague is willing to undertake this role.

7.10 **Obligations on the practitioner in the event exclusion is considered**

7.10.1 Duty to co-operate

A practitioner should co-operate with the Trust in finding alternatives to exclusion by:

- agreeing to restrictions on their practice, including a restriction to non- clinical duties;
- agreeing to not interfere with investigations involving him/her;
- agreeing to give undertakings not to carry out certain work. NHSR PPA may recommend such undertakings extend beyond the Trust to the public and private sector;
- agreeing to work under supervision.

7.10.2 Duty to provide written commitments

A practitioner should be prepared to give any of these commitments in writing to ensure there is no confusion about them. If a practitioner refuses to give any such commitments if asked to, that is a factor a Case Manager can legitimately take into account when deciding whether to exclude or not.

7.11 **Consequences of non-compliance with the practitioner's duties**

In the event the practitioner fails to comply with their duties under paragraphs 7.9 and 7.10 above, (s)he may be subject to disciplinary action on the grounds of failure to comply with a reasonable management instruction. If the Case Manager believes the practitioner is in breach of an undertaking they should contact the practitioner's professional regulatory body and the Medical Director of the NHS England to consider producing an alert letter.

7.12 **Reviewing exclusions and the role of the Trust Board**

Informing the Board

The Board must be informed about an exclusion at the earliest opportunity. It is the Board's responsibility to ensure the procedure below is being followed correctly and it must require a

summary of the progress of each case at the end of each period of exclusion to demonstrate the procedure is being correctly followed and resolution is being expeditiously sought. It should be borne in mind that members of the Board might be required to sit as members of a future disciplinary or appeal panel and so information provided to the Board should be limited to that which will allow it to satisfy itself that procedures are being followed. More detailed information should be provided to the Designated Member who should receive the reports and review the continued exclusion, consider any representations from the practitioner and consider any representations about the investigation.

The Board should also receive a monthly summary of all exclusions, their duration and reviews. A copy of this document should be sent to NHS Improvement.

7.12.1 First Review

The Case Manager must initially review the practitioner's formal exclusion before the expiry of four weeks from the decision to exclude and:

- decide on next steps as appropriate (lifting the exclusion, continuing the exclusion or imposing restrictions);
- submit a written advisory report of the outcome of that review to the Chief Executive / the Trust Board;
- formally document the renewal;
- send written notification of the renewal to the practitioner.

Any change of circumstances since the original decision to exclude must be addressed by the Case Manager in their written review report provided always that where the original reasons for exclusion no longer apply and there is no other reason for the exclusion, the exclusion will be lifted. This review report should be provided to the practitioner under investigation, the Chief Executive and the Trust Board.

The exclusion will lapse and the practitioner will be entitled to return to work at the end of the four-week period if the exclusion is not actively reviewed.

7.12.2 Second Review (and reviews after the Third Review)

Before expiry of a further four weeks from the date of the previous review, the Case Manager must review the exclusion and follow the steps detailed under the First Review above.

7.12.3 Third Review

If an exclusion continues for a further four weeks from the Second Review, a Third Review should be carried out.

If an investigation has been completed showing there is a case to answer, prompt steps need to be taken to set up the appropriate hearing to consider the case.

If a practitioner has been excluded for three periods and the investigation has not been completed, the Case Manager must:

- Submit a written report to the Chief Executive including:-

- the reasons for the continued exclusion;
- why restrictions on practice are not appropriate;
- Formally refer the matter to NHSR PPA confirming:-
 - why exclusion remains appropriate; and
 - the steps taken to conclude the exclusion.

The Chief Executive must report both to:

- NHS Improvement, informing it of:-
 - the action proposed to resolve the situation;
 - the reason for the continued exclusion;
 and
- the Designated Board Member.

NHSR PPA will review the case with NHS Improvement and advise the Trust on handling the case until it is concluded.

7.12.4 Six Month Review

Exclusions should not normally last for more than six months unless a criminal investigation is ongoing. If it does a report must be prepared by the Chief Executive of NHS Improvement setting out:

- the reasons for continuing the exclusion;
- anticipated timescale for completion of the process; and
- actual and anticipated costs of the exclusion.

Normally there should be a maximum limit of 6 months exclusion, except for those cases involving criminal investigations of the practitioner concerned. The employer and NHSR PPA should actively review those cases at least every six months.

7.12.5 Return to Work

If it is decided that the exclusion should come to an end, there must be formal arrangements for the return to work of the practitioner. 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. These requirements should be documented.

7.13 **Role of the Board**

The Trust Board's responsibility, having been informed via the Designated Board Member, is to ensure the procedures set out above are followed but no more. The Trust will add as a standing agenda item for the closed part of Trust Board meetings a review of excluded/restricted practitioners. The Board should assess if proper progress is being made with investigations and that those people who should be involved are involved.

7.14 **Police involvement**

Where any allegations give rise to potential criminal allegations the Director of HR&OD (or nominated Deputy) should be consulted at the earliest opportunity. Police investigations are not

necessarily a bar to continued internal investigations. However, if the Police do not consent to the Trust continuing with an investigation, the Trust must cease that investigation.

7.15 Reporting matters outside the Trust

In cases where there is concern that the practitioner may be a danger to patients the Trust has a duty to notify the public and private sector organisations of any restriction on practice or exclusion and provide a summary of reasons for it. Where details of other employers are not readily available to the Trust, the practitioner is obliged to provide this information. Failure to do so may result in disciplinary action or referral to the GMC/GDC.

7.16 Breach of a restriction

Where a restriction has been placed on the practitioner's practice, they shall agree not to undertake any work in that area of practice with any other organisation whether on an employed basis or otherwise and whether in the private or public sectors. If a practitioner breaches an undertaking the case manager should consult with the GMC / GDC and Director of Public Health or Medical Director of NHS England on whether an alert letter should be issued. Guidance on issuing an alert letter is contained in HSC 2002/011.

7.17 Reporting to the GMC

At the point where serious allegations affecting patient safety and professional misconduct arise, the Case Manager has a duty to consider reporting the matter to the GMC/GDC. This could be either at the stage of immediate exclusion or when the Case Investigator's report has been provided.

8 CONDUCT PROCEDURE

8.1 Introduction

8.1.1 At the initial stage set out in Section 6 the Case Manager should consider whether the concern may amount to an issue of conduct. This is not a final decision, and the Case Manager should review the decision regarding classification of the concern on receipt of the Case Investigator's report.

8.1.2 Any allegation of misconduct against a practitioner in a recognised training grade should be considered initially as one a training issue and must be discussed with the relevant educational supervisor and college or clinical tutor, together with the Postgraduate Dean at the outset.

8.2 Definition of Misconduct

Examples of misconduct will vary widely but may fall into one of the following broad categories:

- A refusal to comply with reasonable requirements of the Trust;
- An infringement of the Trust's disciplinary rules including standards of professional behaviour required by the relevant regulatory body. In the case of doctors this will be Good Medical Practice and for dentists Maintaining Standards;
- Commission of criminal offences outside the work place, which may in some circumstances amount to misconduct;

- Wilful, careless, inappropriate or unethical behaviour likely to compromise standards of patient care or safety or likely to create serious dysfunction to the effective running of the service;
- Dishonest or fraudulent behaviour
- A failure to fulfil contractual obligations; or
- A failure to provide proper support to other members of staff.
- Breach of the Trust's Disciplinary procedure

Examples of gross misconduct are included at Appendix I. As a general rule a practitioner should not be dismissed for a first offence unless it is one of gross misconduct.

8.3 **Investigation of allegations**

Every allegation of misconduct must be fully investigated. Where the alleged misconduct involves matters of a professional nature, the Case Investigator should obtain independent professional advice. The investigation process will be carried out in accordance with Section 6 above.

8.4 **Classification of the concern**

The Case Manager will, on receipt of the Case Investigator's report and having consulted with NHSR PPA, the Director of HR&OD (or nominated Deputy) and the Chief Executive, consider again the classification of the concerns about the practitioner.

If the Case Manager concludes that the concern is one of conduct the remainder of Section 8 of this policy section will be followed. If the concern is one of capability, Section 9 should be followed. If the concern is one of health, Section 10 should be followed.

The classification will be confirmed to the practitioner in writing in the letter confirming the outcome of the investigation along with the Case Manager's conclusions.

It is for the employer to decide upon the most appropriate way forward, having consulted the NHSR PPA and their own employment law specialist. If a practitioner considers that the case has been wrongly classified as misconduct, they (or their representative) are entitled to use the employer's grievance procedure. Alternatively or in addition they may make representations to the Designated Board Member.

8.5 **Criminal Proceedings**

8.5.1 **Action by the Trust during a Police investigation**

Where the Trust's investigation finds a suspected criminal act, this must be reported to the police. Where the police are investigating the allegation, the Trust's own investigations should only proceed in respect of those aspects of the case which are not directly related to the ongoing police investigation after having consulted with the police to ensure the continuation of the Trust investigation would not impede the police investigation. If the Police do not consent to the Trust continuing with an investigation, the Trust must accede to this request.

In cases of fraud, the Counter Fraud & Security Management Service must be contacted.

8.5.2 Action by the Trust in the event that criminal charges are successful

In a circumstance where criminal charges have been successfully brought against the practitioner, the Trust will need to carefully consider whether they render the practitioner unsuitable for further employment. The Trust will need to consider the overall circumstances of the conviction and in particular the safety of patients, staff and members of the public and whether exclusion and further investigation is necessary and reasons for taking such action will be provided to the practitioner.

8.5.3 Action in the event of acquittal or insufficient evidence

Where a criminal case is pursued but the practitioner is acquitted or where there was insufficient evidence to take the matter to court, there is a presumption that the practitioner will be re-instated. The Trust must however consider whether there is enough evidence to suggest that there is a threat to patients, staff or members of the public. If the Trust believes this to be the case, the alleged misconduct should be addressed under these procedures. This is so even though the criminal process did not result either in the prosecution or conviction of the practitioner. The police must be informed that any evidence supplied to the Trust by them will be disclosed to the practitioner as part of the disciplinary process.

8.6 Preparation for Conduct Hearing

8.6.1 Invitation to Hearing

Where the Case Manager concludes that the case should be taken to a conduct panel, the Case Manager should write to the practitioner inviting him to the disciplinary hearing. This letter should be received by the practitioner at least **10 working days** before the date of the hearing (unless there are exceptional circumstances) to allow sufficient time for him/her to consider their case.

That letter should, where possible, include:

- Clear and complete details of the allegations, including (if not already received) a copy of the investigatory report and any supporting evidence (including witness statements);
- Details of who is attending to present the management case;
- Details of members of the panel;
- Details of any witnesses to be called in support of the management case;
- Confirmation of the practitioner's right to be accompanied;
- Confirmation that disciplinary action may be taken as a result of the meeting.

8.6.2 Documents and Witnesses

Any documents to which the practitioner and/or their representative intend to refer at the hearing (including any statement of case) should be circulated to the Case Manager no later than **5 working days** prior to the hearing, unless there are exceptional circumstances.

The practitioner and/or their representative will also be provided with copies of all the documents on which the management case will rely at the hearing at least **5 working days** before the hearing (this shall include any statement of case if one is prepared).

The practitioner or their representative and the individual presenting the management case must also confirm the names of any witnesses they intend to call at least **5 working days** before the hearing.

Any witness statements to be relied upon by the practitioner must be provided to the Case Manager no less than **5 working days** before the hearing.

It is the responsibility of the person(s) calling the witnesses to arrange for their attendance at the hearing. Witnesses will not be required to attend all of the hearing, only the period for which they are required to give evidence. Where witnesses are employees of the Trust, they will be paid for attendance at the hearing. Where a synopsis has been provided of a witness' evidence by the practitioner, the practitioner must ensure that witness attends the hearing to provide their evidence unless that evidence has been expressly agreed by the Case Manager.

8.6.3 Postponement Requests

The practitioner must take all reasonable steps to attend the hearing. Requests for postponements will be considered by the Chairman of the panel and will be dealt with reasonably taking into account all of the circumstances of the case, including:

- the reason for the request;
- the period that the allegations have been outstanding;
- the period it is anticipated that the practitioner will remain off sick;
- the future availability of the panel and witnesses;
- the practitioner's ill health will be dealt with in accordance with the procedures at Section 10.

8.6.4 Failure to attend the hearing by the practitioner

A failure to attend a disciplinary hearing by the practitioner without valid reason may result in the process being carried out in the practitioner's absence

8.7 **The Disciplinary Hearing**

8.7.1 Panel Members

The disciplinary panel will consist of the level of manager authorised to make the disciplinary sanctions as set out in Appendix B. Where the misconduct relates to a matter of professional misconduct the panel must include a member who is medically or dentally qualified and is not a current employee of the Trust. The panel should be advised by a senior member of the HR team.

8.7.2 Procedure of the Hearing

The Chair of the panel is responsible for ensuring the hearing is conducted properly and in accordance with the Trust's procedure.

The practitioner has the right to be accompanied at the hearing.

The Case Manager may be assisted by the Case Investigator(s) (where they are not appearing as a

witness) or a HR representative.

At all times during the hearing the panel, its advisers, the practitioner, their representative and the Case Manager must be present. Once a witness has given evidence they shall leave the hearing.

The procedure for the hearing will be as follows:-

- The Case Manager presents the management case;
- The management witnesses will be called in turn. Each witness will confirm their witness statement and provide any additional information. The Case Manager may ask additional questions.
- The practitioner or their representative may ask questions of the witnesses.
- The panel may question the witness once both sides' representatives have asked questions.
- The Case Manager may then ask further questions to clarify any point that has been raised either by the questions of the practitioner or their representative or from the Panel. The Case Manager will not, however, be able to raise new evidence.
- The Chair may ask the Case Manager to clarify any issues arising from the management case.
- The practitioner and/or their representative shall present their case and call any witnesses. The above procedure used for the management's witnesses shall be followed.
- The Chair can request any points of clarification on the practitioner's case.
- The Chair shall invite the Case Manager to make a short closing statement summarising the key points of the management's case.
- The Chair shall invite the practitioner or their representative to make a short closing statement summarising the key points of their case. Where appropriate, this should include any grounds of mitigation.
- The panel shall retire to consider its decision. If the Panel is unable to reach a determination at the close of the hearing due to the constraints of time it will provide the Case Manager and practitioner with the date on which the decision will be reached and notification of the outcome provided.

8.8 **Disciplinary Action**

Types of Formal Disciplinary Sanctions

The following outcomes may apply:

- No Action
- Verbal Warning
- First Written Warning;
- Final Written Warning;
- Disciplinary Transfer;
- Dismissal.

These disciplinary sanctions are normally followed consecutively but a disciplinary hearing panel may elect to go straight to written warnings or dismissal depending on the gravity of the situation.

8.8.1 **Verbal Warnings**

Where previous counselling has failed to result in the necessary improvement, it may be necessary for a verbal warning to be given and in doing so, the panel hearing the case will emphasise the standard of performance or behaviour expected in the future with a view to assisting the practitioner.

8.8.1.1 Confirmation of the verbal warning

A verbal warning will be confirmed in writing. The warning will confirm that it is the first stage in the disciplinary process and give details of:

- the complaint;
- the improvement or change in behaviour required;
- any training or support that may be given (if appropriate) and the timescale allowed for this);
- any points of mitigation that were taken into consideration;
- and the right of appeal.

The warning should also inform the practitioner that a more severe sanction may be considered if there is not a satisfactory improvement or change in behaviour or performance in the future.

8.8.1.2 Timescale for sending out the verbal warning

The written confirmation of the verbal warning shall be dispatched to the practitioner within **5 working days** of the decision.

8.8.1.3 Retention of the verbal warning on the practitioner's personnel file and Review

A copy of the warning should be kept on the practitioner's personnel file but should be removed from the file and disregarded for disciplinary purposes after a specified period. That period should not exceed six months.

Before the expiry of the specified period, the behaviour or performance of the practitioner will be reviewed, and the Case Manager will decide whether any further action is necessary. If additional episodes of inappropriate behaviour or substandard performance occur within the specified period, it may be necessary to hold this review meeting sooner than the end of the specified period.

8.8.2 **Written Warnings**

8.8.2.1 First written warning

Where counselling does not result in improved behaviour or performance, or where the issue is more serious, a formal written warning may be appropriate.

Content of the written warning

The warning will give details of:

- the complaint;
- the improvement or change in behaviour required;
- any training or support that may be given (if appropriate) and the timescale allowed for this;

- any points of mitigation that were taken into consideration; and
- the right of appeal.

The warning should also inform the practitioner that a final written warning may be considered if there is not a satisfactory improvement or change.

Timescale for confirmation of the written warning

The written confirmation of the verbal warning shall be dispatched to the practitioner within **5 working days** of the decision.

Retention of the written warning on the practitioner's personnel file and Review

A copy of the warning should be kept on the practitioner's personal file but should be removed from the file and disregarded for disciplinary purposes after a specified period. That period should not exceed one year.

Before the expiry of the specified period, the behaviour or performance of the practitioner will be reviewed, and the Case Manager will decide whether any further action is necessary. If additional episodes of inappropriate behaviour or substandard performance occur within the specified period, it may be necessary to hold this review meeting sooner than the end of the specified period.

8.8.2.2 Final written warning

Where there is a failure to improve or change behaviour or performance during the currency of a prior written warning, or where the infringement is sufficiently serious, the practitioner will normally be given a final written warning.

The content of the final written warning

The confirmation of the final written warning should give details of:

- the complaint;
- the reasons for the decision;
- warn the practitioner that failure to improve performance or modify behaviour may lead to dismissal or to some other action short of dismissal;
- any training or support that may be given (if appropriate) and the timescale allowed for this;
- any points of mitigation that were taken into consideration; and
- refer to the right of appeal.

Timescale for confirmation of the written warning

Confirmation of the final written warning should be sent out within **5 working days** of the decision.

Retention of the final written warning on the practitioner's personnel file and Review

A copy of the final written warning should be kept on the practitioner's personal file but should be removed from the file and disregarded for disciplinary purposes after a specified period. That period shall not exceed one year.

Before the expiry of the specified period, the behaviour or performance of the practitioner will be reviewed, and the Case Manager will decide whether any further action is necessary. If additional episodes of inappropriate behaviour or substandard performance occur within the specified period, it may be necessary to hold this review meeting sooner than the end of the specified period.

8.8.3 **Transfer**

If a practitioner has reached the stage where termination of employment would normally be appropriate, it may be possible to consider alternative action if it is appropriate. There will be various instances where it will not, for instance, where there has been a significant breach of trust.

In deciding whether the alternative action is appropriate, mitigating circumstances, including length of service and previous employment history, should be taken into account. The panel hearing the case may, if they consider it appropriate, also take into account the views of the Medical Director, lead clinician for the proposed department receiving the practitioner and the practitioner, before making a decision about any suitable alternative action.

Alternative action may include transfer to an alternative post.

8.8.4 **Dismissal**

Dismissal will occur where a lesser sanction is not appropriate and must be reasonable in all the circumstances of the case.

8.9 **Appeals**

Where there is a continuation of a situation which is already the subject of a final written warning, or where there is gross misconduct, the panel hearing the case may decide that dismissal with/without payment in lieu of notice (as appropriate) is the only appropriate remedy. Dismissal without notice is usually appropriate in cases of gross misconduct. Examples of such situations are set out in Appendix I. Such action may only be taken by an authorised manager (See Appendix J.)

The period of notice, where applicable will run from the date of the notification of the disciplinary decision.

The detailed written reasons for dismissal will be dispatched to the practitioner and their representative in the form of a letter within five working days of that decision being taken.

A practitioner, who is aggrieved by disciplinary action, including dismissal, has a right to appeal.

8.9.1 Purpose of the appeal

The purpose of the appeal is principally to review the decision taken of the disciplinary panel. The appeal panel will consider whether the Trust's disciplinary procedure has been adhered to and that the disciplinary panel had acted fairly and reasonably having regard to:

- a fair and thorough investigation of the issue

- whether there was sufficient evidence arising from the investigation or assessment on which to base the decision;
- whether in the circumstances the decision as to penalty was fair and reasonable.

The appeal panel may consider new evidence presented by the practitioner and decide whether it would have significantly altered the original decision. The appeal panel may also, of its own motion, call evidence that it thinks may be relevant to the appeal.

8.9.2 Timescale for submitting an appeal

Any practitioner wishing to appeal the decision of the disciplinary panel must submit an appeal, in writing, to the Trust's Chief Executive. The appeal must be received within **25 working days** of the date of the letter to the practitioner which confirmed the disciplinary panel's decision. The appeal letter should state fully the grounds for the appeal.

A failure to submit an appeal within the set time limit will lead to the right to appeal being forfeited. The grounds of appeal will be provided to the Case Manager and the appeal panel.

8.9.3 Membership of the appeal panel

Any individual involved in the original disciplinary action or investigation should not be a member of the appeal panel, although they may be present either as a witness or in order to present the management case.

The appeal panel shall comprise a Director of the Trust who will be advised by the Trust's Director of HR&OD (or nominated deputy) or a Senior HR Adviser appointed by the Director of HR&OD (or nominated deputy).

The appeal panel may rely on specialist advice from a consultant in the same speciality as the practitioner if this is appropriate.

8.9.4 Response to the Grounds of Appeal

If the Case Manager's response to the practitioner's Grounds of Appeal is other than as set out in the written decision of the disciplinary panel, the Case Manager must provide this response, in written form, to the practitioner no later than **5 working days** before the appeal hearing.

8.9.5 Notice of the appeal date and representation

The practitioner will be given as much notice as possible of the date of the appeal, and will be entitled to be accompanied.

8.9.6 Timescale for hearing the appeal

The appeal hearing shall be held within **25 working days** of the appeal being lodged unless this is impracticable. The practitioner and the Trust shall co-operate to ensure the hearing can be held as quickly as possible.

8.9.7 Procedure at the appeal hearing

The appeal shall be by way of review and not full re-hearing, subject to the modifications that are set out below:

- all parties will have access to all of the documents from the last hearing, including the statements of the witnesses called;
- The practitioner or their representative shall present a statement of all the grounds for the appeal;
- The practitioner or their representative shall present any additional evidence/witnesses. If they do so, the Case Manager and panel may ask questions of the witness, or question the evidence;
- The Case Manager and the panel shall be entitled to question the practitioner or their representative on the grounds of appeal;
- The Case Manager shall present the management case in response to the grounds of appeal;
- The practitioner and the panel shall be entitled to question the Case Manager;
- The Case Manager shall present any additional evidence/witnesses in response to any new evidence from the practitioner or their representative and the panel may ask questions;
- The Case Manager shall sum up the management's case;
- The practitioner or their representative shall sum up their case. At this stage a mitigation statement may be made.
- The appeal panel shall retire to make a decision.

8.9.8 The decision of the appeal panel

The appeal panel may:-

- Confirm the original decision of the panel;
- Amend the decision of the panel;
- Order the case to be reheard in its entirety.

8.9.9 Timescale for the appeal panel's decision

The appeal panel's decision and the reasons for it must be confirmed in writing to the practitioner within **5 working days** of the appeal hearing.

A record of the decision shall be kept on the practitioner's personal file including a statement of the conduct issues, the action taken and the reasons for this.

Where the appeal was about the practitioner's dismissal and the original decision was to dismiss, they will not be paid from the date of termination notified by the disciplinary panel. If the practitioner is reinstated following the appeal their pay shall be backdated to the date of termination of employment.

If the appeal panel decided that the whole case is to be reheard, the practitioner shall be reinstated and be paid backdated salary to the date of termination. In this situation any conditions/restrictions on practice in place at the time of the original capability hearing shall be applied.

9 CAPABILITY PROCEDURE

9.1 Introduction

Initial consideration must be given as to whether any failure or concern in relation to a practitioner was due to broader systems or organisational failure. If so, appropriate investigation and remedial action should be taken.

If the concerns do relate to the capability of an individual practitioner, these should be dealt with under this procedure whether arising from a one-off or series of incidents. Capability issues arise when there has been a clear failure by an individual to deliver an adequate standard of care, or standard of management, through lack of knowledge, ability or consistently poor performance.

Wherever possible, issues of capability shall be resolved through ongoing assessment, retraining and support. If the concerns cannot be resolved routinely by management, NHSR PPA must be contacted for support and guidance before the matter can be referred to a capability panel.

Any concerns relating to practitioners in training grades must be considered initially as a training issue and dealt via the relevant educational supervisor and college or clinical tutor, plus with the postgraduate dean from the outset.

9.2 Definition of Capability

The following are examples of matters which the Trust may regard as being concerns about capability (this is a non-exhaustive list):-

- Out of date or incompetent clinical practice (unless this is contrary to clear management requests made previously in which case the issue may be one of misconduct – see Section 8);
- Inappropriate clinical practice arising from a lack of knowledge or skills that puts patients at risk;
- Inability to communicate effectively;
- Inappropriate delegation of clinical responsibility;
- Inadequate supervision of delegated clinical tasks; and
- Ineffective clinical team working skills.

In the event that the capability issue has arisen due to the practitioner's ill health, then the Ill Health Procedure in Section 10 must be considered.

In the event of an overlap between issues of conduct (see Section 8) and capability, then usually both matters will be heard under the capability procedure. In exceptional circumstances, it may be necessary for issues to be considered under separate procedures. The decision as to which procedure shall be initiated shall be taken by the Case Manager in consultation with the Director of HR & OD (or nominated deputy) and NHSR PPA.

Prior to instigating these procedures, the employer should consider the scope for resolving the issue through counselling or retraining and should take advice from the NHSR PPA.

9.3 Pre-Capability Hearing Process

Once the Case Investigator has concluded their investigation (see Section 6), the report will be sent to the Case Manager. The Case Investigator will already have provided the practitioner with the opportunity to comment on the factual sections of the report. In exceptional circumstances, for example in complex cases or due to annual leave, the deadline for comments from the practitioner should be extended.

The Case Manager shall decide what further action needs to be taken, based on the findings of the report and any comments that the practitioner has made. The Case Manager shall consult with NHSR PPA and within **10 working days** notify the practitioner in writing on how the issue is to be dealt with.

The Case Manager will also need to consider with the Medical Director and Director of HR&OD (or nominated deputy) whether the issues of capability can be resolved through local action (such as retraining, counselling, performance review). If such local action is not appropriate the matter must be referred to NHSR PPA to consider whether assessment is necessary.

If it is decided to apply the capability process set out in this part of the policy the options available to the Case Manager for dealing with the matter are:-

- No action is required;
- Retraining or counselling should be undertaken;
- The matter should be referred to NHSR PPA to deal with the case by way of an assessment panel ; or
- Referral to a capability panel for a hearing should be made.

9.4. Preparation for Capability Hearings

9.4.1 Time Limits

Where a Case Manager has decided to refer the matter to a capability panel, the following preparatory steps must take place:

- **20 working days** before the hearing the Case Manager will notify the practitioner in writing of the decision to arrange a capability hearing The practitioner must at the same time be provided with details of the allegations and copy documents or evidence that will be put before the capability panel and confirmation of their right to be accompanied.
- At least **10 working days** before the hearing, both parties should exchange documents (including any written statements of case) and witness statements on which they intend to rely at the hearing. In the event of late evidence being presented, the employer should consider whether a new date should be set for the hearing.
- At least **2 working days** before the hearing, the parties must exchange final lists of witnesses they intend to call to the hearing. Witnesses who have made written statements at the inquiry stage may, but will not necessarily, be required to attend the capability hearing. Following representations from either side contesting a witness statement which is to be relied upon in the hearing, the Chair should invite the witness to attend. The Chair cannot require anyone other than an employee to attend. However, if evidence is contested and the witness is unable or unwilling to attend, the panel should reduce the weight given to the evidence as there will not be the opportunity to challenge it properly. A final list of witnesses to be called must be given to both parties not less than two working days in advance of the hearing.

9.4.2 Postponement Requests

In the event of a postponement request, the Case Manager shall deal with the response and may agree time extensions. If the practitioner requires a postponement of over **30 working days**, the Chairman of the capability panel should consider the grounds for the request and if reasonable to do so may decide to proceed with the hearing in the practitioner's absence.

Should the practitioner's ill health prevent the hearing taking place the employer should implement their usual absence procedures and involve the Occupational Health Department as necessary.

9.4.3 Panel Members

The panel for the capability hearing shall consist of at least three people not previously involved in the case including:-

- An Executive Director of the Trust;
- A medical or dental practitioner not employed by the Trust (following discussions with the LNC/GMSC);
- A Board Member or Senior Manager of the Trust.

The Executive Director will normally act as Chair of the panel.

If the practitioner is a clinical academic, a further panel member may be appointed in accordance with any agreed protocol between the Trust and the relevant University.

The panel must be advised by:-

- A senior member of staff from HR.
- A senior clinician from the same or similar speciality as the practitioner from another NHS employer. In the event this clinician cannot advise on the appropriate level of competence then a practitioner from another NHS employer of the same grade as the practitioner in question should be asked to advise.

The practitioner should be notified of the panel members in writing by the Case Manager, where possible at the same time as the notification of the hearing.

Within **5 working days** of their notification, the practitioner should raise with the Case Manager any objections to the choice of any panel members. The Case Manager in consultation with the Director of HR & OD shall consider the objections and will respond in writing prior to the hearing, stating the reasons for any decision on the objections. Reasonable efforts will be made by the Trust to agree the composition of the panel with the practitioner and only in exceptional circumstances shall the hearing be postponed whilst the matter is resolved.

9.5 The Capability Hearing

The Chair of the panel is responsible for ensuring the hearing is conducted properly and in accordance with the Trust's procedure.

The practitioner has the right to be accompanied at the hearing. The Case Manager may be assisted by the Case Investigator(s) (where they are not appearing as a witness) or a HR Manager.

At all times during the hearing the panel, its advisers, the practitioner, their representative and the Case Manager must be present. Once a witness has given evidence they shall leave the hearing.

The procedure for the hearing will be as follows:-

- The Case Manager presents the management case (which may be by reference to the Case Investigator's report or a separate statement of case);
- The management witnesses will be called in turn. Each will confirm their witness statement and provide any additional information. The Case Manager may ask additional questions. The practitioner's representative may ask questions of the witnesses (if unrepresented the practitioner may ask questions). The panel may question the witness. The Case Manager may then ask further questions to clarify any points but will not be able to raise new evidence;
- The Chairman may ask the Case Manager to clarify any issues arising from the management case;
- The practitioner and/or their representative shall present their case and call any witnesses. The above procedure used for the management's witnesses shall be followed;
- The Chairman can request any points of clarification on the practitioner's case;
- The Chairman shall invite the Case Manager to make a short closing statement summarising the key points of the management's case;
- The Chairman shall invite the practitioner and/or their representative to make a short closing statement summarising the key points of their case. Where appropriate, this should include any grounds of mitigation;
- The panel shall retire to consider its decision.

9.6. The Decision

The panel has the discretion to make a range of decisions. A non-exhaustive list of possible decisions include:-

- No action required;
- Verbal agreement by the practitioner that there will be an improvement in clinical performance within a specified timescale confirmed in a written statement as to what is required and how it is to be achieved (remains on the employment record for 6 months);
- Written warning to improve clinical performance within a specified timescale with a statement on what is required and how this can be achieved (remains on the employment record for 1 year);
- A final written warning that there must be improved clinical performance within a specified timescale and how this can be achieved (remains on the employment record for 1 year)
- Termination of employment.

The decision must be confirmed in writing to the practitioner within **5 working days** of the hearing and communicated to the Case Manager within the same timescale. The letter to the practitioner must include reasons for the decision, confirmation of the right of appeal and notification of any intention to make a referral to the GMC/GDC or any other external professional body.

Any decision must be placed in the practitioner's personal file.

9.7 **Capability Appeals Procedure**

9.7.1 Remit of the Appeal Panel

This appeal procedure shall relate to decisions of a capability panel. The remit of the appeal panel is twofold. First, to review the findings of the capability panel to establish whether its decision was fair and reasonable on the basis of a thorough investigation and sufficient evidence. Secondly, the appeal panel will need to establish whether the Trust's procedures have been followed by the capability panel. A full re-hearing of all evidence should not take place unless the Chairman of the appeal panel considers that proper procedures have not been followed at an earlier stage in the process and a full re-hearing is required in the interests of a fair process.

The appeal panel can hear any new evidence submitted by the practitioner to consider whether this might have significantly altered the capability panel's decision. The Case Manager may call new evidence that is relevant to new evidence called by the practitioner and/or their representative. The appeal panel has the right to call witnesses of its own volition but must notify parties at least **10 working days** prior to the hearing supplying them with a written statement from the additional witness.

9.7.2 The Appeal Panel

The appeal panel should consist of:-

- An independent person (trained in legal aspects of appeals) from an approved pool appointed by the NHS Appointments Commission. This person will act as the Chair of the appeal panel;
- The Trust's Chairman or another Non-Executive Director (other than the Designated Board Member) who must have the appropriate training for hearing an appeal unless agreed otherwise by the two parties;
- A medically/dentally qualified member who is not employed by the Trust (following discussions with the LNC/GMSC) who must have the appropriate training for hearing an appeal unless agreed otherwise by the two parties;
- Where the practitioner is a clinical academic, a further panel member may be appointed in accordance with any agreed protocol between the Trust and the relevant University.

The appeal panel may be advised by:-

- A Consultant from the same speciality or sub-speciality of the practitioner who is not employed by the Trust; and
- A senior HR specialist.

The panel will be established by the Trust and advice should be sought from the Director for HR and OD.

The practitioner shall be notified of the composition of the panel, where possible, **25 working days** prior to the hearing. If the practitioner objects to a panel member, the Director of HR & OD (or nominated deputy) shall liaise with him/her or their representative to seek to reach agreement. In the event agreement cannot be reached, the objections will be noted.

9.7.3 Procedure and Time Limits in Preparation for the Appeal Hearing

The following steps shall be taken:-

- Within **25 working days** of the practitioner receiving the capability panel's decision they must send an appeal statement to the Chief Executive giving full grounds for the appeal;
- Within **25 working days** of the appeal being lodged, the appeal hearing shall take place;
- At least **10 working days** before the appeal hearing, the appeal panel shall notify the parties if it considers it is necessary to hear evidence from any witness. In the event the panel requires a witness to be called, the Chair shall liaise with the HR Department for the witness to supply a written statement to both parties 5 working days in advance of the hearing;
- At least **10 working days** before the hearing the practitioner shall confirm to the panel and the Case Manager whether they has any additional evidence on which they intends to rely. Copies of any documents or witness statements shall be provided with the notice of intention to call additional evidence.
- At least **5 working days** before the hearing, the Case Manager shall confirm to the panel and the practitioner whether they has any additional evidence on which they intends to rely. Copies of any documents shall be provided. If the Case Manager's response to the practitioner's grounds of appeal is other than as set out in the written decision of the capability panel, the Case Manager must provide this response, in written form, to the practitioner no later than **5 working days** before the appeal hearing.

9.7.4 Procedure at the Appeal Hearing

The procedure for the hearing will be as follows:-

- The practitioner or their representative shall present a full statement of their case to the appeal panel which shall include all the grounds of appeal;
- The Case Manager and the panel shall be entitled to question the practitioner or their representative on the grounds of appeal;
- The practitioner or their representative shall present any additional evidence/witnesses. If they do so, the Case Manager and panel may ask questions;
- The Case Manager shall present a statement of the management case to the appeal panel which shall include the response to the grounds of appeal;
- The practitioner and the appeal panel shall be entitled to question the Case Manager;
- The Case Manager shall present any additional evidence/witnesses in relation to any new evidence from the practitioner or their representative and the panel may ask questions;
- The Case Manager shall sum up the management's case;
- The practitioner or their representative shall sum up their case. At this stage a mitigation statement may be made.
- The appeal panel shall retire to make a decision.

9.7.5 The Decision of the Appeal Panel

The appeal panel may:-

- Confirm the original decision of the capability panel;
- Amend the decision of the capability panel; or

- Order the case to be reheard in its entirety.

The appeal panel's decision and the reasons for it must be confirmed in practitioner within **5 working days** of the appeal hearing. The decision of the appeal panel is final and binding.

A record of the decision shall be kept on the practitioner's personnel file including a statement of the capability issues, the practitioner's defence or mitigation, the action taken and the reasons for those actions. These records must be kept confidential and in accordance with the Data Protection Act 1998. They must be made available if requested by the Regulatory body or an Order of the Employment Tribunal or other Court.

Where the appeal was about the practitioner's dismissal, they will not be paid from the date of termination as decided by the original capability panel. If the practitioner is reinstated following the appeal their pay shall be backdated to the date of termination of employment.

If the appeal panel decided that the whole case is to be reheard, the practitioner shall be reinstated and be paid backdated salary to the date of termination. In this situation any conditions/restrictions on practice in place at the time of the original capability hearing shall be applied.

9.8. Other Issues

9.8.1 Termination of Employment Pre-completion of Process

If a practitioner leaves the Trust's employment prior to the conclusion of the above processes, the capability proceedings must be completed wherever possible. This applies whatever the personal circumstances of the practitioner.

If the practitioner cannot be contacted via their last known address/registered address, the Trust will need to make a decision on the capability issues raised based on the evidence it has and take appropriate action. This decision shall be made by the Chief Executive in conjunction with the Case Manager, Director of HR & OD (or nominated deputy) and in consultation with the Designated Board Member. This action may include a referral to the GMC/GDC, the issue of an alert letter and/or referral to the police or the Disclosure and Barring Service.

9.8.2 Sickness Absence of the Practitioner

Where during the capability process a practitioner becomes ill, they shall be dealt with under the Trust's sickness absence procedure and Section 10 of this policy.

Where a practitioner's employment is terminated on ill health grounds the Trust shall take the capability procedure to a conclusion as set out in above.

10 HANDLING CONCERNS ABOUT A PRACTITIONERS HEALTH

10.1 Introduction

A wide variety of health problems can have an impact on an individual's clinical performance.

Wherever possible and consistent with reasonable public protection, the practitioner should be treated, rehabilitated or re-trained, including the consideration of reasonable adjustments. In some cases however, retirement due to ill health may be necessary.

The purpose of this section is to provide guidance to managers when dealing with the various circumstances which involve the health of the practitioner

This part applies to the following circumstances:

- where the practitioner is off sick and no concerns have arisen about conduct or capability;
- where the issues of capability or conduct are decided by the Case Manager to have arisen solely as a result of ill health on the part of the practitioner;
- where issues of ill health arise during the application of the procedures for addressing capability or conduct.

Separate procedures are set out below in respect of each of these eventualities.

This procedure should be read in conjunction with the Trust's Sickness and Attendance Management Policy.

10.2 **Action in the event the practitioner is absent purely due to ill health and no concerns exist as to conduct or capability**

10.2.1 Procedure

Where a practitioner has been off sick for a continuous period of four weeks and there is no anticipated date for the practitioner's return to work and no concerns about capability or conduct have arisen, the following procedure will be adopted:

- A Case Manager will be appointed in accordance with Section 6;
- The Case Manager will refer the practitioner to Occupational Health for assessment;
- Occupational Health will provide an assessment to the Trust and make recommendations as regards future management of the practitioner's ill health or proposals for re-integration of the practitioner into work;
- The Case Manager will seek the advice of NHSR PPA about the report and management of the practitioner's ill health;
- The practitioner (together with their representative if the practitioner so wishes) will meet the Case Manager (who will be accompanied by a member of the HR Department if (s)he wishes) to discuss the occupational health report and proposals for the practitioner to return to work;
- If the practitioner is unable to attend a meeting due to the state of their health, their ill health will continue to be monitored by the Case Manager in conjunction with the HR Department ;
- The Case Manager, in conjunction with HR and NHSR PPA, shall monitor the practitioner's sickness and explore all of the options, including re-training, rehabilitation, variation of duties and/or working patterns, with the practitioner and their representative;
- As a last resort, in the event that the practitioner will be unable to return to work within a reasonable time and no reasonable steps can be taken by the Trust to facilitate that return, the practitioner's employment may be terminated.

10.2.2 Obligations of the Trust and the Practitioner

The Trust agrees that it will explore all options with the practitioner and seek to make reasonable adjustments to facilitate their return to work. The practitioner agrees that they will make themselves reasonably available for meetings or appointments with Occupational Health or such other medical adviser as may be reasonably deemed necessary or appropriate by the Trust.

10.3 **Action in the event that issues of capability or conduct arise solely as a result of ill health on the part of the Practitioner**

In the event that the Case Manager considers that the capability or conduct concerns may have arisen because of a practitioner's ill health, they should refer the practitioner to Occupational Health. Care must be taken in the letter to Occupational Health. It needs to set out:

- The practitioner's role and duties within it.
- If the practitioner has been signed off sick. If so, for how long and for what reason?
- Any evidence the practitioner has put forward suggesting that the concerns are caused by health problems rather than misconduct or incapability.
- Enough of the background about the concerns so that the Occupational Health adviser understands the context in which they are asked to advise.
- Specific questions asking the Occupational Health adviser to assess whether the ill health in question could have caused the practitioner to behave in a particular way and if that is likely in the particular case.
- Whether the practitioner is currently fit to carry out their duties. If not, when might they be fit to do so? Does their ill health compromise or potentially compromise patient safety? If so, how long will that be the situation or when will the Occupational Health adviser need to review the position and give further advice? Will the practitioner be able to return on a restricted basis without jeopardising patient safety and, if so, when?
- A request for a written report from Occupational Health addressing each of the questions raised

If the practitioner refuses to co-operate in such an Occupational Health assessment, that may well be a refusal to obey a reasonable management instruction to be dealt with under Section 8 of this procedure.

Once the Case Manager has the report from Occupational Health, they should decide whether they are satisfied that any concerns arise from ill health rather than misconduct or incapability. In that situation the Case Manager must then consider whether the practitioner should:

- Be removed from duties if the person is not on sickness absence.
- Have their practice restricted, for instance, by removing certain duties.
- Be excluded in accordance with Section 7 of this policy.
- Simply continue sickness absence, but on the strict basis that the situation will be reviewed in the event that the practitioner indicates they are fit to return to work. At that point the Case Manager should seek further advice from Occupational Health on this issue. If the practitioner is insisting on returning to work in circumstances where Occupational Health says they are not

fit to do so and there could be a risk to patient safety, then the Case Manager is entitled to consider exclusion or a restriction of practice as appropriate.

- If sickness absence continues it will be dealt with under the Trust's sickness absence procedure with due regard to the Equality Act 2010, if applicable.

10.4 Where issues of ill health arise during the application of the procedures for addressing capability or conduct

This section addresses circumstances where:

- Part way through a conduct or capability procedure the practitioner argues any concerns were caused by their ill health.
- Where the practitioner says a capability or conduct procedure should be delayed because of their ill health.
- Where a practitioner says conduct or capability procedures should be halted and purely handled as a health issue.

10.4.1 Practitioner arguing concerns are caused by ill health

In this situation the first step for the Case Manager is to obtain an Occupational Health report as set out above. If there is a dispute as to whether or not the practitioner's ill health caused the concerns or Occupational Health has been unable to offer a view on this, then the Case Manager may refer the practitioner to a specialist for a further opinion. If Occupational Health advice is clear, the Case Manager is entitled to act on the basis of that advice. They are also entitled to act on the basis of the specialist's advice (if obtained) if that conflicts with the practitioner's medical advice.

The Case Manager should seek advice from NHSR PPA on this issue. Where there is such dispute the Case Manager will write to the practitioner within **5 working days** of receiving the specialist's and Occupational Health's advice setting out their decision. The Case Manager should confirm whether the matter will be dealt with as an ill health issue or under the capability or conduct procedure as appropriate. If the Case Manager determines that the issue is an ill health issue, they should follow the procedure set out above. If he decides the issue is a matter of conduct or capability, then that process will continue subject to what is set out below.

10.4.2 Delaying a conduct or capability procedure due to a practitioner's ill health

Where a Practitioner seeks the delay of an investigation, conduct or capability hearing, they must, without delay, seek such delay in writing providing supporting medical evidence. If no such written reasons or medical evidence is provided, the

Case Manager is entitled to take this into account in deciding whether to delay the process. Any decision whether to delay the process is the Case Manager's.

Where a practitioner says that they are unfit to attend a conduct or capability hearing or take part in an investigation, the Case Manager should refer the practitioner to Occupational Health promptly and in any event within **4 weeks** of the sickness absence starting to consider:

- The practitioner's general state of health at that point.
- The prognosis as to when the practitioner's health might improve.

- The practitioner's ability to give instructions to their trade or defence union representative to defend their position.
- The practitioner's ability to participate in the conduct or capability hearing.
- If the assessment is that the practitioner is unfit to give instructions or take part in the hearing, provide an opinion as to when they may be able to.
- Provide an opinion on the likely impact of the procedure remaining on hold in the long term. Is there any benefit to the practitioner's health in moving forward with the procedure at a certain point?
- Asking for a written report addressing these issues.

The Case Manager should discuss any decisions as to whether to delay the proceedings with NHSR PPA. If, having taken all matters into account, the Case Manager is satisfied that circumstances require a delay to be lifted, they must write to the practitioner explaining this fact and giving reasons for such decision. If notice is given of a conduct or capability hearing, the Case Manager should explain that the practitioner is entitled to attend this hearing or ask a representative to attend in their absence and/or present written representations. Alternatively, the Case Manager may decide proceedings should re-start at a specified date.

Once an Occupational Health report has been received, the Case Manager should convene a meeting with the practitioner, their representative and a Senior HR Representative to consider the way forward. The Case Manager shall take into account the practitioner's views, but it remains the Case Manager's responsibility to ensure the process is effectively handled. The Case Manager may conclude that:

- A delay for a certain period of time is appropriate but the situation should then be reviewed at that point.
- A delay is appropriate for a certain period at which point the practitioner should be referred to Occupational Health once more for a further assessment at which point the situation will be re-assessed.
- The Occupational Health advice is clear that an impasse has been reached and that it would actually be beneficial to the practitioner to continue the process at a certain point. In doing so, the Case Manager is entitled to take into account the risk of memories fading if there is a lengthy delay in the proceedings.

The practitioner must reasonably co-operate with Occupational Health. If they does not do so, for instance, by unreasonably refusing to accept a referral to Occupational Health, then they may be subject to separate disciplinary actions. The Case Manager will further be entitled to take such issue into account in deciding whether to delay a conduct or capability hearing or investigation.

10.4.3 Practitioner request to terminate or modify conduct or capability proceedings

In the event that a practitioner requests that the scope of proceedings be modified or terminated, the Case Manager should refer the practitioner to Occupational Health within 4 weeks of such request. Again, the Occupational Health adviser should be asked specific questions as to the practitioner's state of health, ability to take part in the process, and the implications of the modification or termination sought on the practitioner's health. When a report is received from Occupational Health, the Case Manager should consider this report alongside any representations that the practitioner makes. The Case Manager should also take into account:

- Evidence suggesting there is a risk to patient safety.

- Evidence suggesting there is a risk to other staff.
- The seriousness of the concerns.
- Evidence of any serious dysfunction in the operation of the service in which the practitioner works.

The Case Manager is entitled to weigh these factors in the balance in determining whether to modify or terminate conduct or capability proceedings. The Case Manager should discuss this matter with NHSR PPA. Having done so, the Case Manager must write to the practitioner setting out their decision as to whether to modify or terminate the procedure and giving reasons for it. If the Case Manager determines it is inappropriate to modify or terminate the procedure, they should outline what next steps will be taken in the process. These might include:

- A further Occupational Health assessment.
- A delay in the proceedings until a specified date.
- Where the Case Manager considers the circumstances justify it, setting a date for a conduct or capability hearing.

10.5 **Practitioners in training grades where ill health issues arise**

Where a concern involves a training grade practitioner, the Trust shall seek advice from the Post Graduate Dean in each of the situations set out above.

10.6 **Reporting Practitioners with health concerns to Regulatory Bodies**

If a practitioner's ill health makes them a danger to patients and they does not recognise this, or is not prepared to co-operate with measures to protect patients, then exclusion from work must be considered and is potentially justifiable. Furthermore, NHSR PPA or the GMC/GDC must be informed irrespective of whether or not the practitioner has retired on ill health grounds.

11 **RIGHT TO BE ACCOMPANIED**

Any practitioner covered by these policy and procedures may be accompanied by a friend, partner/spouse, work colleague, trade union/defence organisation representative. The right to be accompanied extends to any of the meetings or hearings referred to throughout the policy and procedures. Any representative or other accompanying person cannot act in a legal capacity, unless the practitioner is allowed to be legally represented.

Any trainee covered by these policy and procedures is entitled to be legally represented, whether that is through their defence organisation or otherwise.

As a general rule, practitioners other than trainees are not allowed to be legally represented, whether that is through their defence organisation or otherwise. The exception to that general rule is where the absence of legal representation would compromise their right to a fair trial (under Article 6 ECHR). Such circumstances might occur where the practitioner is facing charges of such gravity that, in the event they are found proved, they will effectively be barred from employment in the NHS. If the practitioner is concerned that their right to a fair hearing may be compromised if they are not legally represented, they should make representations at the earliest possible opportunity. If this is at the investigative stage, the representations should be made to the Case

Manager, who may seek legal advice to help them decide whether that is the case. If this is at the hearing stage, the representations should be made to the Chair of the Panel, who may seek legal advice to help them decide whether that is the case. As in relation to any other decisions in this process, the practitioner may raise any issues or concerns with the Designated Board Member (see 2.2.2 and Appendix A)

12 TRAINING REQUIREMENTS

The HR & OD Directorate provide comprehensive training opportunities on all of the HR-related policies. This is primarily delivered through standalone training sessions (either centrally coordinated, or locally delivered). Coaching and support for managers will be offered from the HR & OD team utilising this policy to support staff within the workplace.

All managers and directors (whether internal or external to the Trust) who are involved in undertaking investigations or sitting on disciplinary/capability panels or appeal panels shall have undertaken formal Equality and Diversity training prior to undertaking such duties. Case Managers, Case Investigators and Panel Members should be adequately trained in the operation of the disciplinary and capability procedures as advised by the HR&OD Department.

13 CONFIDENTIALITY

The Trust will maintain confidentiality at all times and will not release the name of the practitioner, or issue any press release regarding an investigation or hearing into any disciplinary matters. The Trust may however confirm that an investigation or disciplinary hearing is underway.

Personal data released to the Case Investigator should be fit for purpose and proportionate to the gravity of the matter under consideration. It is to be handled in accordance with principles of the Data Protection Act 1998.

14 COMMUNICATION AND CONSULTATION

Advice and guidance will be provided by the HR & OD team to ensure that staff and managers are given appropriate support and advice in dealing with all elements of this policy, as required.

15 MONITORING ARRANGEMENTS

Policy element to be monitored	Lead	Audit Tool	Frequency	Reporting arrangements (Committee or group)	Response required on any issues/recommendations identified
Number of cases resulting in formal sanctions and within the following groups: - Ethnic & national origin - gender - age - disability - sexual orientation - religion and/or belief - part/full time employees	Head of Employee Relations	Report	Annually	Local Negotiating committee	Actions will be identified when required and remedial work completed within an agreed timeframe. Any required changes in practice or lessons to be shared will be identified and actioned within a specific timeframe, with lead person for implementation identified.

16 EQUALITY IMPACT ASSESSMENT

Title of Document:	Conduct Capability, Ill Health And Appeals Policies And Procedures For Medical Practitioners (MHPS)
Completed By:	Associate Director of HR&OD
Date Completed:	August 2019
Summary of Stakeholder Feedback:	

Potential Equality Impacts and Issues Identified

Protected Group	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
Age	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring
Disability (Including Learning Disability)	Provisions within policy ensure staff with disabilities are effectively supported within the workplace in relation to reasonable adjustments	Occupational Health provide guidance about adaptations and modifications that may be made to the workplace, access to work and other specialist agencies can also be contacted. Any potential detriment may occur during implementation, which will be identified through monitoring
Gender Re-Assignment	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring
Marriage or Civil Partnership	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring
Pregnancy and Maternity	Treated sensitively under remit of this policy	Occupational Health provide guidance about adaptations and modifications that may be made to the workplace. Any potential detriment may occur during implementation, which will be identified through monitoring
Race	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring
Religion or Belief	Provisions within this policy ensure all are treated fairly regardless of religion or belief	If meetings are arranged for a day or time, which the employee cannot attend because of religious reasons, a request to change the date or time of the meeting will be considered in line with this policy. Any potential detriment may occur during implementation,

		which will be identified through monitoring
Sex	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring
Sexual Orientation	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring

17 REFERENCES

Equality Act 2010

Employment Rights Act 1996

Human Rights Act 1998

ACAS Code of Practice on Disciplinary and Grievance Procedures 2015

APPENDIX A – Authorisations

Set out below are lists of those authorised to fulfil certain roles under these guidelines. GOSH reserves the right to add to or remove from these lists as it considers necessary.

Case managers

The following are authorised by the Trust to act as case managers: the Medical Director

- an appropriate Chief of Service, Deputy Chief of Service or Specialty Lead appointed by the Medical Director (in a case not involving a Consultant)
- or any Medical Director or Chief of Service not employed by the Trust who has been requested to undertake this role by the Chief Executive of the Trust.

Case investigators

The following are authorised by the Trust to act as Case Investigators:

- Chief of Service
- Deputy Chief of Service
- Specialty Leads
- Deputy Medical Director
- General Managers
- Service Managers (for practitioners below the grade of Consultant)

Designated Members

The following Non-Executive Directors are authorised by the Trust to act as Designated Members: Mary MacLeod, Yvonne Brown.

Employees with the power to exclude doctors from work or restrict their practice

The following are authorised to exclude or restrict practice:

- Chief/A Executive
- Chiefs of Service
- Specialty Leads (for practitioners below the grade of consultant)
- Medical Director

APPENDIX B – Checklist On Excluding / Restricting Practice When Concerns First Arise

Who discussed this?	[Insert names]
When?	[Insert date]
Summarise the areas of concern	[Insert summary]
Has the NHSR PPA been consulted?	YES/NO. [Give name of NHSR PPA officer spoken to if applicable and when discussion took place]
If so, what was its advice?	[Insert summary]
Has an NHSR PPA assessment been considered? Is it an appropriate action? If not, why not?	YES/NO. [Insert summary answer]
Has supervision by clinical/medical Director been considered? Is it an appropriate action? If not, why not?	YES/NO. [Insert summary answer]
Has restricting the practitioner’s Clinical duties been considered? Is it an appropriate action? If not, why not?	YES/NO. [Insert summary answer]
Has restricting activities to non-Clinical duties and/or re-training been considered? Is it an appropriate action? If not, why not?	YES/NO. [Insert summary answer]
Is immediate exclusion necessary? If so, outline reason for this (e.g. A serious clinical concern has arisen and the practitioner’s presence is likely to hinder investigation) and basis for such conclusion	YES/NO. [Insert reasoning]
What arrangements have been agreed to inform the practitioner?	[Insert details]
	Signed..... Date.....

APPENDIX C – Template Letter To Send To Practitioner Being Immediately Excluded/Restricted From Practice

Dear **[insert name of practitioner]**

I am writing to inform you that serious concerns have been raised concerning your conduct/ **capability/health** **[delete / add to as appropriate]**. These concerns are that:

[Set out details of the concerns]

In accordance with Department of Health Guidance and Trust procedure, I will be the case manager dealing with your case. In the circumstances, I have discussed this case with **[insert names]**. I have also consulted with NHSR PPA.

The above concerns are very serious. They need to be investigated further. I have therefore appointed **[insert name]** to investigate these concerns with all proper speed. It is anticipated that **[insert name]** will complete their investigation by **[insert date four weeks from date of letter]**. I will then endeavour to write to you within five days of the completion of the investigation to provide you with a copy of the investigatory report.

In the meantime I and **[insert names]** have considered and consulted with NHSR PPA over the following alternatives:

- Your clinical duties being carried out under the supervision of the **[Medical/Clinical]** Director **[delete as appropriate]**
- A restriction of your clinical duties pending the investigation or any formal procedure that may follow if considered necessary
- Asking you to cease clinical duties pending completion of the investigation/any procedures flowing from it
- An NHSR PPA assessment
- Immediately excluding you from work for **[insert period up to a maximum of two weeks]**

After the most careful consideration, I have decided that it is appropriate to **[insert conclusion]**. I did not consider the other alternatives I have set out appropriate because:

[Set out reasons for rejecting other options.]

I considered that **[insert option decided upon]** was appropriate because:

[Insert reasons for your choice of option.]

This information must be treated in the strictest confidence by you as it will be by the Trust. You are of course free to discuss it with your professional adviser/defence organisation/representative. Otherwise you should not discuss it further.

Insert if excluding from work.]

Exclusion from work is a neutral act. It does not denote guilt or any suggestion of guilt. During the period of exclusion you

[either]

may only attend the Trust's premises for audit meetings, research purposes, and study or continuing professional development. Obviously there is no limitation on you attending Trust premises to receive medical treatment.

[Or]

you should not attend the Trust's premises unless specifically invited to do so by me or **[insert name of case investigator]**. Of course this does not affect your ability to come to receive medical treatment.

During your exclusion from work you will continue to receive your full salary and benefits. You must remain ready and available to work. You must seek permission for annual and study leave from me but otherwise in the normal way. During your working hours you must be available and contactable to provide information to **[insert name of case investigator]**. If you are unavailable for work during your exclusion, this may result in the Trust stopping your pay.

[Applies where restriction on practice is agreed with the practitioner]

Please signify your agreement to the restrictions on your practice by signing and returning the enclosed copy of this letter. If you do not agree to abide by these restrictions, the Trust reserves the right to review this situation and any actions it may need to take in order to safeguard patient interests.

[Applicable in all cases]

[Insert name], a non-executive director of the Trust is designated to ensure that your case is dealt with fairly and promptly.

[Applicable in exclusion cases]

[You may make representations to **[insert name]** on your exclusion from work.

A meeting has been scheduled to meet with myself on (date) at (time) in (location) to discuss the progress in the case. You will be entitled to be accompanied at this meeting by a trade union/staff side representative, a work colleague not likely to be called as a witness in the case or a friend (not acting in a legal capacity).

If you have any questions, please contact me.

Yours sincerely

[Insert name of case manager]

APPENDIX D – Case Manager’s Initial Assessment Report

General Principles

This Guidance relates to when initial concerns have been raised with the Case Manager. The Case Manager should decide how such concerns should be taken forward in accordance with Part 2.

If an immediate decision on how to deal with the concerns is unnecessary, then the Case Manager should set out their decision in an Initial Assessment Report, in accordance with the Guidance below. Where immediate action is necessary and it is simply not practicable to document the decision beforehand, then it would be best practice to produce an Initial Assessment Report, after the event so that there is a record of the reasons for the decision.

The Initial Assessment Report is not intended to be and cannot be a thorough investigation of all the issues arising from the concern. The Case Manager is only concerned in investigating the concern to the extent that it is necessary to make a preliminary decision on how matters should be taken forward.

The Case Manager’s preliminary decision on how the matter should be taken forward, as set out in the Initial Assessment Report, should not in any way affect the Case Investigator’s conclusions (if a Case Investigator is later appointed) or the fact that the Case Manager may subsequently decide that it is more appropriate to take matters forward in another way. For example, a Case Manager may believe in their initial assessment that a serious concern has arisen which requires investigation. However, following the investigation, the Case Manager may decide that it is unnecessary to take any further action.

The Report

The Initial Assessment Report should usually include the following:

- a clear statement of what the concern(s) is/are;
- an explanation of any steps the Case Manager has taken to clarify the concern(s). It should also identify any evidence or witnesses that have been identified by the Case Manager. Any evidence identified by the Case Manager as part of this initial assessment should be secured in a safe place and passed to the Case Investigator if there is a formal investigation subsequently;
- any advice received from NHSR PPA should be noted together with a record of the name of the NHSR PPA officer and when the advice was given;
- the Case Manager’s view on how the matter should be dealt with in accordance with paragraphs 8 - 7, Part 2 and the reasons for this should be set out. For example, the Case Manager may decide that no serious concerns have arisen and the matter may be dealt with by counselling.
- way of further example, the Case Manager may decide that a formal investigation is necessary before they can decide upon the appropriate procedure to apply;
- the Case Manager should identify what the next steps will be and who will undertake these. For example, if concerns relate to a practitioner’s health, it may be necessary to make a referral to the Occupational Health Department in accordance with Part 6. Another example is where the concern is not considered serious, the Case Manager may believe that the practitioner's line manager should counsel the practitioner to avoid a re-occurrence of the issue;
- The Initial Assessment Report should be signed and dated. The initial assessment Report should not be lengthy.

APPENDIX E – Terms Of Reference For Case Investigator

Where a Case Manager decides that a formal investigation is necessary, Terms of Reference should normally be produced in order to focus the investigation.

The Terms of Reference should usually include the following:

- identification of the Case Manager, the Case Investigator and the Designated Board Member;
- a clear statement of the concerns which are the subject of the investigation and instruction to the Case Investigator to investigate these concerns, establishing the facts and report on the findings;
- any evidence collated by the Case Manager should be appended to the Terms of Reference and any relevant witnesses should be identified. It should however be stressed that the Case Investigator's investigation is not limited to considering this evidence alone and it is entirely for the Case Investigator, at their discretion, to determine how best to investigate the concerns set out in the Terms of Reference;
- identification of any HR adviser and/or a specialist clinician working in the same area as the practitioner who will assist the Case Investigator;

If during the course of the investigation it transpires that case involves more complex clinical issues than first anticipated the case manager should consider whether an independent practitioner from another NHS body should be invited to assist. The Case Investigator should complete their investigation within **4 weeks** of their appointment and submit the report to the Case Manager within a further **5 working days**.

The Terms of Reference should be signed and dated by the Case Manager.

APPENDIX F – Framework For Case Investigator’s Report

The Case Investigator must refer back to the advice in the Department of Health Guidance to ensure they are complying with it. The key is to prepare a clear and thorough report which the Case Manager can understand and stands up to scrutiny. The report will vary from case to case and the framework below is for guidance. Where a clinical adviser is appropriate the investigation report must be written with their full input of the clinical adviser.

Terms of reference

Set out the brief provided by the Case Manager. Set out the scope of the issues or concerns being investigated.

Background Information

Briefly set out the circumstances leading to the investigation. It can be a summary of the incidents of concern and how they came to the attention of the Trust’s senior management.

Investigatory steps

Set out what was done to carry out the investigation. Which witnesses were interviewed? What documentation was looked at? Where applicable what link up was there with those carrying out a serious untoward incident investigation into the same matter? What other steps were taken in the course of the investigation?

Evidence gathered and findings of fact

Set out the main evidence gathered in respect of each of the concerns investigated. Then set out the findings of fact concern by concern. Is there evidence to substantiate the concern? What is said in response, does this provide an answer to the concern? The Case Investigator needs to show that they has weighed both oral and written evidence in the balance.

Where there is conflict of evidence, for example, where the practitioner has given evidence one way but there is other witness evidence to the contrary then such conflict of evidence should be identified and the Case Investigator should explain which evidence appears preferable and why that is the case. However, this may not always be necessary. It depends whether such disputes need to be resolved in order to make recommendations.

Conclusions

Give a preliminary view as to whether there is a case to answer on each of the concerns cross referencing to the findings of fact. Are there other explanations or mitigating factors working against saying there is a case to answer? For instance is there evidence of a systems failure rather than it being the practitioner’s fault on the face of it?

Specifically deal with any arguments that the concerns arise from an underlying health issue.

Recommendations

Are the concerns too serious to ignore? If so can they be addressed through remedial action such as the

supervision of a clinical director, mentorship or an NHSR PPA assessment? If not why not? The Case Investigator needs to be careful to give an explanation as to why the course they recommend one course of action over another. If the Case Investigator concludes there is a serious case to be answered what allegations they recommend should be put before a panel. Specify whether in the Case Investigator's view the allegations are about conduct or capability and give reasons for this view? If the allegations are different from the concerns initially investigated explain why.

Appended to the report should be:

- copies of the statements gathered in the course of the investigation.
- documents considered by the Case Investigator. These should generally be organised in chronological, paginated order with the oldest documents first preferably with an index at the start. In some cases it may make matters easier if documents are sorted by individual issue and then chronologically.

It may be easier if the appendix is prepared as a separate bundle of documents for ease of reference especially where there are a lot of documents.

Preliminary Report

If the Case Investigator is requested to produce a preliminary report by the Case Manager in order for the Case Manager to make a determination on the issue of formal exclusion, then this preliminary report should contain the following:

- a statement as to the concerns being investigated;
- an explanation of what investigations have been undertaken to date;
- an explanation of the evidence gathered to date (this can be by reference to documents or witness statements appended to the preliminary report);
- the Case Investigator should provide sufficient information in the preliminary report to allow the Case Manager to decide whether a formal exclusion is necessary. The Case Investigator may, for example, have come to the preliminary view that the case against the practitioner is weak (although this will of course have to be thoroughly considered in the course of a full investigation). They may therefore be of the view that an exclusion may not be appropriate and this should be referred to in the Report. Alternatively there may be evidence that an exclusion is necessary to protect patient or staff interests or to assist the investigatory process. This evidence and the Case Investigator's preliminary views in respect of this should be set out in the preliminary report.

APPENDIX G – Checklist On Making A Formal Exclusion/ Restricting Practice

Has a case investigator prepared a Preliminary report?	YES/NO.
What does it say?	[Provide summary of key conclusions]
Has NHSR PPA been consulted? If so, what was their advice	YES ¹ . [Summarise their advice]
Has a case conference been held? When? Who attended it	YES. ² [Insert date and attendees of it]
<p>Have alternatives to formal Exclusions been considered namely:</p> <ul style="list-style-type: none"> • Supervision of clinical role • cessation of certain clinical duties • cessation of all clinical duties with restriction to non-clinical duties <p>Are any of these appropriate actions? If not, why not?</p>	YES/NO. [Insert brief analysis against each of these points giving reasons why appropriate / inappropriate]
Are there reasons making formal exclusion necessary? If so, outline reasons for this, e.g. There are serious allegations and the Practitioner’s presence is likely to hinder the investigation. Set out basis for this conclusion.	YES/NO. [Set out reason as per Trust policy and consistent with Department of Health guidance]
If exclusion is necessary, how long will it last for (it cannot last for more than 4 weeks)?	[State length of exclusion period and date it will expire]
What arrangements have been agreed to notify the practitioner?	[State date by which letter will be sent]

¹ NHSR PPA must be consulted where a formal exclusion is being considered

² A case conference must be held when formally excluding

APPENDIX H – Guidance To Classification Of Disciplinary Offences

It is not possible to prescribe, classify and list every possible circumstance, which would require disciplinary action, and the following list therefore gives a sample of the most obvious serious offences which may be classified as gross misconduct therefore justifying summary dismissal (dismissal without notice). The list is not exhaustive nor exclusive and is intended as guidance only.

- Unauthorised removal, use or theft of property belonging to the Trust, another employee, a patient or visitor.
- Fraud or dishonesty, e.g. signing in for another employee or allowing such an arrangement to occur, defrauding the Trust of resources by wilfully falsifying records or booking of work or defrauding patients or staff (NB further guidance on this issue is contained in the Trust's fraud policy and procedure).
- Markedly irresponsible and / inappropriate behaviour including sleeping on duty and / or being under the influence of alcohol or non-prescribed drugs whilst at work or on-call.
- Negligent and / or reckless acts or omissions which endanger the safety of staff, patients or members of the public.
- Gross insubordination, for example wilful failure to carry out reasonable instructions or wilful disobedience of the written or oral instructions of a manager or supervisor.
- A criminal offence either at work or outside of work where the latter is liable to bring the Trust into disrepute or which necessitates the removal of the employee from the post to which they had been appointed (see also paragraph of Part III).
- Wilful damage to Trust premises or property.
- Disclosure of confidential information to unauthorised persons, particularly in relation to a patient or member of staff.
- The illegal possession of drugs and/or the administration of such drugs to oneself or others on Trust premises or allowing such a practice to take place.
- Non-compliance with safety, health or fire rules where such non-compliance could pose a serious risk to themselves or others, and where the rules have been known to staff.
- Unauthorised acceptance of payment from patients, visitors, contractors or other parties having dealings with the Trust which might be interpreted as seeking to exert influence to obtain preferential consideration.
- Physical, verbal or other bullying or harassment or discrimination including harassment on the grounds of race, religion, sexual orientation, sex or disability.
- Physical or verbal abuse, of a patient, employee or visitor.
- Falsification of a qualification which is a stated requirement of the Trust or which might result in additional remuneration.
- Non-declaration of a criminal offence.
- Unauthorised absence from work
- An act sufficiently serious to cause substantial damage to the Trust's reputation.

APPENDIX I - Managers With Authority To Sanction

This section below identifies those managers authorised to take disciplinary action in accordance with the policy.

1. Verbal warnings

The authority to issue a verbal warning rests with the investigating manager's manager (or appropriate equivalent) responsible for direct or indirect management of the individual.

2. First written warning/final written warning

The authority to take this level of action will be within the remit of those managers holding posts reporting directly to the Chief Executive or appropriate equivalent (including Chiefs of Service)

3. Dismissal/disciplinary transfer/demotion

The authority to dismiss (or transfer or demote where dismissal of the practitioner can be justified) will be within the remit of the Chief Executive, Executive Directors and, with the Executive Director's authorisation, those who report directly to them

NB: In all cases, an appropriately equivalent manager may be a manager of an equivalent status from another directorate/department