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## 1 INTRODUCTION

- 1.1 NHS Blood and Transplant requires high standards of conduct and performance from all members of staff. It is also committed to helping and encouraging staff to improve knowledge and skills and to learn from mistakes. This policy/ procedure is designed to ensure that a fair, systematic and consistent approach is taken when conduct or performance of medical staff falls short of the required standard.
- 1.2 Minor matters of concern should be resolved informally. If informal action does not bring about improvement or the misconduct is sufficiently serious, the formal stages of the disciplinary procedure will be applied.
- 1.3 NHSBT commits itself to handling concerns about medical staff fairly and transparently, reflecting the overriding need to maintain patient safety while offering appropriate support and guidance to the member of staff concerned.
- 1.4 This policy should always be read in line with the current guidance and advice as outlined by MHPS – Maintaining High Professional Standards in the NHS <https://resolution.nhs.uk/covid-19-and-business-continuity/practitioner-performance-advice/maintaining-high-professional-standards-in-the-nhs/>

## 2 SCOPE

- 2.1 This policy applies to the following staff groups:
  - All Medical Staff – where the individual holds a contract (permanent, fixed term, bank locum or honorary) with NHSBT
- 2.2 This policy does not apply to the following staff groups:
  - Agency Medical staff – individuals on-site at NHSBT who are employed via an agency on the NHS Agency Framework;
  - Medical Students - students on placement within NHSBT as part of their educational programme
- 2.3 In dealing with individuals who are not NHSBT employees (e.g. clinical academic staff and staff employed by NHS Trusts) NHSBT will make every effort to liaise with the substantive employer regarding appropriate action. NHSBT reserves the right to take action on issues affecting work delivered on behalf of NHSBT, particularly when patient safety is affected or may be affected.
- 2.4 Doctors in training are covered by the policy. NHSBT will liaise with educational supervisors, clinical tutors and Health Education England about concerns affecting doctors in training especially those involving issues of capability.
- 2.5 Issues involving locum agency staff will be addressed with the involvement of the Locum Agency. Medical workers on agency contracts are professionally accountable for their conduct and actions and will be expected to co-operate with any disciplinary investigations or hearings.

### 3 AIMS AND OBJECTIVES

- 3.1 The purpose of this policy and procedure is to ensure that NHSBT has a process for handling concerns about the conduct, performance and health of all medical employees.
- 3.2 This policy provides guidance on:
- Action to be taken when a concern about a doctor first arises (Section 6)
  - Procedures for considering whether restrictions need to be placed on a doctor'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.

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

**"Designated Board Member"** is a non-executive director of NHSBT 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.

**"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) NHSBT will seek to identify a person outside its employment to advise.

**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 document 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

Disciplinary issues involve concerns about personal or professional conduct, capability, health or a combination of these. A serious concern about capability, will arise where a practitioner's, in the judgement of the Medical Director, actions have or may adversely affect patient care.

## 6 ACTION TO BE TAKEN WHEN A CONCERN ARISES

### 6.1 Raising concerns about a practitioner

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, donors or relatives of patients/ donors, information from regulatory bodies, information from the police or Coroner and litigation.

If an employee has a serious concern about the conduct or capability of a practitioner, or a patient, donor or relative raises a concern with an employee, they should immediately report it to their Line Manager or another Line Manager within NHSBT. 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.

### 6.2 Minor Concerns – Informal Approach

It is important to tackle conduct and performance issues informally where possible. Minor issues should be dealt with through supportive action or remedial training so that they can be quickly resolved before they become serious or patients are harmed. If the Medical Director decides that the concern is minor, then this may not require formal investigation.

### 6.3 More Serious Concerns - Formal Approach

If the Medical Director identifies a serious concern or the facts are unclear, the following procedure should be followed immediately:

- The concerns must be registered with the Chief Executive. He or she will ensure that a suitably trained and qualified Case Manager is appointed – this will usually be the Medical Director.
- The Chair of the Board must designate a non-executive member of the Board, “the designated member” to oversee the case and ensure that momentum is maintained.
- Consideration will be given to whether some restriction of duties or immediate exclusion is necessary – see section 7.
- If further investigation is required, the Case Manager will appoint an appropriately experienced or trained Case Investigator to establish the facts.

The practitioner will be informed in writing by the Case Manager of the concerns or allegations, whether a formal investigation will be undertaken, if so the name of the Case Investigator, their right to put their views of events to the Case Investigator and given the opportunity to be accompanied by one of the following: another employee of NHSBT, a trade union or professional representative or a friend, partner or spouse.

### 6.4 Carrying out an investigation

#### 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.

#### 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 act in an independent and impartial manner.

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 NHS organisation if no one suitable is available at NHSBT;
- 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 individuals 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 People Director (or nominated deputy) with the Chief Medical Officer;
- Must assist the designated Board Member in reviewing the progress of the case.

It is not the Case Investigator's responsibility to:

- make the decision on what disciplinary action should be taken;
- make the decision on whether the practitioner should be excluded from work
- 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 People Directorate where appropriate and may in some circumstances request external professional legal advice. The Case Investigator should always ensure that the investigation is carried out in line with the NHS Maintaining High Professional Standards Framework.

Where concerns are considered a Serious Incident in line with NHSBT'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.

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.

## 6.5 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.

### 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 10 working days, 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.

## 6.6 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 NHS Resolutions. The Case Manager should discuss the report with the Chief Executive and Chief People Officer (or nominated deputy), with the Clinical Tutor and Postgraduate Dean if the practitioner is a trainee, as well as with NHSR.

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

Where serious concerns arise about a practitioner's conduct, performance or health, NHSBT will consider whether it is necessary to place temporary restrictions on their

practice. This might be to amend or restrict their clinical duties or exclude the practitioner completely from the workplace.

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

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 Director or Head of Service. 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

## 7.2 Roles of Officers

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

## 7.3 Immediate exclusion

### The right to exclude immediately

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.

### 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.

### 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** provides a form to be completed on making an initial assessment of what measures to take.

**Appendix D** provides an *advisory* template letter to send to a practitioner in these circumstances.

#### 7.4 Formal decisions to exclude or restrict practice

##### 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; and
- NHSR PPA (formerly NCAS) has been consulted.

##### Justification of the decision to exclude formally

Formal exclusion can only be justified where there is a need to protect a patient or donor, or the 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.

##### Considerations in a decision to exclude formally

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

##### Meeting with the practitioner

The practitioner should be informed of the exclusion in a meeting with the Chief Medical Officer and/or the Case Manager. A 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.

### 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.

#### 7.5 Practitioner's duties if excluded

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).

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.

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 in their employment. A mentor could be appointed for this purpose if a colleague is willing to undertake this role.

#### 7.6 Reviewing exclusions, the role of NHSBT Board and 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 Board 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.

### 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 / NHSBT 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 NHSBT Board.

### 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.

### 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.

### 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 setting out:

- the reasons for continuing the exclusion;
- anticipated timescale for completion of the process

Normally there should be a maximum limit of 6 months exclusion, except for those cases involving criminal investigations of the practitioner concerned.

### 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.

#### 7.7 Reporting matters outside NHSBT

In cases where there is concern that the practitioner may be a danger to patients or donors, NHSBT has a duty to notify other employing organisations, including private health providers, 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 NHSBT, the practitioner is obliged to provide this information. Failure to do so may result in disciplinary action or referral to the GMC.

#### 7.8 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 and the Chief Medical Officer of NHS England on whether an alert letter should be issued. Guidance on issuing an alert letter is contained in HSC 2002/011.

#### 7.9 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. 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

Misconduct matters for practitioners and dentists, as for all other staff groups, are matters for local employers and must be resolved locally. All issues regarding the misconduct of practitioners and dentists will be dealt with under the NHSBT's Disciplinary procedures covering other staff charged with similar matters.

## 8.2 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.

## 8.3 Classification of the concern

The Case Manager will, on receipt of the Case Investigator's report and having consulted with NHSR PPA, the People Director (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.

## 8.4 Criminal Proceedings

### Action by NHSBT during a Police investigation

Where NHSBT's investigation finds a suspected criminal act, this must be reported to the police. Where the police are investigating the allegation, NHSBT'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 NHSBT investigation would not impede the police investigation. If the Police do not consent to NHSBT continuing with an investigation, NHSBT must accede to this request.

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

### Action by NHSBT in the event that criminal charges are successful

In a circumstance where criminal charges have been successfully brought against the practitioner, NHSBT will need to carefully consider whether they render the practitioner unsuitable for further employment. NHSBT will need to consider the overall circumstances of the conviction and in particular the safety of patients, donors, 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.

### 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. NHSBT must however consider whether there is enough evidence to suggest that there is a threat to patients, donors, staff or members of the

public. If NHSBT 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 NHSBT by them will be disclosed to the practitioner as part of the disciplinary process.

## 8.5 Procedure for Conduct Hearing

In all respects NHSBT will follow the process laid down in its Disciplinary Policy and Procedure for Disciplinary Hearings. This includes:

- Notice to be given to the employee and their representatives of the hearing
- Provision and circulation of documents to be referred to at the hearing including the management case.
- Provisions for hearing witnesses
- Procedure to be followed in the event of a postponement request
- Procedure to be followed if the practitioner does not attend the hearing
- Roles and responsibilities of the panel
- Procedure of the hearing

## 8.6 Disciplinary Action and Dismissal

The types of formal Disciplinary Sanctions (warnings etc) are laid out in NHSBT's Disciplinary Policy and Procedure alongside timescales, retention policies and process to be followed for confirmation and communication of the sanction.

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

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 procedure for notifying a practitioner of dismissal will be as in NHSBT's Disciplinary Policy.

## 8.7 Appeals

An appeal is not a re-hearing but an opportunity to review the decision taken at the disciplinary hearing. The right of appeal concerns whether the procedures were correctly and fairly followed, and whether the disciplinary sanction was reasonable in the circumstances. Appeals will be handled in accordance with NHSBT's Appeals Procedure.

## 9 CAPABILITY PROCEDURE

If concerns relate to the capability of an individual practitioner, these should be dealt with under this procedure. 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.

## 9.1 Definition of Capability

The following are examples of matters which NHSBT 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 People Director (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.

## 9.2 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 Chief Medical Officer and People Director (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.

### 9.3 Preparation for Capability Hearings

#### 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.

#### 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.

## 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 NHSBT;
- A medical or dental practitioner not employed by NHSBT (following discussions with the LNC/GMC);
- A Board Member or Senior Manager of NHSBT.

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 NHSBT 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 People Director 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 NHSBT 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.

### 9.4 The Capability Hearing

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

## 9.5 The Decision

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

- 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.

## 9.6 Capability Appeals Procedure

### 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 NHSBT'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 process for hearing an appeal shall be in accordance with NHSBT's Appeals Policy and Procedure.

## 10 HANDLING CONCERNS ABOUT A PRACTITIONER'S HEALTH

### 10.1 Introduction

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

### 10.2 Interaction with NHSBT Sickness Absence Policy and Procedure

Practitioners with health problems will be treated in accordance with NHSBT's sickness absence/managing attendance policy. If there is an incident which points to a problem with the practitioner's health, or the Case Manager wishes to exclude the possibility of health factors, the practitioner will be referred to the Occupational Health Service ("OHS"). The practitioner will be expected to co-operate fully with any such referral in order to give the employer sufficient information to make an informed decision about appropriate action.

### 10.3 Cases where Concerns are due to ill-health

In cases where there is impairment of performance solely due to ill health, disciplinary proceedings will only be considered in exceptional circumstances - for example if the employee refuses to co-operate with NHSBT to resolve the underlying situation e.g. by refusing a referral to Occupational Health. In this situation the capability procedure will be followed.

### 10.4 Handling Complex Health Issues

Where the practitioner has been referred to the Occupational Health Service (OHS), the occupational physician should agree a course of action with the practitioner and send his or her recommendations to the Medical Director. A case conference may be necessary to agree a timetable for action. The case conference will include as appropriate HR representative, Case Manager, line manager, the practitioner and the occupational physician. The practitioner is entitled to bring a representative to the meeting who may be a family member, colleague or a trade union or defence association representative. Examples of action that might be taken include:

- Treatment (period of sick leave)
- Remove the practitioner from certain duties
- Reassign to a different area of work
- Arrange retraining with appropriate advice from the NHSR and/or the Deanery
- Ill Health Retirement
- Reasonable adjustments to working conditions/processes
- Termination of contract

Unreasonable refusal to accept a referral, to co-operate with the Occupational Health Service or agreed action plan, may give separate grounds to pursue disciplinary proceedings. If a practitioner's ill health makes them a potential danger to patients and they do not recognise this, or are not prepared to co-operate with measures to protect patients, then exclusion from work must be considered and the professional regulatory

body must be informed, irrespective of whether or not they have retired on the grounds of ill health.

NHSR may be approached to offer advice on any situation and at any point. Even early concerns may be referred as issues are easier to deal with before they escalate into serious problems.

There may be circumstances where a practitioner who is subject to disciplinary proceedings puts forward a case on health grounds that the proceedings should be delayed, modified or terminated. In such cases NHSBT will refer the practitioner to the OHS.

#### 10.5 Reasonable Adjustments

Practitioners are encouraged to inform the OHS and their manager of any medical or psychological condition for which reasonable adjustments may be required. NHSBT will consider what reasonable adjustments could be made to the workplace conditions or other arrangements on the advice of the OHS. Examples of reasonable adjustments

- Adjustments to the premises or facilities
- Re-allocation of some of the disabled person's duties
- Alteration of working hours or pattern of work
- Agreed absence for rehabilitation, assessment or treatment
- Acquisition or modification of equipment
- Provision of a reader or interpreter
- Advice sought from specialist Disability Advisors
- Modify procedures for testing or assessment

## 11 CONFIDENTIALITY

NHSBT will maintain confidentiality at all times and will not release the name of the practitioner, nor issue any press release regarding an investigation or hearing into any disciplinary matters. NHSBT 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.

12 MONITORING ARRANGEMENTS

<b>Policy element to be monitored</b>	<p>Number of cases resulting in formal sanctions and within the following groups:</p> <ul style="list-style-type: none"> <li>• Ethnicity &amp; National Origin</li> <li>• Gender</li> <li>• Age</li> <li>• Disability</li> <li>• Sexual orientation</li> <li>• Religion and/or belief</li> <li>• Part-time &amp; full-time employees</li> </ul>
<b>Lead</b>	To be agreed
<b>Audit Tool</b>	Report
<b>Frequency</b>	Annually
<b>Reporting arrangements (Committee or group)</b>	National Joint Negotiating Committee (NJNC)
<b>Response required on any issues/recommendations identified</b>	<p>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.</p>

## 13 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. NHSBT reserves the right to add to or remove from these lists as it considers necessary.

### **Case managers**

The following are authorised by NHSBT to act as Case Managers:

- the Chief Medical Officer or another appropriate person appointed by the CMO.

### **Case investigators**

The following are authorised by NHSBT to act as Case Investigators:

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

### **Designated Board Members**

Non-Executive Directors are authorised by NHSBT to act as Designated Board Members.

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

The following are authorised to exclude or restrict practice:

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

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

Who discussed this?	<b>[Insert names]</b>
When?	<b>[Insert date]</b>
Summarise the areas of concern	<b>[Insert summary]</b>
Has an NHSR PPA assessment been considered?	YES/NO.
Is it an appropriate action? If not, why not?	<b>[Insert summary answer]</b>
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?	<b>[Insert summary]</b>
Has supervision by clinical/Chief Medical Officer been considered? Is it an appropriate action? If not, why not?	YES/NO. <b>[Insert summary answer]</b>
Has restricting the practitioner’s Clinical duties been considered? Is it an appropriate action? If not, why not?	YES/NO. <b>[Insert summary answer]</b>
Has restricting activities to non-Clinical duties and/or re-training been considered? Is it an appropriate action? If not, why not?	YES/NO. <b>[Insert summary answer]</b>
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. <b>[Insert reasoning]</b>
What arrangements have been agreed to inform the practitioner?	<b>[Insert details]</b>

Signed..... Date.....
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APPENDIX C – Guidance Template Letter to Send to Practitioner Being Immediately Excluded/Restricted From *(please discuss with senior People colleague prior to sending)*

**Practice Dear [insert name of practitioner]**

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

These concerns are that:

**[Set out details of the concerns]**

In accordance with Department of Health Guidance and NHSBT 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 NHSBT. 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 NHSBT's premises for audit meetings, research purposes, and study or continuing professional development. Obviously, there is no limitation on you attending NHSBT premises to receive medical treatment.

**[Or]**

you should not attend NHSBT'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 NHSBT 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, NHSBT 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 NHSBT 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 – Guidance

### 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 NHSBT’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 have 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 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?

What does it say?

**[Provide summary of key conclusions]**

Has NHSR PPA been consulted?<sup>1</sup>

If so, what was their advice?

**[Summarise their advice]**

Has a case conference been held? <sup>2</sup>

When?

Who attended it?

**[Insert date and attendees of it]**

<p>Have alternatives to formal Exclusions been considered namely:</p> <ul style="list-style-type: none"> <li>• Supervision of clinical role cessation of certain clinical duties</li> <li>• Cessation of all clinical duties with restriction to non-clinical duties</li> <li>• Are any of these appropriate actions? If not, why not?</li> </ul>	<p>YES/NO.</p> <p><b>[Insert brief analysis against each of these points giving reasons why appropriate / inappropriate]</b></p>
<p>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.</p>	<p>YES/NO.</p> <p><b>[Set out reason as per NHSBT policy and consistent with Department of Health guidance]</b></p>
<p>If exclusion is necessary, how long will it last for (it cannot last for more than 4 weeks)?</p>	<p><b>[State length of exclusion period and date it will expire]</b></p>
<p>What arrangements have been agreed to notify the practitioner?</p>	<p><b>[State date by which letter will be sent]</b></p>

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<sup>1</sup> NHSR PPA must be consulted where a formal exclusion is being considered

<sup>2</sup> 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 NHSBT, another employee, a patient or visitor.
- Fraud or dishonesty, e.g. signing in for another employee or allowing such an arrangement to occur, defrauding NHSBT of resources by wilfully falsifying records or booking of work or defrauding patients or staff (NB further guidance on this issue is contained in NHSBT'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 NHSBT into disrepute or which necessitates the removal of the employee from the post to which they had been appointed.
- Wilful damage to NHSBT 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 NHSBT 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 NHSBT 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 NHSBT 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 NHSBT'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