

HR28

Disciplinary and Management of Performance Policy and Procedure for Medical and Dental Staff

Contents

Sections	Page
1.0 Policy Statement	2
2.0 Definitions	2
3.0 Accountabilities	3
4.0 Policy Detail	4
5.0 Finance Risk Assessment	5
6.0 Equality Impact Assessment	5
7.0 Maintenance	5
8.0 Communication and Training	5
9.0 Audit Process	5
10.0 References	6

Attachments

Attachment 1	<u>Action when a Concern Arises</u>
Attachment 2	<u>Restriction of Practice and Exclusion from Work</u>
Attachment 3	<u>Procedure for Dealing with Issues of Capability</u>

1.0 Policy Statement

- 1.1 This is an agreement between The Royal Wolverhampton NHS Trust and the Local Negotiating Committee (LNC) outlining the Trust's policy and procedure for handling concerns about doctors' and dentists' conduct and capability. It implements the framework set out in '*Maintaining High Professional Standards in the Modern NHS*', issued under the direction of the Secretary of State for Health.
- 1.2 This procedure may be amended to reflect any future national advice or guidance but only by agreement with the LNC. The operation of this procedure will be reviewed after 3 years from the date indicated at the top of the document.
- 1.3 The aim of this procedure is to ensure that when concerns are raised, the Trust will ascertain quickly what the nature of the concern is and the reasons behind the concern, identify ways to reduce or manage the risks arising, put in place a robust and speedy process to tackle any underlying problems and ensure that doctors and dentists are treated fairly. Any concerns raised in relation to allegations or suspicions of child abuse must be dealt with in line with Trust Policy HR10.

2.0 Definitions

- 2.1 **Concern** – A concern about a doctor's or a dentist's practice can be said to have arisen where an incident causes or has the potential to cause harm to a patient, staff or the organisation; or where the doctor or dentist develops a pattern of repeating mistakes, or appears to behave persistently in a manner inconsistent with General Medical Council (GMC), General Dental Council (GDC) or Trust standards. There will be different levels of seriousness in the concerns identified. Careful analysis of the seriousness of the concern will guide an appropriate response.
- 2.2 **Remediation** – Remediation is the process of addressing performance concerns (knowledge, skills and behaviours) that have been recognised through assessment, investigation, review or appraisal, so that the practitioner has the opportunity to return to safe and effective practice. It is an umbrella term for all activities which provide help, from the simplest advice, through formal mentoring to further training, reskilling, rehabilitation, coaching, counselling and behaviour impact agreements.
- 2.3 **Exclusion** – Removal of a practitioner from the workplace, pending the outcome of an internal investigation or hearing. The phrase "exclusion from work" has been used to replace the word "suspension" which can be confused with action taken by the GMC or GDC to suspend the practitioner from the register pending a hearing of their case or as an outcome of a fitness to practice hearing.
- 2.4 **Suspension** – Action taken by the GMC or GDC to suspend the practitioner from the register pending a hearing of their case of a fitness to practise hearing.
- 2.5 **Responsible Officer (RO)** – The accountable officer who is responsible for making recommendations to the GMC or GDC about a medical practitioner's fitness to practice.

3.0 Accountabilities

- 3.1 **Author** – Accountable for the revision of this policy which may be necessary from time to time as a result of changes in the law or in light of experience when applying the procedure. Any revisions will be agreed through the Trust's Joint LNC.
- 3.2 **Chief Medical Officer (CMO)** – The CMO is the RO for the Trust. The RO has a duty to make recommendations to the GMC or GDC about revalidation. The CMO is also responsible for the management of serious issues including decisions involving external agencies such as referral to the Practitioner Performance Advice Service (PPAS) and/or the GMC or GDC. They are also responsible for ensuring this policy is fairly and equitably applied within the Trust. For doctors in General Practice, the RO is the Chief Medical Officer at NHS England, however any issues regarding a General Practitioner (GP) will in the first instance be discussed with the appropriate Divisional Medical Director (DMD) and the CMO.
- 3.3 **Divisional Medical Director (DMD)** – Responsible for ensuring that this policy is fairly and consistently applied within their area of responsibility in the Trust and for ensuring that Clinical Directors (CD) attend the training required as a result of this policy.
- 3.4 **Clinical Director (CD)** – Responsible to the DMD for ensuring that the policy is implemented and complied with in their area(s). The CD has responsibility for enabling the early identification of performance issues. The usual pathway for the CD to respond will initially be a 1:1 informal meeting with the individual. If this meeting has an unsatisfactory outcome or if the matter is of a more serious nature, the CD will refer the matter to the DMD or directly to the CMO or Deputy CMO in their absence.
- 3.5 **Educational Supervisor** – Responsible for ensuring that when concerns arise in respect of a training grade doctor or dentists that the appropriate Professional Support Unit (PSU) referral mechanisms are followed.
- 3.6 **Medical and Dental Practitioners** – Doctors and dentists have personal responsibility for their own health, conduct and capability. In particular, they must ensure that they:
- Work in accordance with Good Medical Practice and other relevant GMC and GDC guidance;
 - Work within the relevant specialty framework;
 - Meet any employment or contractual-related standards for their roles, including engaging in appraisal and personal development processes;
 - Are honest about when they feel they might have competence and capability problems and seek early help and support;
 - Will actively engage with the Trust in identifying and accepting support and working collaboratively to take the necessary steps to ensure resolution of any issues requiring remediation;
 - Engage constructively with the Trust when problems are identified and investigated;
 - Will cooperate with any formal procedures that are instigated.

3.7 **Human Resources (HR)** – Responsible for providing training and support on the application of this policy and procedure.

3.9 **Responsible Officer Advisory Group (ROAG)** - A meeting to support and enable consideration of identified issues, taking account of just culture factors, risk factors, and case complexity. The supporting documentation provides a framework for the ROAG and assists in determining an appropriate, fair and consistent way forward.

4.0 **Policy Detail**

4.1 The great majority of doctors and dentists provide a high standard of care to patients. The principles and values which underpin medical professionalism, and the behaviour required of a doctor and dentist are described in Good Medical Practice (GMC, 2014).

4.2 The assessment of performance is a continuous process. Numerous ways exist in which concerns about a practitioner's performance can be identified to allow remedial and supportive action to be taken quickly before matters become serious or patients are harmed which need not necessarily require formal investigation or the resort to disciplinary procedures.

4.3 Action to take when a concern arises – Refer to [Attachment 1](#)

4.4 Procedure for dealing with issues of capability – refer to [Attachment 3](#)

Concerns about a doctor or dentist's conduct or capability can come to light in a wide variety of ways, for example:

- Concerns expressed by other NHS professionals, health care managers, students and/or non-clinical staff;
- Review of performance against job plans, annual appraisal and revalidation;
- Monitoring of data on performance and quality of care;
- Clinical governance, clinical audit and other quality improvement activities;
- Complaints about care by patients or relatives of patients;
- Information from the regulatory bodies;
- Litigation following allegations of negligence;
- Information from the police or coroner;
- Court judgments.

4.4 Where the standard of care of a doctor or dentist falls below that defined in the GMC's Good Medical Practice or by the GDC, continuing professional development measures alone may be insufficient to address the problem. The Trust policy and procedure ensure that for the very small minority of doctors who fall short of the high professional standards expected, there are fair and effective local systems to identify them and ensure appropriate remedial, performance or regulatory action to safeguard patients.

5.0 Financial Risk Assessment

1	Does the implementation of this policy require any additional capital resources?	No
2	Does the implementation of this policy require additional revenue resources?	No
3	Does the implementation of this policy require additional manpower?	No
4	Does the implementation of this policy release any manpower costs through a change in practice?	No
5	Are there additional staff training costs associated with implementing this policy which cannot be delivered through current training programmes or allocated training times for staff?	No
	Other comments	

6.0 Equality Impact Assessment

- 6.1 The screening checklist has been completed. Reasonable efforts have been made to eliminate any possible Equality and Diversity discrimination occurring.

7.0 Maintenance

- 7.1 This policy will be reviewed every three years or earlier if warranted by a change in standards/legislation or if changes are deemed necessary from internal sources.

8.0 Communication and Training

- 8.1 Training is provided for clinicians and managers identified either as a Case Investigator or Case Manager to execute their responsibilities within that role.
- 8.2 All Executive Directors, DMD's, CD's, Deputy Chief Operating Officers, Divisional Managers and Group Managers are responsible for the communication of this Policy to their staff and for ensuring that they access and log their training sessions on the Trust's training database.

9. Audit Process

- 9.1 The Director of Workforce has overall responsibility for the update and maintenance of this policy.

- 9.2 The Divisional Team, as well as the Workforce and Organisational Development Committee will be responsible for monitoring its implementation and reviewing this policy to ensure it reflects national standards and best practice, see below.

Criterion	Lead	Monitoring method	Frequency	Committee / Group
Fair and consistent application of this policy	HR Manager/ Line Manager	Audit of actions taken by gender, race, age and disability to identify any variations.	Annual	Group People Committee

10. References

- 10.1 Maintaining High Professional Standards in the Modern NHS (Department of Health)
- 10.2 Good Medical Practice – GMC April 2014
- 10.3 Professional Support Unit Guidance – Health Education England (West Midlands)
- 10.4 Article 6 of the European Convention on Human Rights
- 10.5 The Protection of Children Act 1999 – A Practical Guide to the Act for all Organisations Working with Children

Part A – Document Control

Policy number and Policy version: HR28 v 5.0	Policy Title: Disciplinary and Management of Performance Policy and Procedure for Medical and Dental Staff		Status: Final	Author: Senior HR Manager Director Sponsor: Group Chief People Officer
Version / Amendment History	Version	Date	Author	Reason
	V1	March 2009	Head of HR	Introduction
	V2	May 2012	Deputy Director of HR	Regulatory Changes
	V3	October 2017	HR Manager	Timely Review and Update of Policy
	V4	July 2019	HR Manager	Update of Policy
	V5	February 2026	Senior HR Manager	Review of Policy
Intended Recipients: Trust Medical and Dental Staff				
Consultation Group / Role Titles and Date: Staff Side – September 2025				
Name and date of Trust level group where reviewed		Local Negotiating Committee – September 2025 Trust Policy Group – April 2026		
Name and date of final approval committee		Executive Sponsor Endorsement – September 2026		
Date of Policy issue		September 2026		
Review Date and Frequency (standard review frequency is 3 yearly unless otherwise indicated)		February 2029 (Aligned with WHT Equivalent Policy)		

Training and Dissemination: Information sharing and engagement meetings at manager's meetings, launched via Divisional Management forums. Advice and guidance available from the HR Advisory Department as and when required by managers and staff.

To be read in conjunction with: HR03 Trust's Disciplinary Policy

Department of Health Guidance – Maintaining High Professional Standards in the Modern NHS

Initial Equality Impact Assessment (all policies): **Completed Yes**

Full Equality Impact assessment (as required): **Completed No**

If you require this document in an alternative format e.g., larger print please contact Policy Administrator 88904

Monitoring arrangements and Committee

Group People Committee

Document summary / key issues covered:

The majority of doctors provide a high standard of care to patients. The principles and values which underpin medical professionalism, and the behaviour required of a doctor are described in Good Medical Practice (GMC, 2014).

Numerous ways exist to monitor a practitioner's performance can be identified; this may reveal a problem that can be remedied by appropriate action and support before problems become serious or patients are harmed without necessarily requiring formal investigation or disciplinary procedures.

This is an agreement between The Royal Wolverhampton NHS Trust and the Local Negotiating Committee (LNC) outlining the Trust's policy and procedure for handling concerns about doctors' and dentists' conduct and capability. It implements the framework set out in 'Maintaining High Professional Standards in the Modern NHS', issued under the direction of the Secretary of State for Health.

Key words for intranet searching purposes

ROAG
MHPS
Conduct
Capability
Exclusion
PPAS

High Risk Policy?

No

HR28 Attachment 1

Action when a concern arises

1.0 Introduction

- 1.1 The management of performance is a continuous process which may identify problems. Numerous ways now exist in which concerns about a practitioner's performance can be identified through which remedial and supportive action can be quickly taken before problems become serious or patients harmed; and which need not necessarily require formal investigation or the resort to disciplinary procedures. The Trust accepts that breaches of the rules of conduct and standards of performance will occur from time to time. Wherever possible, these should be dealt with informally in the first instance. As a general principle, it is expected that the immediate line manager of the practitioner will deal with issues of minor misconduct or performance (if necessary with HR support) without resort to the Divisional Medical Director or Chief Medical Officer and formal processes. In such circumstances, it may or may not be appropriate for the Chief Medical Officer to be informed of the outcome.
- 1.2 Concerns about a doctor or dentist's conduct or capability can come to light in a wide variety of ways, for example:
- Concerns expressed by other NHS professionals, health care managers, students and non-clinical staff;
 - Freedom To Speak Up submission
 - Review of performance against job plans, annual appraisal, revalidation;
 - Monitoring of data on performance and quality of care;
 - Clinical governance, clinical audit and other quality improvement activities;
 - Complaints about care by patients or relatives of patients;
 - Information from the regulatory bodies;
 - Litigation following allegations of negligence;
 - Information from the police or coroner;
 - Self-referral;
 - Court judgments.
- 1.3 Where a doctor's or dentist's standard of care falls below that defined in the GMC's Good Medical Practice (2014) or by the GDC, continuing professional development measures alone may be insufficient to address the problem. The Trust policy and procedure ensures that for the very small minority of doctors and dentists who fall short of the high professional standards expected, there are fair and effective local systems to identify them and ensure appropriate remedial, performance or regulatory action to safeguard patients.
- 1.4 A concern about a doctor's or dentist's practise can be said to have arisen where an incident causes or has the potential to cause, harm to a patient, staff or the organisation; or where the doctor or dentist develops a pattern of repeating mistakes, or appears to behave persistently in a manner inconsistent with GMC, GDC or Trust standards. There will be different levels of severity in the concerns identified. Careful analysis of the severity of the concern at a

Responsible Officer Advisory Group (ROAG) will guide an appropriate response (please see below principles of a ROAG).

1.5 These responses may include:

- initiating remediation, which may include further training, re-skilling, rehabilitation, coaching, counselling and behaviour impact agreements;
- initiating monitoring;
- initiating an investigation;
- excluding a doctor or dentist or placing local conditions or restrictions on their practise pending further appropriate action.

1.6 All allegations, including those made by relatives of patients, or concerns raised by colleagues, must be properly investigated to establish the facts and the substance of any allegations. Unfounded or malicious allegations can cause lasting damage to a doctor or dentist's reputation or career. Where allegations raised by a fellow employee are shown to be malicious, that employee will be subject to the relevant disciplinary procedure.

1.7 Concerns about the capability of doctors and dentists in training should be considered initially as training issues. The appropriate referral pathway as outlined in the Professional Support Unit Guidance – Health Education England (West Midlands) should be followed [Professional Support and Wellbeing](#). Typically this involves referral to the Assigned Educational Supervisor (AES) and then onto the Clinical Tutor or Programme Director as appropriate.

1.8 The Trust will ensure that investigations and conduct procedures are conducted in a way that does not discriminate on the grounds of race, colour, nationality, ethnic or national origin, or on the grounds of age, gender, gender reassignment, marital status, domestic circumstances, disability, HIV status, sexual orientation, religion, belief, political affiliation or trade union membership, or on any other grounds.

2.0 **Summary of Key Actions Needed**

2.1 The key actions needed at the outset can be summarised as follows:

- the CD or DMD for the area should gather all relevant documentation and statements in respect of the matter to identify the nature of the problem or concern;
- CD and/or DMD should discuss the case with the CMO in the first instance before any internal or external action is taken (this includes whether informal management is appropriate and whether the PPAS should be contacted);
- a ROAG should be convened where appropriate to consider all relevant documentation and statements to consider:
 - whether formal action is required, including formal investigation
 - whether urgent action needs to be taken to protect patients;
 - consider whether restriction of practise or exclusion is required;
 - whether informal action is required;
 - whether no action is required

3.0 **Protecting the Public**

3.1 When serious concerns are raised about a practitioner, the employer must urgently consider the continued safety of patients and the public. Whilst exclusion from the workplace may be unavoidable it should not be the sole or first approach to ensuring patient safety. Alternatives to exclusion include:

- arranging supervision of normal contractual clinical duties;
- restricting the practitioner to certain forms of clinical duties;
- restricting activities to non-clinical duties -. by mutual agreement this might include some formal retraining;
- sick leave for the investigation of specific health problems.

4.0 **Involvement of PPAS**

4.1 When a problem or concern is identified consideration should always be given to the involvement of the PPAS.

4.2 Employers or practitioners are at liberty to make use of the services of the PPAS at any point they see fit. However, where any employing body is considering exclusion or restriction from practice the PPAS must be notified so that alternatives to exclusion can be considered. Procedures for immediate and informal exclusion are covered within [Attachment 2](#).

5.0 **Action when a concern arises**

5.1 The first task of the CD is to identify the nature of the problem or concern and to assess its seriousness. Preliminary enquiries are essential to verify or refute the substance and accuracy of any concerns or complaints. In addition, it is necessary to decide whether an informal approach can address the problem or whether formal investigation is needed. This is a difficult decision and must not be taken alone but in conjunction with the DMD for the area, the CMO or Deputy CMO (in the CMO's absence) and a Senior HR Representative. Consideration should be made of taking advice from the PPAS and, or the Trust's Occupational Health and Wellbeing Service (OHWB) where necessary.

5.2 In order to support this assessment, statements from the practitioner and any witnesses must be requested.

5.3 The cause of adverse events should not automatically be attributed to the actions or omissions of an individual. Root cause analyses of adverse events frequently show that these can be attributed to systems or organisational failures, or demonstrate that they are untoward outcomes which could not have been predicted and are not the result of any individual or systems failure. Each will require appropriate investigation and remedial actions.

5.4 Where there are concerns about a doctor or dentist in training, they should be considered initially as a training issue and the appropriate referral pathway as outlined in the Professional Support Unit Guidance – Health Education England (West Midlands) followed (see 1.7).

5.5 Where on initial consideration it is felt that an informal approach is not appropriate the concern should be referred for consideration at a Responsible Officer Advisory Group (ROAG). Please see below.

6.0 **Principles of the Responsible Officer Advisory Group (ROAG):**

6.1 The purpose of the ROAG is to support and enable consideration of identified issues, taking account of just culture factors, risk factors, and case complexity. The supporting documentation provides a framework for the panel and assists in determining an appropriate, fair and consistent way forward.

6.2 The ROAG is made up of core and peripheral members as detailed below. The CMO or Deputy CMO is the decision-maker of the process and the remaining members act as a sounding board providing advice, support, and appropriate challenge ensuring that due process is followed.

Core member – must be in attendance for the panel to continue	Peripheral member – wherever possible to be in attendance however the panel can continue if availability is proving difficult. Feedback must be provided after the panel.
Chief Medical Officer (CMO) and/or Deputy CMO– Decision maker	Appraisal Lead
Senior HR representative	

6.3 The supporting framework will support the ROAG in considering the identified issues and assist in determining the way forward from the following options:

- initiating remediation, which may include further training, re-skilling, rehabilitation, coaching, counselling and behaviour impact agreements;
- initiating monitoring;
- initiating a formal investigation
- excluding a doctor or dentist or placing local conditions or restrictions on their practice pending further appropriate action.
- initiating informal action;
- no action required

7.0 **Informal Management**

7.1 If the problem is a low level concern, it may be deemed appropriate for Informal Management. This involves a discussion of those aspects of performance or conduct which are causing concern and an agreement on how the issues can be addressed. A support plan is agreed setting performance objectives and reasonable timescales by which satisfactory performance or conduct is achieved. Guidance in relation to this process and supporting templates can be found in the HR Advisor Toolkit.

8.0 **Exclusion**

8.1 When serious concerns are raised about a medical or dental practitioner, the Trust will urgently consider whether it is necessary to place temporary restrictions on their practice. This might be to amend or restrict their clinical duties, obtain undertakings or provide for the exclusion of the practitioner

(including immediate time limited exclusion) from the workplace. These considerations will take place as part of the ROAP. [Attachment 2](#) of this document sets out the procedures for this action.

- 8.2 At any point in the process where the Case Manager has reached the clear judgment that a practitioner is considered to be a serious potential danger to patients or staff, that practitioner must be referred to the GMC/GDC, after discussion with the CMO and Chief People Officer (CPO), whether or not the case has been referred to the PPAS. Consideration should also be given to whether the issue of an alert letter should be requested.

9.0 Formal Management

- 9.1 Where it has been decided that a formal approach needs to be followed, concerns must be registered with the Chief Executive Officer (CEO) who will, after discussion with the CMO and CPO, ensuring the following individuals are appointed:

- A Designated Board Member oversee the case and ensure that momentum is maintained and consider any representations from the practitioner about his or her exclusion or any representations about the investigation;
- A Case Manager who will lead the informal investigation; the CMO will normally act as the Case Manager but may delegate this role to the Deputy CMO or DMD;
- A Case Investigator; supported by a Senior HR Advisor, must do the following.
 - Lead the investigation into any allegations or concerns about a practitioner, establishing the facts and reporting the findings.
 - Formally involve a senior member of the medical or dental staff where a question of clinical judgment is raised during the investigation process, usually after discussion with the Case Manager (if no suitable senior clinician is employed by the Trust, a senior doctor or dentist from another NHS body should be approached).
 - Ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible. Patient confidentiality must be maintained, but any disciplinary panel will need to know the details of the allegations. The Case Investigator must 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 any disciplinary panel.
 - Ensure that a written record is kept of the investigation, the conclusions reached and the course of action agreed by the CMO and CPO.
 - Assist the Designated Board Member in reviewing the progress of the case.

- 9.2 A clear audit route must be established for initiating and tracking progress of the investigation, its costs and resulting action.

10.0 The Investigation

- 10.1 The Case Investigator will not decide on the action that must be taken or whether the employee should be excluded from work. He or she must not be a member of any disciplinary or appeal panel relating to the case.

- 10.2 The practitioner concerned must be informed by the Case Manager as soon as it has been decided that an investigation is to be undertaken. The name of the Case Investigator and details of the allegation or concerns must be communicated at this stage. This will be confirmed in writing and a copy of this policy and procedure must be enclosed with the letter. The practitioner must be given the opportunity to see any correspondence together with a list of the people that the Case Investigator will interview (in extremely sensitive cases this may not be appropriate). The practitioner must be afforded the opportunity to put their view of events to the Case Investigator.
- 10.3 At any stage of this process, or subsequent disciplinary action, the practitioner may be accompanied in any interview or hearing by a companion. In addition to statutory rights under the Employment Act 1999, the companion may be another employee of the Trust; an official or representative of the British Medical Association, the British Dental Association or a defence organisation; the companion may be legally qualified but he or she will not be acting in a legal capacity.
- 10.4 The Case Investigator has discretion on how the investigation is carried out but in all cases the purpose of the investigation is to ascertain the facts in an unbiased manner. Investigations are not intended simply to secure evidence against the practitioner as information gathered in the course of an investigation may clearly exonerate the practitioner or provide a sound basis for effective resolution of the matter.
- 10.5 In cases where the matters in question are relating to personal conduct, the Trust will give consideration to a request for dual representation from a defence organisation and trade union. Any such arrangements will be considered on a case-by-case basis. Such arrangements must not delay proceedings, and it is for the member to make arrangements for their representative to be available for any meeting or hearing. The Trust reserves the right to withdraw any agreement to allow for dual representation where this causes delay or otherwise disrupts proceedings unnecessarily.
- 10.6 If during the course of the investigation it transpires that the case involves more complex clinical issues than first anticipated, the Case Manager must arrange for a practitioner in the same specialty and appropriate experience from another NHS body to assist.
- 10.7 The Case Investigator should complete the investigation within 4 weeks of appointment and submit their report to the Case Manager within a further 5 working days (where possible). The report of the investigation should give the Case Manager sufficient information to make a decision whether:
 - There is a case of misconduct that should be put to a conduct panel;
 - There are concerns about the practitioner's health that should be considered by the Trust's Occupational Health and Wellbeing Department;
 - There are concerns about the practitioner's performance that should be referred to the PPAS;

- Restrictions on practice or exclusion from work should be considered;
 - There are serious concerns that should be referred to the GMC or GDC, after discussion with the CMO and/or CPO;
 - There are intractable problems and the matter should be put before a capability panel;
 - The matter is less serious and appropriate for an Agreed Outcome process, as outlined in paragraph 11.9);
 - No further action is needed.
- 10.8 The Case Investigator will make all reasonable efforts to comply with stated timeframes. Where this is not possible this will be communicated to the practitioner advising them of the reasons for the delay and possible revised timescales.
- 10.9 Agreed Outcome Process Disciplinary Meeting: This is a fast-track meeting in which a disciplinary warning (up to, and including, a final written warning) is given to a practitioner.
- 10.10 It enables faster resolution and closure to a disciplinary matter for the practitioner and is a less formal meeting than a Formal Conduct Hearing. Parties in attendance will usually be a senior manager (such as the Case Manager), a Senior HR representative and the practitioner. The practitioner has the right to be accompanied by a colleague who is a member of Trust staff, or trade union representative.
- 10.11 An Agreed Outcome Disciplinary Meeting will not be appropriate in cases of serious misconduct where the maximum sanction of dismissal may be a consideration, e.g., gross misconduct.
- 10.12 Prior to the meeting:
- The Case Manager or a Senior HR representative will contact the practitioner or their representative to offer the opportunity to proceed through the Agreed Outcome process;
 - The practitioner or their representative will be informed of the intended sanction to be issued and a brief explanation of the rationale for this level of sanction (full feedback on the findings will be given at the meeting);
 - Where the practitioner declines the offer of the Agreed Outcome process recourse to a Formal Conduct Hearing will take place.
- 10.13 At the meeting:
- The Case Manager will feedback the outcome of the investigation;
 - The practitioner will have the opportunity to give a response to the allegations and raise any further mitigation;
 - If no further issues come to light the nominated Case Manager will offer a warning;
 - Where the practitioner accepts the warning, this will be confirmed in writing with a copy placed on their personal file.
 - The practitioner has the right of appeal within 15 calendar days of the Agreed Outcome Meeting;

- Where the practitioner does not accept the warning or appeals against the warning after the Agreed Outcome Meeting has concluded, recourse to a Formal Conduct Hearing will take place.
- A practitioner wishing to appeal must write to the next level of manager within 15 calendar days of the decision (Agreed Outcome Meeting).

11.0 Involvement of the PPAS following local investigation

- 11.1 Professional under-performance can be due to health problems, difficulties in the work environment, behaviour or a lack of clinical capability. These may occur in isolation or in a combination. The PPAS' processes are aimed at addressing all of these, particularly where local action has not been able to take matters forward successfully. The PPAS' methods of working therefore assume commitment by all parties to take part constructively in a referral to the PPAS. For example, its assessors work to formal terms of reference, decided on after input from the doctor and the referring body.
- 11.2 The focus of the PPAS' work is therefore likely to involve performance difficulties which are serious and/or repetitive. That means:
- Performance falling well short of what doctors and dentists could be expected to do in similar circumstances and which, if repeated, would put patients seriously at risk and, or
 - Problems that are ongoing or (depending on severity) have been encountered on at least two occasions.
- 11.3 In cases where it becomes clear that the matters at issue focus on fraud, specific patient complaints or organisational governance, their further management may warrant a different local process.
- 11.4 Where the Trust is considering excluding a doctor or dentist (whether or not his or her performance is under discussion with the PPAS), the Trust will inform the PPAS of this at an early stage, so that alternatives to exclusion are considered. **Procedures for Exclusion** are covered in [Attachment 2](#). It is particularly desirable to find an alternative when the PPAS is likely to be involved, because it is much more difficult to assess a doctor or dentist who is excluded from practice than one who is working.
- 11.5 A practitioner undergoing assessment by the PPAS must cooperate with any request to give an undertaking not to practice in the NHS or private sector other than their main place of NHS employment until the PPAS assessment is complete. (Under circular HSC 2002/011, Annex 1, paragraph 3, "A doctor undergoing assessment by the NCAA [now the PPAS] must give a binding undertaking not to practice in the NHS or private sector other than in their main place of NHS employment until the assessment process is complete").
- 11.6 Failure to co-operate with a referral to the PPAS may be seen as evidence of a lack of willingness on the part of the doctor or dentist to work with the employer on resolving performance difficulties. If the practitioner refuses to co-operate with such a referral, that may limit the options open to the parties and may necessitate disciplinary action and consideration of referral to the GMC or GDC.

12.0 Action when investigations identify possible criminal acts

- 12.1 Where an investigation establishes a suspected criminal action in the UK or abroad, this will be reported to the police. The Trust investigation will only proceed in respect of those aspects of the case which are not directly related to the police investigation underway.
- 12.2 The Trust will consult the police to establish whether an investigation into any other matters would impede their investigation. In cases of fraud, the Counter Fraud & Security Management Service will be contacted.

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

- 13.1 There are some criminal offences that, if proven, could render a doctor or dentist unsuitable for employment. In all cases, the Trust, having considered the facts, will need to consider whether the employee poses a risk to patients and/or colleagues and whether their conduct warrants instigating an investigation and the exclusion of the practitioner. The Trust will have to give serious consideration to whether the employee can continue in their job once criminal charges have been made. Bearing in mind the presumption of innocence, the Trust will consider whether the offence, if proven, is one that makes the doctor or dentist unsuitable for their type of work and whether, pending the trial, the employee can continue in their present job, should be allocated to other duties or should be excluded from work. This will depend on the nature of the offence and the Trust will take legal advice as it deems appropriate. The Trust will explain the reasons for taking any such action to the practitioner concerned.

14.0 Dropping of charges or no court conviction

- 14.1 When the Trust has taken no action pending the outcome of a court case and, the practitioner is acquitted, if the Trust feels there is enough evidence to suggest a potential danger to patients and/or colleagues, then the Trust must take action to ensure that the individual concerned does not pose a risk to patient safety. Similarly, where there are insufficient grounds for bringing charges or the court case is withdrawn there may be grounds for considering police evidence where the allegations would, if proven, constitute misconduct, bearing in mind that the evidence has not been tested in court. It must be made clear to the police that any evidence they provide that is used in the Trust's case must be made available to the doctor or dentist concerned.

15.0 Confidentiality

- 15.1 The Trust and its employees must maintain confidentiality at all times. No press notice will be issued, nor the name of the practitioner released, in regard to any investigation or hearing into disciplinary matters. In response to direct questioning, the employer will only confirm publicly that an investigation or disciplinary hearing is underway.
- 15.2 Personal data released to the Case Investigator for the purposes of the investigation must be fit for the purpose, nor disproportionate to the seriousness of the matter under investigation. The Trust will operate consistently with the guiding principles of the Data Protection Act.

HR28 Attachment 2

Restriction of Practice and Exclusion from Work

1.0 Introduction

- 1.1 In this part of the procedure, the phrase "exclusion from work" has been used to replace the word "suspension" which can be confused with action taken by the GMC or GDC to suspend the practitioner from the register pending a hearing of their case or as an outcome of a fitness to practice hearing.
- 1.2 The Trust will ensure that:
- Where a practitioner is excluded, it will be for the minimum necessary period of time: this can be up to but no more than four weeks at a time;
 - All extensions of exclusion are reviewed and a brief report provided to the CEO and the Board;
 - A detailed report is provided when requested to a single non-executive member of the Board (the Designated Board Member) who will be responsible for monitoring the situation until the exclusion has been lifted.

2.0 Managing the risk to patients

- 2.1 When serious concerns are raised about a practitioner, the Trust will urgently consider whether it is necessary to place temporary restrictions on their practice. This might be to amend or restrict their clinical duties, obtain undertakings or provide for the exclusion of the practitioner from the workplace. Exclusion will be considered as a last resort if alternative courses of action are not feasible.
- 2.2 Exclusion of clinical staff from the workplace is a temporary expedient. Exclusion is a precautionary measure and not a disciplinary sanction. Exclusion from work will be reserved for only the most exceptional circumstances.
- 2.3 Exclusion will only be used:
- To protect the interests of patients or other staff and, or
 - To assist the investigative process when there is a clear risk that the practitioner's presence would impede the gathering of evidence.
- 2.4 It is imperative that exclusion from work is not misused or seen as the only course of action that could be taken. The action must depend on the nature and seriousness, of the concerns and on the need to protect patients, the practitioner concerned and, or their colleagues.
- 2.5 Alternative ways to manage risks, avoiding exclusion, include:
- CMO, DMD, CD, or their agreed deputy supervising normal contractual clinical duties;
 - Restricting the practitioner to certain forms of clinical duties;

- Restricting activities to administration, research/audit, teaching and other educational duties (by mutual agreement the latter might include some formal retraining or reskilling);
- Sick leave for the investigation of specific health problems.

2.6 In cases relating to the capability of a practitioner, consideration will be given to whether an action plan to resolve the problem can be agreed with the practitioner. Advice on the practicality of this approach will be sought from the PPAS. If the nature of the problem and a workable remedy cannot be determined in this way, the case manager will seek to agree with the practitioner to refer the case to the PPAS, which can assess the problem in more depth and give advice on any action necessary. The case manager will seek immediate telephone advice from the PPAS when considering restriction of practice or exclusion.

3.0 The Exclusion Process

3.1 The Trust must not exclude a practitioner for more than four weeks at a time. The justification for continued exclusion must be reviewed on a regular basis and before any further four-week period of exclusion is imposed. Key officers and the Trust Board have responsibilities for ensuring that the process is carried out quickly and fairly and kept under review and that the total period of exclusion is not prolonged.

4.0 Roles of officers

4.1 The CEO has overall responsibility for managing exclusion procedures and for ensuring that cases are properly managed. The decision to exclude a practitioner must be taken only by persons nominated in paragraph 4.2. The case will be discussed fully with the CEO, the CMO, CPO, the PPAS and other interested parties (such as the police where there are serious criminal allegations or the Counter Fraud & Security Management Service) prior to the decision to exclude a practitioner. In the rare cases where immediate exclusion is required, the above parties must discuss the case at the earliest opportunity after the exclusion, preferably at a case conference.

4.2 The authority to exclude Medical Staff is vested in the CEO and the CMO, or the On-call Executive (out-of-hours) with advice from the CPO. This authority may be delegated to the Deputy CMO or DMD on behalf of the CMO and the Deputy CPO on behalf of the CPO. Where the matter involves a practitioner in training, the Postgraduate Dean will be involved in the decision.

4.3 The CMO will normally act as the Case Manager but may delegate this role to the Deputy CMO or a DMD. The Case Manager must appoint a Case Investigator to explore and report on the circumstances that have led to the need to exclude the staff member. The Case Investigator will provide factual information to assist the Case Manager in reviewing the need for exclusion and making progress reports to the CEO and Designated Board Member.

5.0 Role of Designated Board Member

5.1 At any stage in the process, the practitioner may make representations to the Designated Board Member in regard to exclusion or investigation of a case.

5.2 The designated Board member must also ensure, among other matters, that time frames for investigation or exclusion are consistent with the principles of Article 6 of the European Convention on Human Rights.

6.0 Immediate Exclusion

6.1 In exceptional circumstances, an immediate time-limited exclusion may be necessary for the purposes identified in paragraph 2.3 above following;

- A critical incident when serious allegations have been made; or
- If there has been a serious break down in relationships between a colleague and the rest of the team; or
- The presence of the practitioner is likely to hinder the investigation.

6.2 Such an exclusion will allow a more measured consideration to be undertaken and the PPAS should be contacted before the immediate exclusion takes place. This period should be used to carry out a preliminary situation analysis, to seek further advice from the PPAS and to convene a case conference. The manager making the exclusion must explain why the exclusion is being made in broad terms (there may, be no formal allegation at this stage) and agree a date up to a maximum of two weeks away at which the practitioner should return to the workplace for a further meeting. The Case Manager must advise the practitioner of their rights, including rights of representation. A letter confirming the terms of the exclusion will be sent within 7 working days.

7.0 Formal exclusion

7.1 A formal exclusion may only take place after the Case Manager has first considered whether there is a case to answer and then discussed, at a case conference, whether there is reasonable and proper cause to exclude. PPAS must be consulted where formal exclusion is being considered. If a Case Investigator has been appointed he or she must produce a preliminary report as soon as is possible to be available for the case conference. This preliminary report is advisory to enable the Case Manager to decide on the next steps as appropriate.

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

- The allegation appears unfounded;
- There is a potential misconduct issue;
- There is a concern about the practitioner's capability;

The complexity of the case warrants further detailed investigation before advice can be given on the way forward and what needs to be inquired into; or

- Patients or staff are at risk.

7.3 Formal exclusion of one or more clinicians must only be used where:

(a) There is a need to protect the interests of patients or other staff pending the outcome of a full investigation, or.

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

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

7.5 When the practitioner is informed of the exclusion, there must be a witness present and the nature of the allegations or areas of concern must be conveyed to the practitioner. The practitioner should be told of the reason(s) why formal exclusion is regarded as the only way to deal with the case. At this stage the practitioner should be given the opportunity to state their case and propose alternatives to exclusion (e.g. further training, referral to the Trust's Occupational Health and Wellbeing Service or referral to the PPAS with voluntary restriction).

7.6 The formal exclusion must be confirmed in writing as soon as is possible and within a maximum of 7 working days. The letter should state the effective date and time of the exclusion, the duration (up to 4 weeks), the allegations, the terms of the exclusion (e.g. exclusion from the premises, see paragraph 8.1) the need to remain available for work (paragraph 9.1) and that a full investigation or what other action will follow. The practitioner must be advised that they may make representations about the exclusion to the Designated Board Member at any time after receipt of the letter confirming the exclusion.

7.7 In cases when disciplinary procedures are being followed, exclusion may be extended for four-week renewable periods until the completion of disciplinary procedures if a return to work is considered inappropriate. The exclusion will still only last for four weeks at a time and be subject to review. The exclusion will usually be lifted and the practitioner allowed back to work, with or without conditions placed upon the employment, as soon as the original reasons for exclusion no longer apply.

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

7.9 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 the relevant regulatory body and make arrangements for the practitioner to return to work with any appropriate support as soon as practicable.

8.0 Exclusion from premises

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

9.0 Keeping in contact and availability for work

9.1 The practitioner should, where appropriate and dependent upon the issues of the case, be allowed to retain contact with colleagues, take part in clinical audit and remain up to date with developments in their field of practice or to undertake research or training.

9.2 Exclusion under this procedure will normally be on full pay; therefore the practitioner must remain available for work with their employer and fully contactable during their normal contracted hours. The practitioner must inform the Case Manager of any other organisation(s) with whom they undertake either voluntary or paid work and seek their Case Manager's consent to continue to undertake such work or to take annual or study leave. The practitioner should be reminded of these contractual obligations but would be given 24 hours notice to return to work.

In exceptional circumstances the Case Manager may decide that payment is not justified because the practitioner is no longer available for work (e.g. abroad without agreement).

9.3 The Case Manager must 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 the Trust. A mentor could be appointed for this purpose if a colleague is willing to undertake this role.

10.0 Informing other organisations

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

11.0 Keeping Exclusions Under Review: Informing the Board

- 11.1 The Board must be informed about an exclusion at the earliest opportunity. The Board has a responsibility to ensure that the Trust's internal procedures are being followed.

12.0 Regular review

- 12.1 The Case Manager must review the exclusion before the end of each four week period and report the outcome to the CEO and the Board. This report is advisory and it would be for the Case Manager to decide on the next steps as appropriate. The exclusion must be lifted and the practitioner allowed back to work, with or without conditions placed upon the employment, at any time that the original reasons for exclusion no longer apply and if there are no other reasons for exclusion. The exclusion will lapse and the practitioner will be entitled to return to work at the end of the four-week period if the exclusion is not actively reviewed.
- 12.2 It is important to recognise that Board members might be required to sit as members of a future disciplinary or appeal panel. Therefore, information to the Board should only be sufficient to enable the Board to satisfy itself that the procedures are being followed. Only the designated Board member should be involved to any significant degree in each review. Careful consideration must be given as to whether the interests of patients, other staff, the practitioner, and/or the needs of the investigative process continue to necessitate exclusion and give full consideration to the option of the practitioner returning to limited or alternative duties where practicable.
- 12.3 The Trust must take review action before the end of each 4-week period. After three exclusions, the PPAS must be called in. The information below outlines the activities that must be undertaken at different stages of exclusion.

- 12.4 The Trust will use the same timeframes to review any restrictions on practice that have been placed on a practitioner, although the requirements for reporting to the Board do not apply in these circumstances.

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

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

- The Case Manager decides on next steps as appropriate, taking into account the views of the practitioner. Further renewal may be for up to 4 weeks;
- The Case Manager submits an advisory report of outcome to CEO and the Trust Board;
- Each renewal is a formal matter and must be documented as such;
- The practitioner must be sent written notification on each occasion.

14.0 Third review

- 14.1 If the practitioner has been excluded for three periods:

- A report must be made to the CEO outlining the reasons for the continued exclusion, why restrictions on practice would not be an appropriate alternative, and if the investigation has not been completed, a timetable for completion of the investigation;
- The CEO must report to the designated Board member (see paragraphs 17.1-17.4);
- The case must formally be re-referred to the PPAS explaining why continued exclusion is appropriate and what steps are being taken to conclude the exclusion, at the earliest opportunity;

15.0 Six months review

- 15.1 If the exclusion has been extended over six months:

- A further position report must be made by the CEO to the relevant regulatory body indicating the reason for continuing the exclusion, the anticipated time scale for completing the process and the actual and anticipated costs of exclusion;
- The relevant regulatory body will form a view as to whether the case is proceeding at an appropriate pace and in the most effective manner and whether there is any advice they can offer to the Board.

- 15.2 There will be a normal maximum limit of 6 months exclusion, except for those cases involving criminal investigations of the practitioner concerned. The employer and the PPAS will actively review such cases at least every six months.

16.0 The role of Regulatory Bodies in monitoring exclusions

- 16.1 When an exclusion decision has been extended twice, the CEO (or a nominated officer) must inform the relevant regulatory body of what action is proposed to resolve the situation. This will include dates for hearings or give reasons for the delay. Where retraining or other rehabilitation action is proposed, the reason for continued exclusion must be given.

17.0 The role of the Board and Designated Board Member

- 17.1 Board members may be required to sit as members of a disciplinary or appeal panel. Therefore, information given to the Board should only be sufficient to enable the Board to satisfy itself that the procedures are being followed. Only the Designated Board Member should be involved to any significant degree in each review.
- 17.2 The Chairman of the Board is responsible for designating one of its non-executive members as the Designated Board Member under the procedures.
- 17.3 The Designated Board Member is the person who oversees the Case Manager and investigating manager during the investigation process and maintains momentum of the process.
- 17.4 This Designated Board Member's responsibilities include:
- Receiving reports and reviewing the continued exclusion from work;
 - Considering representations from the practitioner about his or her exclusion;
 - Considering any representations about the investigation.

18.0 Return to Work

- 18.1 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.

HR28 Attachment 3

Procedure for Dealing with Issues of Capability

1.0 Introduction and General Principles

1.1 There will be occasions where the Trust considers that there has been a clear failure by an individual to deliver an adequate standard of care, or standard of management, through lack of knowledge and, or ability or consistently poor performance. These are described as capability issues.

1.2 Concerns about the capability of a doctor or dentist may arise from a single incident or a series of events, reports or poor clinical outcomes. Advice from the PPAS will help the Trust to come to a decision on whether the matter raises questions about the practitioner's capability (health problems, behavioural difficulties or lack of clinical competence) or whether there are other matters that need to be addressed. If the concerns about capability cannot be resolved routinely by management, **the matter must be referred to the PPAS before the matter can be considered by a capability panel** (unless the practitioner refuses to have his or her case referred). The Trust will also involve the PPAS in all other potential disciplinary cases.

1.3 Matters which fall under this procedure include:

- Out of date clinical practice;
- Inappropriate clinical practice arising from a lack of knowledge or skills ;
- Incompetent clinical practice;
- Inability to communicate effectively with colleagues and, or patients;
- Inappropriate delegation of clinical responsibility;
- Inadequate supervision of delegated clinical tasks;
- Ineffective clinical team working skills.

1.4 Wherever possible, the Trust will aim to resolve issues of capability (including clinical competence and health) through ongoing assessment and support. Early identification of problems is essential to reduce the risk of serious harm to patients. The PPAS will be consulted for advice to support the remediation of a doctor or dentist.

2.0 How to proceed where conduct and capability issues are involved

2.1 It is inevitable that some cases will cover both conduct and capability issues. It is recognised that these cases can be complex and difficult to manage. If a case covers more than one category of problem, they should usually be combined under a capability hearing although there may be occasions where it is necessary to pursue a conduct issue separately. It is for the Trust to decide upon the most appropriate way forward having consulted the PPAS and their own employment law specialist.

3.0 Handling Concerns about a Practitioner's Health

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

4.0 Retaining the services of individuals with health problems

- 4.1 Wherever possible the Trust will attempt to continue to employ individuals provided this does not place patients or colleagues at risk. In particular, the Trust will consider the following actions for staff with ill-health problems:
- Sick leave for the practitioner (the practitioner to be contacted frequently on a pastoral basis to stop them feeling isolated);
 - Remove the practitioner from certain duties;
 - Reassign them to a different area of work;
 - Arrange re-training or adjustments to their working environment, with appropriate advice from the PPAS and/or Professional Support Unit, under the reasonable adjustment provisions in the Equality Act 2010.

This is not an exhaustive list.

5.0 Reasonable adjustment

- 5.1 At all times the practitioner will be supported by the Trust and the Occupational Health and Wellbeing Service which will ensure that the practitioner is offered every available resource to get back to practise where appropriate. The Trust will consider what reasonable adjustments could be made to their workplace or other arrangements, in line with the Equality Act. In particular, it will consider:
- Making adjustments to the premises;
 - Re-allocating some of a disabled person's duties to another;
 - Transferring an employee to an existing vacancy;
 - Altering an employee's working hours or pattern of work;
 - Assigning the employee to a different workplace;
 - Allowing absence for rehabilitation, assessment or treatment;
 - Providing additional training or retraining;
 - Acquiring/modifying equipment;
 - Modifying procedures for testing or assessment;
 - Providing a reader or interpreter;
 - Establishing mentoring arrangements.
- 5.2 In some cases retirement due to ill health may be appropriate for consideration. Ill health retirement should be approached in a reasonable and considerate manner, in line with NHS Pensions Agency advice. However, any issues relating to conduct or capability that have arisen must be resolved, using the appropriate agreed procedures.

6.0 Handling Health Issues

- 6.1 Where there is an incident that points to a problem with the practitioner's health, the incident may need to be investigated to confirm a health problem. If the report recommends Occupational Health and Wellbeing involvement, the Case Manager must immediately refer the practitioner to a qualified occupational physician (usually a consultant) within the Trust Occupational Health and Wellbeing Service.
- 6.2 The PPAS should be approached to offer advice on any situation and at any point where the employer is concerned about a doctor or dentist. Even apparently simple or early concerns should be referred, as these are easier to deal with before they escalate.
- 6.3 The Occupational Physician should agree a course of action with the practitioner and send his or her recommendations to the CMO. A meeting must be convened with the CPO, the CMO or Case Manager, the practitioner and a case worker from the Occupational Health and Wellbeing Service to agree a timetable of action and rehabilitation (where appropriate). The practitioner may wish to bring a support companion to these meetings. This could be a family member, a colleague or a trade union or defence association representative. Confidentiality must be maintained by all parties at all times.
- 6.4 If a doctor or dentist's ill health makes them a danger to patients and they do not recognise that, or are not prepared to co-operate with measures to protect patients, then exclusion from work and referral to the professional regulatory body must be considered, irrespective of whether or not they have retired on the grounds of ill health.
- 6.5 In those cases where there is impairment of performance solely due to ill health, disciplinary procedures will be considered only in the most exceptional of circumstances, for example if the individual concerned refuses to co-operate with the employer to resolve the underlying situation e.g. by repeatedly refusing a referral to the Occupational Health and Wellbeing Service or PPAS. In these circumstances the procedures detailed below should be followed.
- 6.6 There will be circumstances where an employee who is subject to disciplinary proceedings puts forward such a case on health grounds that the proceedings should be delayed, modified or terminated. In such cases the Trust will refer the doctor or dentist to the Occupational Health and Wellbeing Service for assessment as soon as possible. Unreasonable refusal to accept a referral to, or to co-operate with, the Occupational Health and Wellbeing Service under these circumstances, may give separate grounds for pursuing disciplinary action.

7.0 Duties of Employers

- 7.1 The procedures set out below are designed to cover issues where a doctor's or dentist's *capability* to practise is in question. Prior to instigating these

procedures, the employer will consider the scope for resolving the issue through counselling or retraining and will take advice from the PPAS.

- 7.2 Capability may be affected by ill health and this will be considered in any investigation. Arrangements for handling concerns about a practitioner's health are described above.
- 7.3 The Trust will ensure that investigations and capability procedures are conducted in a way that does not discriminate on the grounds of any of the Protected Personal Characteristics (PPCs).
- 7.4 The Trust will ensure that Case Managers and Case Investigators receive appropriate and effective training in the operation of this procedure.

8.0 The pre-hearing process

- 8.1 When a report of the Trust investigation has been received, the Case Manager must give the practitioner the opportunity to comment in writing on the factual content of the report produced by the Case Investigator. Comments in writing from the practitioner, including any mitigation, must normally be submitted to the Case Manager within 10 working days of the date of receipt of the request for comments. In exceptional circumstances, for example in complex cases or due to annual leave, the deadline for comments from the practitioner should be extended.
- 8.2 The Case Manager should decide what further action is necessary, taking into account the findings of the report, any comments that the practitioner has made and the advice of the PPAS. The Case Manager will need to consider urgently:
 - Whether action under [Attachment 2](#) is necessary to exclude the practitioner; or
 - To place temporary restrictions on their clinical duties.

The Case Manager will also need to consider with the CMO (if he /she is not acting as the Case Manager) and CPO whether the issues of capability can be resolved through local action (such as retraining, counselling, performance review). If this action is not practicable for any reason the matter must be referred to the PPAS for it to consider whether an assessment should be carried out and to provide assistance in drawing up an action plan. The Case Manager will inform the practitioner concerned of the decision immediately and normally within 10 working days of receiving the practitioner's comments.

- 8.3 The PPAS will assist the Trust in drawing up an action plan designed to enable the practitioner to remedy any lack of capability that has been identified during the assessment. The Trust must facilitate the agreed action plan (which has to be agreed by the Trust and the practitioner before it can be actioned). There may be occasions when a case has been considered by the PPAS, but the advice of its assessment panel is that the practitioner's performance is so fundamentally flawed that no educational and, or organisational action plan has a realistic chance of success. In these circumstances, the Case Manager must

make a decision, based upon the completed investigation report and informed by the PPAS advice, whether the case should be determined under the capability procedure. If so, a panel hearing will be necessary.

8.4 If the practitioner does not agree to the case being referred to the PPAS, a panel hearing will normally be necessary.

8.5 If a capability hearing is to be held, the following procedure will be followed Beforehand.

- The Case Manager must notify the practitioner in writing of the decision to arrange a capability hearing. This notification should be made at least 20 working days before the hearing and include details of the allegations and the arrangements for proceeding including the practitioner's rights to be accompanied and copies of any documentation and/or evidence that will be made available to the capability panel. This period will give the practitioner sufficient notice to allow them to arrange for a companion to accompany them to the hearing if they so choose.
- All parties must exchange any documentation, including witness statements, on which they wish to rely in the proceedings no later than 10 working days before the hearing. In the event of late evidence being presented, the employer should consider whether a new date should be set for the hearing.
- Should either party request a postponement to the hearing the Case Manager is responsible for ensuring that a reasonable response is made and that time extensions to the process are kept to a minimum. The Trust retains the right, after a reasonable period (not less than 30 working days), to proceed with the hearing in the practitioner's absence, although the Trust will act reasonably in deciding to do so.
- Should the practitioner's ill health prevent the hearing taking place the Trust will implement its usual absence procedures and involve the Occupational Health and Wellbeing Service as necessary.
- Witnesses who have made written statements at the inquiry stage may be required to attend the capability hearing. Following representations from either side contesting a witness statement which is to be relied upon in the hearing, the Chairman will invite the witness to attend.

The Chairman cannot require anyone other than an employee to attend. However, if evidence is contested and the witness is unable or unwilling to attend, the panel will reduce the weight given to the evidence as there will not be the opportunity to challenge it properly. A final list of witnesses to be called must be given to both parties not less than two working days in advance of the hearing.

- If witnesses who are required to attend the hearing choose to be accompanied, the accompanying person cannot participate in the hearing.

9.0 The Hearing Framework

9.1 The capability hearing will normally be chaired by an Executive Director of the Trust (the Trust reserves the right to appoint the Chairman it deems most appropriate to the case). The panel will comprise 3 people, normally 2 members of the Trust Board or senior staff appointed by the Board for the purpose of the hearing. At least one member of the panel must be a medical or dental practitioner who is not employed by the Trust.

9.2 As far as is practicable, no member of the panel or advisers to the panel should have been previously involved in carrying out the investigation.

9.3 Arrangements must be made for the panel to be advised by:

- A senior member of staff from Human Resources, and
- A senior clinician from the same or similar clinical specialty as the practitioner concerned, but from another NHS employer.

It is important that the panel is aware of the typical standard of competence required of the grade of doctor in question. If for any reason the senior clinician is unable to advise on the appropriate level of competence, a doctor from another NHS employer with appropriate experience will be asked to provide advice.

9.4 It is for the Trust to decide on membership of the panel. The practitioner may raise an objection to the choice of any panel member within 5 working days of notification. The Trust will review the situation and take reasonable measures to ensure that the membership of the panel is acceptable to the practitioner. It may be necessary to postpone the hearing while this matter is resolved. The Trust must provide the practitioner with the reasons for reaching its decision in writing before the hearing can take place.

10.0 Representation at capability hearings

10.1 The practitioner will be given every reasonable opportunity to present his or her case, although the hearing should not be conducted in a legalistic or excessively formal manner.

10.2 The practitioner may be represented in the process by a friend, partner or spouse, colleague, or a representative who may be from or retained by a trade union or defence organisation. Such a representative may be legally qualified but they will not be representing the practitioner formally in a legal capacity. The representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any witness evidence.

11.0 Conduct of the capability hearing

11.1 The hearing should be conducted as follows.

- The panel and its advisers, the practitioner, his or her representative and the Case Manager will be present at all times during the hearing. Witnesses

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

- The Chairman of the panel will be responsible for the proper conduct of the proceedings. The Chairman should introduce all persons present and announce which witnesses are available to attend the hearing.
- The procedure for dealing with any witnesses attending the hearing will be the same and will reflect the following:
 - The witness to confirm any written statement and give any supplementary evidence;
 - The side calling the witness can question the witness;
 - The other side can then question the witness;
 - The panel may question the witness;
 - The side which called the witness may seek to clarify any points which have arisen during questioning but may not at this point raise new evidence.

11.2 The presentation will follow a set order.

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

12.0 Decisions

12.1 The panel has the power to make a range of decisions.

- No action required.
- An oral agreement that there must be an improvement in clinical performance within a specified time scale with a written statement of what is required and how it might be achieved: this stays on the employee's record for 6 months.
- A written warning that there must be an improvement in clinical performance within a specified time scale with a statement of what is required and how it might be achieved: this stays on the employee's record for 1 year.
- A final written warning that there must be an improvement in clinical performance within a specified time scale with a statement of what is required and how it might be achieved: this stays on the employee's record for 1 year.
- Termination of contract.

12.2 It is also reasonable for the panel to make comments and recommendations on issues other than the competence of the practitioner, where these issues are relevant to the case. For example, there may be matters around the systems and procedures operated by the employer that the panel wishes to comment upon.

12.3 A record of oral agreements and written warnings should be kept on the practitioner's personal file but will be removed following the specified period.

12.4 The decision of the panel will be communicated to the parties as soon as possible and normally within 5 working days of the hearing. Because of the complexities of the issues under deliberation and the need for detailed consideration, the parties should not necessarily expect a decision on the day of the hearing.

12.5 The decision must be confirmed in writing to the practitioner. This notification must include reasons for the decision, clarification of the practitioner's right of appeal and notification of any intent to make a referral to the GMC/GDC or any other external/professional body.

13.0 Appeals in Capability Cases

13.1 The appeals procedure provides a mechanism for practitioners who disagree with the outcome of a decision to have an opportunity for the case to be reviewed. The appeal panel will need to establish whether the Trust's procedures have been adhered to and that the panel in arriving at their decision acted fairly and reasonably based on:

- A fair and thorough investigation of the issue;

- Sufficient evidence arising from the investigation or assessment on which to base the decision;
- Whether in the circumstances the decision was fair and reasonable, and commensurate with the evidence heard.

13.2 It can also hear new evidence submitted by the practitioner and consider whether it might have significantly altered the decision of the original hearing.

14.0 The Appeal Process

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

- Appeal by written statement to be submitted to the CPO within 25 working days of the date of the written confirmation of the original decision;
- Hearing to take place within 25 working days of date of lodging appeal;
- Decision reported to the appellant and the Trust within 5 working days of the conclusion of the hearing.

14.2 The timetable will be agreed between the Trust and the appellant and thereafter varied only by mutual agreement. The Case Manager should be informed and is responsible for ensuring that extensions are absolutely necessary and kept to a minimum.

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

14.4 Where the appeal is against dismissal, the practitioner should not be paid during the appeal, if it is heard after the date of termination of employment. Should the appeal be upheld, the practitioner should be reinstated and must be paid backdated to the date of termination of employment.

15.0 The Appeal Panel

15.1 The panel will consist of three members. The members of appeal panel must not have had any previous direct involvement in the matters that are the subject of the appeal, for example they must not have acted as the designated board member. These members may be any of the following:

- An independent member (trained in legal aspects of appeals) from an approved pool appointed from the national list held by *NHS Employers* for this purpose (see Annex A to 'Maintaining High Professional Standards in the Modern NHS');
- The Chairman (or other non-executive director) of the Trust;
- A medically qualified member (or dentally qualified if appropriate) who is not employed by the Trust.

- 15.2 The panel should call on others to provide specialist advice. This will include:
- A consultant from the same specialty or subspecialty as the appellant, but from another NHS employer; if the case involves a dentist, this may be a consultant or an appropriate senior practitioner;
 - A senior human resources specialist (who may be from another NHS organisation).
- 15.3 It is important that the panel is aware of the typical standard of competence required of the grade of doctor in question. If for any reason the senior clinician is unable to advise on the appropriate level of competence, a doctor from another NHS employer with appropriate experience will be asked to provide advice.
- 15.4 The Trust should make the arrangements for the panel and notify the appellant as soon as possible. Every effort should be made to ensure panel members are acceptable to the appellant. Where, in rare cases, agreement cannot be reached upon the constitution of the panel, the appellant objections should be noted carefully. The Trust will act reasonably at all stages of the procedure.

16.0 Powers of the appeal panel

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

17.0 Conduct of appeal hearing

- 17.1 All parties should have all documents, including witness statements, from the previous capability hearing together with any new evidence.
- 17.2 The practitioner may be represented in the process by a friend, partner or spouse, colleague or a representative who may be from or retained by a trade union or defence organisation. Such a representative may be legally qualified but they will not be representing the practitioner formally in a legal capacity. The representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any written evidence.

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

17.4 The panel, after receiving the views of both parties, will consider and make its decision in private.

18.0 Decision

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

19.0 Action following hearing

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

20.0 Termination of Employment with Performance Issue Unresolved

20.1 Where an employee leaves employment before disciplinary procedures have been completed, the investigation must be taken to a final conclusion in all cases and capability proceedings will be completed where possible, whatever the personal circumstances of the employee concerned.

20.2 Where employment ends before investigation or proceedings have been concluded, every reasonable effort will be made to ensure the former employee remains involved in the process. If contact with the employee has been lost, the Trust will invite them to attend any hearing by writing to both their last known home address and their registered address (the two will often be the same). The Trust will make a judgment, based on the evidence available, as to whether the allegations about the practitioner's capability are upheld. If the allegations are upheld, the Trust will take appropriate action, such as requesting the issue of an alert letter and referral to the professional regulatory body, referral to the police, or the Protection of Children Act List (held by the Department for Education and Skills).

20.3 If an excluded employee or an employee facing capability proceedings becomes ill, they will be subject to the Trust's Supporting and Managing Staff Attendance at Work Policy (HR13). The sickness absence procedures take precedence over the capability procedures and the Trust will take reasonable steps to give the employee time to recover and attend any hearing. Where the employee's illness exceeds 4 weeks, they must be referred to the Trust Occupational Health and Wellbeing Service.

- 20.4 The Occupational Health and Wellbeing Service will advise the Trust on the expected duration of the illness and any consequences it may have for the capability process and will also be able to advise on the employee's capacity for future work, as a result of which the Trust may wish to consider termination of employment on the grounds of incapability. Should employment be terminated as a result of ill health, the investigation should still be taken to a conclusion and the Trust form a judgment as to whether the allegations are upheld.
- 20.5 If, in exceptional circumstances, a hearing proceeds in the absence of the practitioner, for reasons of ill-health, the practitioner will have the opportunity to submit written submissions and/or have a representative attend in his or her absence.
- 20.6 Where a case involves allegations of abuse against a child, the guidance issued to the NHS in September 2000, called "The Protection of Children Act 1999 – A Practical Guide to the Act for all Organisations Working with Children" gives more detailed information. A copy can be found on the Department of Health website: (www.dh.gov.uk/PublicationsAndStatistics)