

Ref: FOI/GS/ID 5667

Please reply to:
 FOI Administrator
 Trust Management
 Maidstone Hospital
 Hermitage Lane
 Maidstone, Kent
 ME16 9QQ
 Email: mtw-tr.foiadmin@nhs.net

19 September 2019

Freedom of Information Act 2000

I am writing in response to your request for information made under the Freedom of Information Act 2000 in relation to Disciplinary cases under MHPS.

You asked:

Please provide the following information about the disciplinary cases under MHPS in your organisation for the financial year 2017/18:

- 1. The number of permanent and locum doctors employed by the Trust (Headcount).*
- 2. The number of concerns raised under MHPS by type of concern (the following is a suggested categorisation of the types of concern). Please allocate the cases to the most relevant type of concern.*
- 3. The outcome of formal investigations. Please provide the data on the outcome of formal investigations according to the following table:*
- 4. If the information requested in 2. and 3. is set out in the report referred to in the second paragraph of the Background above, please just send me a copy of that report instead.*
- 5. Please send me your Trust's Disciplinary policy for dealing with concerns raised about doctors, the staff code of conduct, and the number of staff formally trained to handle concerns under MHPS.*

Trust response:

1. 341 permanent, 379 FTC as at 31/03/2018
2. Please see the following table:

Type of concern	No. of concerns raised	No. of formal investigations
Doctor's health		
Clinical competence		
Conduct	4	4

Professional performance		
Criminality		

3.

Type of concern	No further action	Advice or warning	Referral to the GMC	Suspension	Dismissal	Resignation within 6 months of concern raised
Doctor's health						
Clinical competence						
Conduct	2	2				
Professional performance						
Criminality						

4. Please see the above responses.

5. MHPS trained staff = 35

Policy and standards below.

[Disciplinary Policy and Procedure]

Standards of conduct at work

Introduction

1. This document is intended to set standards in relation to the more common questions of conduct and to make clear that failure to meet these standards will normally lead to action being taken. In addition, the document sets out the circumstances in which dismissal will normally take place without previous warnings.
2. Breaches of discipline will be dealt with in accordance with the Trust's Disciplinary Policy and Procedure [RWF-OPPPCS-NC-WF10].

General standards of conduct at work

3. A high standard of general conduct is expected from staff at all times. All staff are expected to combine prompt and efficient service with concern and respect for the feelings of other people.
4. All staff should follow the reasonable instructions of their supervisors and managers and carry out their assigned duties.

Attendance for duty

5. Staff are expected to attend for duty at the correct time and work their contracted hours. Unauthorised absence will be dealt with as a disciplinary issue.
6. Leave should be arranged in accordance with local procedures. Absence including sickness absence should be reported, authorised, recorded and managed according to local procedures and Trust policy.

Attendance for mandatory appointments/training sessions

7. It is the responsibility of the member of staff to undertake mandatory training e.g. staff induction, fire lectures, moving and handling training. All staff are also required to attend Occupational Health appointments at the Trust's request.

Smoking on duty

8. No smoking is permitted in non-designated areas of Trust premises.

Use of equipment or resources

9. Staff should ensure they take appropriate care and treat with respect Trust equipment and resources and according to any local rules and procedures on their safe and appropriate use.

Private business

10. Conducting private business arrangements for personal financial gain in paid time is forbidden unless agreed otherwise as part of normal contractual arrangements or with the permission of the Executive Director responsible for the department.

Security

11. Staff should comply with the Trust security management policy at all times.

Confidentiality

12. The nature of all health service work, especially information about patients and staff, is highly confidential. Information should not normally be given to any unauthorised person or agency without prior permission. If staff are ever in doubt they should seek advice from their manager.

Information Technology (IT) / Information Governance (IG) policies and procedures

13. Staff should ensure they familiarise themselves and comply with the Trust IT and IG policies and procedures.

Health and safety and infection control

14. All staff should comply with infection control measures and the health and safety of patients, the public, staff or contractors working on Trust premises. Staff are expected to familiarise themselves with and observe any reasonable instructions issued by the Trust or Health and Safety Executive on the safe performance of their work.

Discrimination, bullying and harassment

15. All members of staff should treat other staff, visitors and patients with dignity and respect at times. Action will be taken against staff whose behaviour is discriminatory, abusive, bullying or which constitutes racial, sexual, or any other form of harassment.

Relationship with colleagues

16. Staff should endeavour to maintain a harmonious working relationship with other staff at all times.

Professional registration

17. Staff requiring professional registration in order to carry out their job should ensure their registration is maintained and up to date at all times.

Compliance with other Trust policies and procedures

18. Staff are expected to familiarise themselves and comply with Trust policies and procedures.

Offences which could constitute gross misconduct

19. A serious breach of any Trust policy or professional requirement could constitute gross misconduct.

20. The following offences (detailed in points 21-37 below) are amongst those regarded as very serious and may lead to dismissal after following the disciplinary procedure. Where the conduct amounts to gross misconduct this may be summary dismissal, which means dismissal without notice and without pay in lieu of notice.

General standards

21. Any breach of the general standards of conduct which is so serious that it justifies dismissal without warning.

Serious breaches of infection control and health and safety measures

22. Serious breaches of infection control and health and safety requirements where staff, patients or visitors are put at significant risk.

Theft and unauthorised removal or use of property

23. Any instance of theft or unauthorised removal or use of property from the Trust, or from patients, visitors, or other members of staff on Health Service premises.

24. Health Service property must not be removed from Health Service premises for personal use, or used for private purposes within the premises without prior written approval of the appropriate manager.

Fraud

25. Any deliberate attempt to defraud the Trust, members of the public, another member of staff or a patient in the course of official duties. This includes the misrepresentation of entitlement to expenses, allowances, or payment from the Trust or falsification, or misrepresentation of attendance, absence, pay or expenses claims.

Corruption

26. The receipt of money, goods, favours, or excessive hospitality in respect of services rendered e.g. from contractors in anticipation, or recognition of receiving orders for goods, or services. This does not include trivial articles clearly intended for advertising (e.g. note pads, diaries) nor small personal gifts from patients etc., but in any case of doubt, the advice of the line manager should be sought. See the Trust's 'Gifts, Hospitality, Sponsorship and Interests Policy and Procedure'. Any cash given by a patient must be paid into the appropriate office as quickly as possible in accordance with the Trust's Standing Financial Instructions.

Failure to disclose a personal financial interest

27. Failure to declare any personal financial interest in outside companies, firms or other agencies with which the Trust deals in accordance with Trust policy.

Assault and fighting

28. Any assault upon a patient, a member of the public or another member of staff that is associated in any way with Trust business.

Malicious damage or complaints

29. Malicious damage to Health Service property, the property of patients, visitors, or staff or malicious and unfounded complaints about patients, visitors or staff.

Being unfit for duty

30. Incapacity at work through the use of drink, drugs, or substances (see the Trust's 'Alcohol and Substance Misuse Policy and Procedure').

Misrepresentation

31. Making a false or deliberately misleading statement in a job application, health declaration or other employment context.

Deliberate falsification of records

32. Deliberately falsifying or entering misleading information on Trust reporting, recording or information systems.

Serious breaches of IT policies and procedures

33. Serious breaches of IT policies and procedures include:

- i. copying, acquiring or using illegal software on Trust's computer system

- ii. using another individuals password or sharing own
- iii. Accessing data or software that is not necessary for completion of duties.
- iv. Deliberately accessing internet sites containing pornographic, offensive or obscene material
- v. Serious abuse of internet privileges.
- vi. Serious misuse of email.

Serious breach of Trust IG policy and procedure

34. Staff should adhere to the Trust IG policies and procedures; serious breaches could result in dismissal with or without notice.

Current or spent convictions

35. Staff should not withhold information about current or spent criminal convictions or cautions on appointment to post or arising during the course of employment.

Offences committed whilst off duty

36. A member of staff who commits an offence outside of work which results in them being arrested, charged or convicted may be subject to disciplinary proceedings at work in relation to the offence.

Legal right to work in the UK

37. Staff with immigration restrictions in place should ensure that their legal right to work in the UK is maintained at all times. Failure to do so will result in dismissal for the reason of Statutory Duty/Restriction as it would break to law if the Trust continued employment.

This document is not intended to provide an exhaustive list of conduct issues that could be considered by a disciplinary panel and possible dismissal from the Trust.

Doctors Conduct and Performance Policy and Procedure

(Incorporating the principles of Maintaining High Professional
Standards)

Requested/ Required by:	Workforce Committee
Main author:	HR Business Partner
Other contributors:	JMNC Members
Document lead:	HR Business Partner Contact Details: 01892 634458
Directorate:	Corporate
Speciality:	Workforce
Supersedes:	The Management of Concerns about the Performance of Doctors and Dentists, Version 2.0 (July 2011)
Approved by:	Senior HR Meeting, 20 th August 2013
Ratified by:	Workforce Committee, 9 th September 2013
Review date:	September 2018 or at times of significant change

Document history

Requirement for document:	To provide a mechanism for handling concerns about the conduct, performance and health of <u>all</u> medical employees. To comply with the DoH published framework entitled “Maintaining High Professional Standards in the Modern NHS” which is mandatory for all NHS organisations under HSC 2003/012.
Cross references:	<ul style="list-style-type: none"> • Maintaining High Professional Standards in the Modern NHS • ACAS Code of Practice 2009 • HSC 2003/012
Associated documents:	<ul style="list-style-type: none"> • Maidstone and Tunbridge Wells NHS Trust. <i>Bullying and Harassment Policy and Procedure</i> [RWF-OPPPCS-NC-WF24] • Maidstone and Tunbridge Wells NHS Trust. <i>Disciplinary Policy and Procedure</i> [RWF-OPPPCS-NC-WF10] • Maidstone and Tunbridge Wells NHS Trust. <i>Grievance and Disputes Policy and Procedure</i> [RWF-OPPPCS-NC-WF27] • Maidstone and Tunbridge Wells NHS Trust. <i>Supporting Staff involved in Traumatic and Stressful Incident, Complaints or Claims Policy and Procedure</i> [RWF-OPPPCS-NC-WF59] • Maidstone and Tunbridge Wells NHS Trust. <i>Managing Attendance Policy and Procedure</i> [RWF-OPPPCS-NC-WF5]

Version Control:		
Issue:	Description of changes:	Date:
1.0	First iteration of policy	August 2005
2.0	Major redraft of document, New appeals section added	July 2011
3.0	<ul style="list-style-type: none"> • New Trust format • Flowcharts included to simplify the process • Clear definitions • Final written warning length changed to 18 months to bring it in line with other Trust policies e.g. Disciplinary P & P • Informal warning clarified to 6 months • Overall policy shortened 	September 2013

Policy statement for

Doctors Conduct and Performance Policy

(Incorporating the principles of Maintaining High Professional Standards)

The purpose of this policy and procedure is to ensure that the Trust has a process for handling concerns about the conduct, performance and health of all medical employees. It complies with the DoH published framework entitled "Maintaining High Professional Standards in the Modern NHS" which is mandatory for all NHS organisations under HSC 2003/012.

The use of this policy and procedure will not discriminate directly or indirectly on the grounds of age, race, gender, sexual orientation, ethnic or national origin, religion, culture, disability, age, membership of a trade union or staff organisation or political affiliation.

Doctors Conduct and Performance Procedure

(Incorporating the principles of Maintaining High Professional Standards)

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1.0 Introduction and scope

- 1.1 The Trust is committed to promoting high standards of behaviour, conduct and performance for all employees in order to deliver an efficient and consistently high standard of care to its patients and service users.
- 1.2 The Trust will seek where possible to tackle performance issues through training or other remedial action rather than solely through disciplinary action. It will continue to support medical and dental staff in their professional development in particular through appraisal.
- 1.3 The aim of this policy is to ensure that the management of concerns relating to medical staff and their performance:
- Is in line with the framework set out in Maintaining High Professional Standards in the Modern NHS.
 - Is fair, consistent, impartial and proactive and without discrimination in relation to any of the protected characteristics.
 - Takes the practitioners circumstances and needs into consideration.
 - Takes system failure and working environment into consideration.
 - Is carried out in line with the Equality Act 2010 and Maintaining High Professional Standards.
 - Ensures efficient and high quality care for our patients.
 - Is monitored to ensure effectiveness of implementation.
- 1.4 The policy contains the process for managing serious concerns regarding a **practitioner's capability, conduct or ill health only**.

2.0 Definitions

2.1 The following definitions are used in the policy

Capability issue	Where the employee has difficulties in carrying out their role to the required standards or in carrying out a certain element of their role because of a lack of knowledge or skills; or where 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.
Professional conduct	The use of ones knowledge in a particular profession. Professional conduct is generally a matter of conduct that may require medical training to identify. It is generally to do with professional practice.
Misconduct	Where the practitioner knows what they should do or how they should behave and chooses not to. Examples of misconduct commonly include but are not limited to: refusal to carry out a reasonable request from the employer; infringement on the Trust's expectations of employee conduct; commission of a criminal offences or failure to inform their Clinical Director/General Manager

	if criminal proceedings are being pursued against them; wilful, careless, inappropriate or unethical behaviour likely to compromise standards of care or patient safety. Failure to fulfil contractual obligations may also constitute misconduct.
Negligence	A failure to exercise reasonable care and attention.
Serious / gross negligence	A conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property or both.
Temporary restrictions to practice and exclusion	Where serious concerns are raised about a practitioner the Trust will urgently consider whether it is necessary to place temporary restrictions on their practice or exclusion. The purpose of exclusion is: <ul style="list-style-type: none"> • 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.
Case Manager	Appointed by the Chief Executive or Medical Director. This will normally be the Medical Director (or Deputy) for cases involving Consultants (Medical Director maintains overall responsibility). The Medical Director may delegate to a Clinical Director/senior manager for other cases below a Consultant.
Designated (Board) Member	Non-Executive Director appointed by the Chairman.
Case Investigator	Appointed by the Medical Director (seniority of the case investigator is dependent on the grade of the practitioner involved in the allegation).
Practitioner	The doctor, dentist or pharmacist being managed under this policy.
Case conference	Held to decide whether there is reasonable and proper cause to exclude a practitioner.
Representative	A representative of a recognised Trade Union, MDU, an accredited Staff side representative or an Employee of the Trust.

3.0 Duties

Chief Executive (CEO)	<ul style="list-style-type: none"> • Responsible for managing exclusion procedures and for ensuring that cases are properly managed. • Discuss any exclusion with the Medical Director, Director of Strategy & Workforce. • Authority to exclude.
Medical Director	<ul style="list-style-type: none"> • Authority to exclude. • Act as Case Manager for Consultant grade staff or delegate to a deputy. • Delegate to a Clinical Director/Senior Manager to oversee the case for other grades of staff where

	<p>appropriate.</p> <ul style="list-style-type: none"> • Appoint Case Investigator. • Retain responsibility for cases where they have been delegated to a Deputy/Clinical Director/Senior Manager. • Discuss any Exclusions with NCAS
Clinical Director	<ul style="list-style-type: none"> • Authority to exclude only where the practitioner is below the grade of Consultant.
Practitioner	<ul style="list-style-type: none"> • To carry out their work in a professional way which demonstrates the values (PRIDE) of the Trust. • Familiarise themselves with trust and local policies and procedures and act within these. • Must inform case manager if they undertake voluntary/paid work elsewhere. • Make reasonable attempts to attend meetings (informal, formal and investigation) and cooperate with the investigation process. • Inform their Clinical Director/General Manager if criminal proceedings are being pursued for an offence(s) committed outside of the working environment. This includes any offence where the police are involved anywhere in the world.
Witness	<ul style="list-style-type: none"> • Facilitate an investigation by providing statements where requested and attending investigation interviews. • Give an honest account of what they have witnessed in relation to the allegations. • Understand that the practitioner under investigation will normally receive a copy of the notes from their investigation and statement.
Case Manager	<ul style="list-style-type: none"> • Identify the nature of the problem or concern and assess the seriousness of the issue on the information available and the likelihood that it can be resolved informally. • Responsible for excluding practitioners, monitoring and reviewing the exclusion and report the decision to the Board at 4-weekly intervals. The practitioner has the right to return if the review is not carried out. • Define allegations and terms of reference for the investigation. • Use information in preliminary review/statement/complaint and case conference to make a decision on the next steps in cases of immediate/formal exclusion. • Oversee the progress of the case and report this to the Chief Executive.
Designated Board Member	<ul style="list-style-type: none"> • Oversee the case during the investigation and maintain momentum of the process. • May request a report to review exclusion/restriction from duties.

	<ul style="list-style-type: none"> As a member of the board, ensure corporate governance is complied with (only sufficient information to satisfy this role will be provided in order to maintain impartiality for any subsequent hearings).
Case Investigator	<ul style="list-style-type: none"> Produce a preliminary report as soon as possible to be available for a case conference with advice from NCAS where there is immediate exclusion. The report will advise the Case Manager to enable them to decide on the next steps. Provide factual information to assist the Case Manager in reviewing any need for exclusion. Assist the Case Manager in making progress reports to the Chief Executive and Designated Member. Lead the investigation, establish the facts of the case and report the findings to the Case Manager. To give the doctor or dentist the opportunity to respond to any evidence and put their own version of events forward and be involved in discussions regarding who should be interviewed as part of the investigation Formally involve senior member of the medical/dental staff regarding questions of clinical judgement. Safeguard against breaches in confidentiality. Collect sufficient written statements to establish the facts of the case and present to the Case Manager making the decision. Ensure written record kept of investigation, conclusion reached and a full report provided to the Case Manager. Does not make decision on what action will be taken nor whether the practitioner should be excluded & not disciplinary/capability/appeal panel member. Notify the Case Manager and practitioner where timescales cannot be met.
Occupational Health (OH)	<ul style="list-style-type: none"> Provide advice to managers about how to support employees who are under stress as a result of going through the process, where there are concerns about their health (in line with the Trust Managing Attendance Policy and Procedure) or for further support.
Human Resources	<ul style="list-style-type: none"> Advise Case Manager and Case Investigator about how to use this policy. Provide guidance to the Case Investigator. Provide guidance to the hearing panel.
Staff side /Trade Union Representative or employee	<ul style="list-style-type: none"> Facilitate their member to make representations to the Designated Board Member/Case Manager, present their case to the Case Investigator and any hearing panel. Provide support during the case.

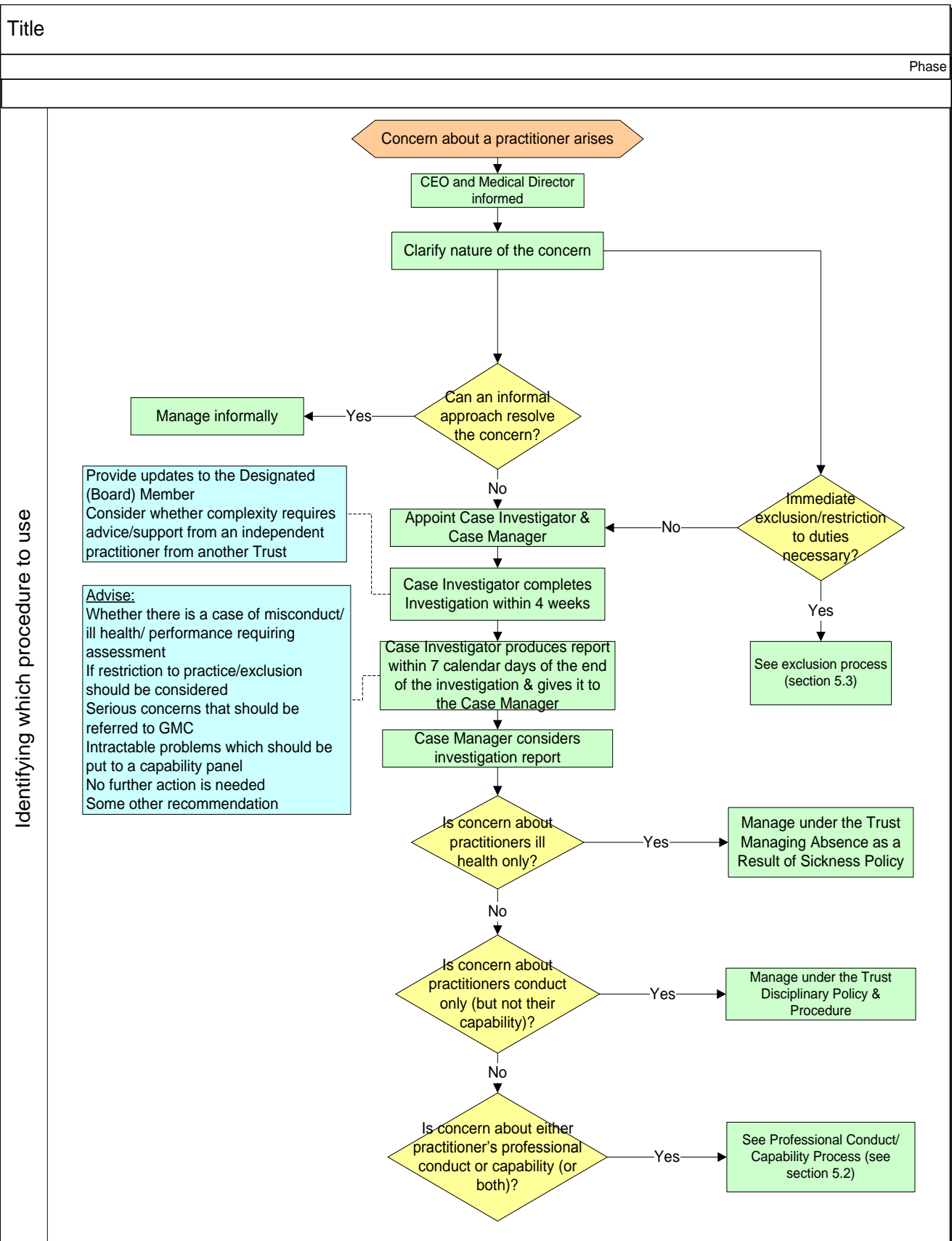
4.0 Training / competency requirements

4.1 No training/competency requirements at this time.

5.0 Procedure

5.1 Identifying which process applies

5.1.1 The process for identifying which route is appropriate to manage any concern that arises (i.e. conduct, ill health or capability) is set out in the flowchart below:



5.1.2 In cases of suspected fraud, theft or corruption of NHS resources, the Trust's LCFS will be consulted before further action is taken.

- 5.1.3 Where there are concerns about a practitioner in training, the postgraduate dean should be involved as soon as possible. Any allegation of misconduct or capability concerns against a practitioner in recognised training grades should be considered initially as a training issue and dealt with via the Director of Medical Education, with close involvement of the postgraduate dean from the outset.
- 5.1.4 Where concerns can be managed informally the Medical Director shall meet with the doctor and agree a plan of action to deal with the concern. Alternatively these actions may be delegated to another clinician, e.g. Clinical Director.
- 5.1.5 This entails the Medical Director/ other clinician meeting with the doctor to discuss the concern and how it will be resolved. The aim of the meeting will be for the manager to:
- a. Discuss the concern with the doctor;
 - b. Advise them of the standards expected in this area;
 - c. Encourage and support them to improve by agreeing standards and objectives with appropriate support identified for attaining them within a set timescale;
 - d. Agree a process of review.
- 5.1.6 A record of the discussion should be kept by the manager for reference purposes and written confirmation given to the member of staff where agreed. This meeting does not constitute disciplinary action.
- 5.1.7 A staff member has the right to be accompanied to such meetings by a union representative or work colleague, but as these proceedings are informal, there is no right of appeal.
- 5.1.8 Where concerns persist following review, consideration should be given to further informal action, an informal warning (remains on file for 6 months) given or whether formal action should be taken.
- 5.1.9 As soon as it has been decided that an investigation is to be undertaken, the doctor under investigation must be informed in writing by the Case Manager, of the details of the concerns and who will be carrying out the investigation.
- 5.1.10 Exclusion will be confirmed in writing as soon as is reasonably practicable. The letter will state the effective date and time, duration (up to four weeks), the content of the allegations, the terms of the exclusion, that a full investigation or other action will follow and that the doctor needs to remain available for work.
- 5.1.11 Exclusion under this procedure will be on full pay and the doctor must therefore remain available for work with their employer during their normal contracted hours. The doctor will be reminded of these contractual obligations but will be given 24 hours' notice to return to work. In exceptional circumstances the Case Manager may decide that payment is not justified because the doctor is no longer available for work (e.g. abroad without agreement).

- 5.1.12 Where the Trust's investigation may have identified a suspected criminal action (in the UK or abroad), this must be reported to the police. The Trust's investigation will usually only continue to investigate concerns which are not directly related to the police investigation. The trust must seek advice from the police about whether this would impede their investigation.
- 5.1.13 If criminal charges are brought against a practitioner, which are unconnected to an investigation by the Trust, the Trust will need to consider whether the practitioner poses a risk to patients or colleagues and whether their conduct requires an investigation and exclusion of the practitioner. The Trust will need to give serious consideration to whether the practitioner can continue in their job once criminal charges have been made. The Trust must consider whether the offence is one that makes the practitioner unsuitable for their type of work and whether they can continue in their current job. This will depend on the nature of the offence and whether it is proven or not. Advice should be sought from HR.
- 5.1.14 Where the Trust has not taken action, pending the outcome of a court case, and if the practitioner is acquitted but the Trust feels there is enough evidence to suggest a potential danger to patients, then the Trust has a public duty to take action to ensure that the individual concerned does not pose a risk to patient safety. 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 proved, constitute misconduct.
- 5.1.15 A wide variety of health problems can have an impact on an individual's clinical performance. The principle of dealing with ill health is that wherever possible, the Trust should attempt to continue to employ the individual provided this does not place patients or colleagues at risk. Re-training or adjustments to their working environment may be needed, with appropriate advice from NCAS and/or deanery, under the reasonable adjustment requirements under the Equality Act 2010.
- 5.1.16 Where there is an incident that may be due to the practitioner's health, it may be necessary to determine the nature of the health problem. The nominated manager should refer the practitioner to Occupational Health.
- 5.1.17 Whenever 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:
- i. Sick leave for the doctor (the doctor to be contacted frequently on a pastoral basis to stop them feeling isolated);
 - ii. Remove the doctor from certain duties;
 - iii. Reassign them to a different area of work;
 - iv. Arrange re-training or adjustments to their working environment, with appropriate advice from the NCAS and/or deanery, under

the reasonable adjustment provisions in the Disability Discrimination Act 1995 (DDA).

5.1.18 At all times the doctor will be supported by the Trust and the Occupational Health Service (OHS) which will ensure that the doctor 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 DDA. In particular, it will consider:

- i. Making adjustments to the premises;
- ii. Re-allocating some of a disabled person's duties to another;
- iii. Transferring an employee to an existing vacancy;
- iv. Altering an employee's working hours or pattern of work;
- v. Assigning the employee to a different workplace;
- vi. Allowing absence for rehabilitation, assessment or treatment;
- vii. Providing additional training or retraining;
- viii. Acquiring/modifying equipment;
- ix. Modifying procedures for testing or assessment;
- x. Providing a reader or interpreter;
- xi. Establishing mentoring arrangements.

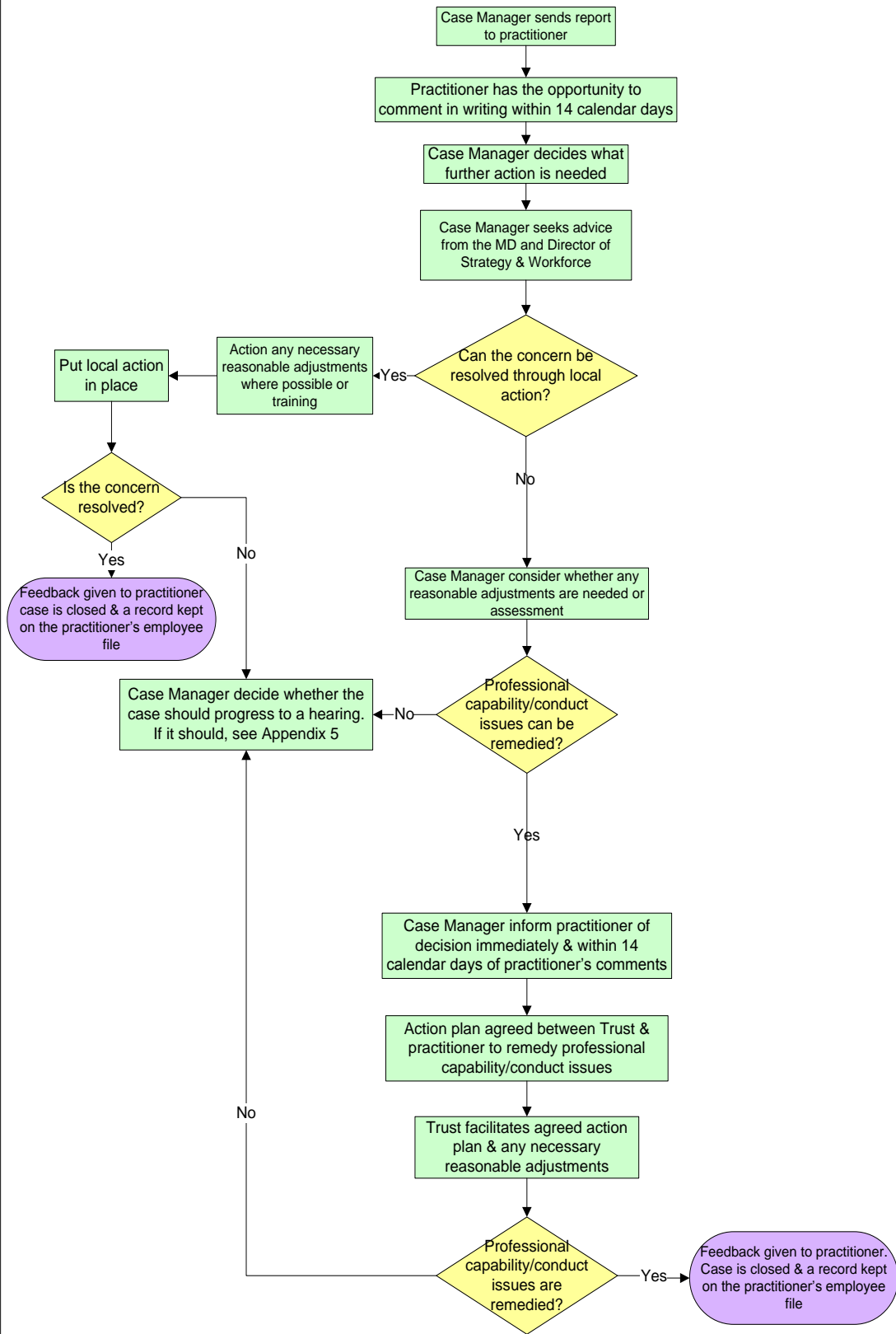
5.1.19 If a practitioner's ill health makes them a danger to patients and they do not recognise that, or are not prepared to cooperate with measures to protect patients, then exclusion from work must be considered and the professional regulatory body must be informed, irrespective of whether or not they have retired on the grounds of ill health.

5.2 Managing cases identified as a result of professional conduct/capability

5.2.1 The process for managing concerns that have been identified as professional conduct/capability is detailed in the process below:

Case identified as a result of professional conduct/capability

Professional Conduct/Capability

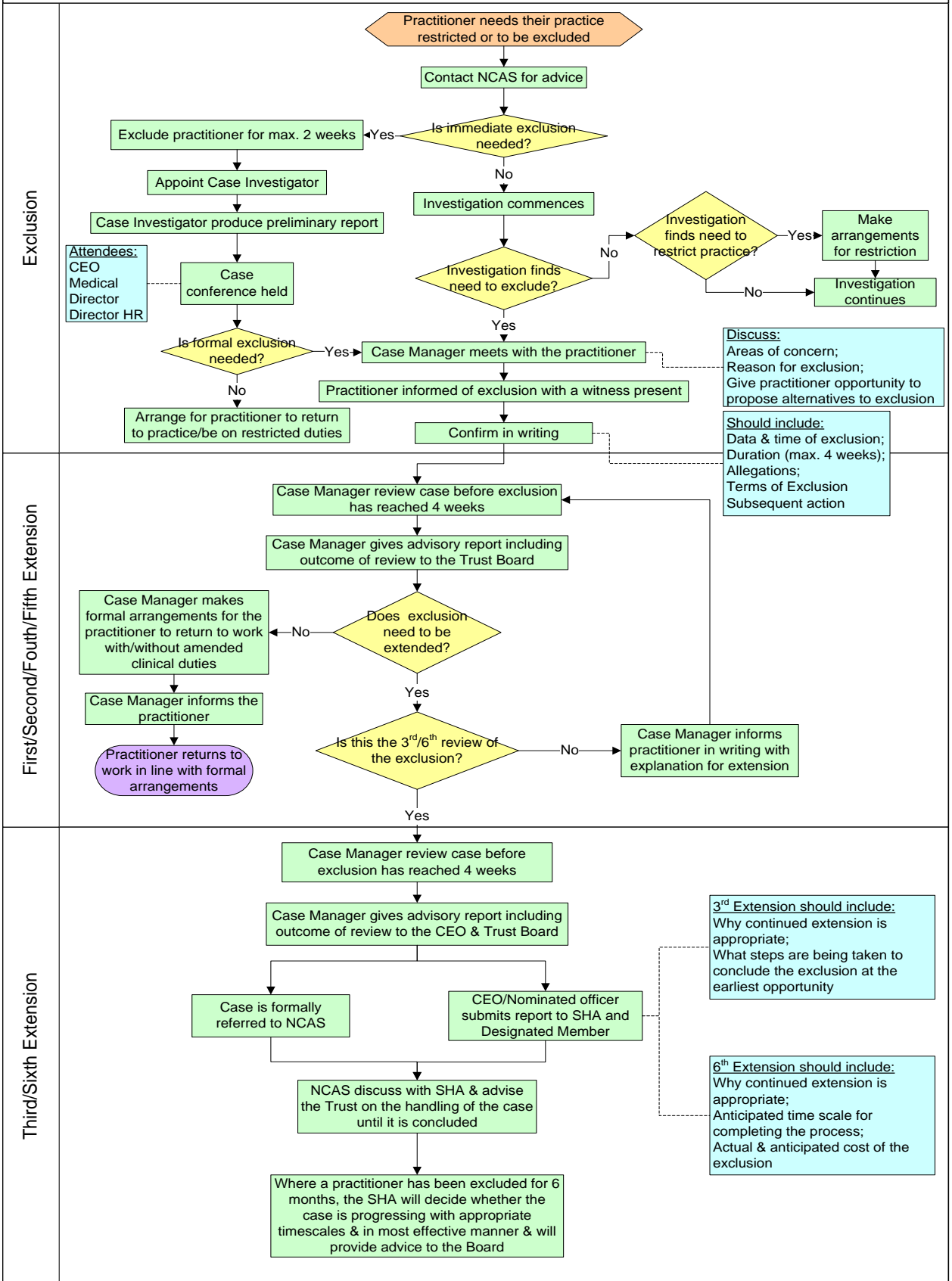


- 5.2.2 Before starting formal action, the Case Manager and/or Medical Director will always consider with the Director of Strategy & Workforce whether the capability issues can be resolved through informal local action.
- 5.2.3 The practitioner may be represented in the process by a, workplace colleague or a representative from a trade union or defence organisation. The trade union or defence organisation 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. A workplace colleague will be entitled to support the practitioner but is not entitled to present the case or answer questions on their behalf.
- 5.2.4 The meeting/investigation/hearing will be either recorded or notes taken.
- 5.2.5 The hearing should be conducted in line with the process in **Appendix 5**.

5.3 Restriction of duties and exclusion

- 5.3.1 The process for managing exclusions is set out in the flowchart below:

Restriction of Practice and Exclusion



5.3.2 Practitioners should not usually be automatically barred from the premises upon exclusion from work. Case Managers will usually consider whether a bar from the premises is absolutely necessary.

5.3.3 Alternative ways to avoid exclusion include:

- Medical/Clinical Director/Consultant supervision of normal contractual clinical duties.
- Restricting the practitioner to certain forms of clinical duties.
- Restricting activities to administrative, research/audit, teaching and other educational duties. The latter might include some formal retraining or re-skilling.
- Sick leave for the investigation of specific health problems.

5.3.4 Immediate or formal exclusion should usually only be used where there is a need to protect the interest of patients or other staff pending the outcome of a full investigation of:

- allegations of misconduct;
- concerns about serious dysfunction in the operation of a clinical service;
- concerns about lack of capability or poor performance
- or the presence of the practitioner in the workplace is likely to hinder the investigation.

5.3.5 At any point in the process, if the Case Manager has reason to believe that a practitioner is considered to be a serious potential danger to patients or staff, that practitioner must be referred to the GMC, whether or not a referral to NCAS has been done. It may also be appropriate to request the issue of an Alert letter.

5.3.6 Immediate exclusion will be for a maximum of two weeks.

5.3.7 Formal exclusion will not be longer than four weeks at a time and the justification for the exclusion must be reviewed before making any subsequent extension (max. four weeks at a time). NCAS should be consulted where formal exclusion is being considered.

5.4 Appeal against hearing outcomes

5.4.1 All practitioners have the right to appeal against any sanction applied under this policy.

5.4.2 If the case is completed under another policy (i.e. Trust Disciplinary Policy or Managing Attendance Policy and Procedure) then the appeals procedure details in that policy will apply.

5.4.3 To appeal against any sanction that is applied under this policy including termination of contract, the appeal should be made in writing to the Director of Strategy & Workforce within 14 calendar days of the date of letter confirming the dismissal. The letter should outline the reason for making the appeal.

5.4.4 The appeal panel will need to establish whether the Trust's procedures have been followed 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
- 5.4.5 The appeal against the outcome of a professional capability hearing should follow the process outlines in **Appendix 6**.
- 5.4.6 The panel who hear an appeal against the outcome of a professional capability hearing should be appropriately trained to hear the appeal and should be made up of:
- An independent member from an approved pool (available from NHS Employers). The person will act as Chair
 - The Chair or other Non-Executive Director of the Trust
 - A medically/dentally (whichever is appropriate) qualified member who is not employed by the Trust
 - (Appeal hearings for clinical academics should also include another panel member as agreed between the Trust and University)
- 5.4.7 A consultant from the same speciality/subspecialty as the appellant and another Trust and a senior HR specialist should be available for specialist advice for the panel

6.0 Monitoring and audit

- 6.1 The impact of this policy and procedure will be monitored on an on-going basis by the HR Department via:
- Quarterly and Annual Data Reports
 - Feedback from staff, managers and HR staff who have used the policy

Process requirements

1.0 Implementation and awareness

This policy will be implemented with immediate effect.

- Once approved the document lead or author will submit this policy/procedural document to the Clinical Governance Assistant who will activate it on the Trust approved document management database on the intranet, under 'Trust polices, procedures and leaflets'.
- A monthly publications table is produced by the Clinical Governance Assistant which is published on the Bulletin Board (Trust intranet) under "Trust Publications"; notification of the posting is included on a bi-weekly Bulletin Board round-up email, circulated Trust wide by the Communications team.
- On receipt of the Trust wide Bulletin Board notification all managers should ensure that their staff members are aware of the new publications.
- The HR Business Partners will introduce the policy to their Clinical Directors and General Managers at Directorate Meetings.
- Clinical Directors and General Managers are to disseminate information to their Consultants/Medical Practitioners.

2.0 Review

This policy will be reviewed five years after implementation, unless there is a change in legislation, in which case the Associate Director of Workforce will ensure that the policy is reviewed.

3.0 Archiving

The Trust intranet retains all superseded files in an archive directory in order to maintain document history.

APPENDIX TWO

CONSULTATION ON: Doctors Conduct and Performance Policy and Procedure
(with regard to Maintaining High Professional Standards)

Consultation process – 30 days consultation

Please return comments to: HR Business Partner

By date: 21st August 2013

<i>Job title: List staff to be included in the consultation. See Section 5.5 of the "Production, Approval and Implementation of Policies and Procedures" policy and procedure for guidance.</i>	Date sent 22/07/13	Date reply received	Modification suggested? Y/N	Modification made? Y/N
Local Counter Fraud Specialist (MA)	22/07/13			
Clinical Governance Assistant (RD)	22/07/13	26/07/13	Y	Y
Staff-side Chair (AK)	22/07/13	23/07/13	Y	Y
Medical Staff-side Chair (MB)	22/07/13			
Chief Nurse (AB)	22/07/13			
Medical Director (PS)	22/07/13	04/08/13	Y	Y
Head of Quality & Governance (CR)	22/07/13			
Director of Strategy & Workforce (PB)	22/07/13			
Associate Director of Workforce (RH)	22/07/13			
Head of Employee Services (TK)	22/07/13			
HRBP Team	22/07/13	19/08/13	Y	Y
ADO's/HoN's	22/07/13			
GM's/Matron's	22/07/13			
JCF Members	22/07/13			
JMNC Members	22/07/13			
The role of those staff being consulted upon as above is to ensure that they have shared the policy for comments with all staff within their sphere of responsibility who would be able to contribute to the development of the policy.				

APPENDIX THREE

Equality Impact Assessment

In line with race, disability and gender equalities legislation, public bodies like MTW are required to assess and consult on how their policies and practices affect different groups, and to monitor any possible negative impact on equality.

The completion of the following Equality Impact Assessment grid is therefore mandatory and should be undertaken as part of the policy development and approval process. Please consult the Equality and Human Rights Policy on the Trust intranet, for details on how to complete the grid.

Please note that completion is mandatory for all policy development exercises. A copy of each Equality Impact Assessment must also be placed on the Trust's intranet.

Title of Policy or Practice	Doctors Conduct and Performance Policy and Procedure (with regard to Maintaining High Professional Standards)
What are the aims of the policy or practice?	Framework for managing any concerns about the performance of doctors
Identify the data and research used to assist the analysis and assessment	Diversity Data on ESR
Analyse and assess the likely impact on equality or potential discrimination with each of the following groups.	Is there an adverse impact or potential discrimination NO If yes give details.
Males or Females	N
People of different ages	N
People of different ethnic groups	N
People of different religious beliefs	N
People who do not speak English as a first language	Y – potentially interpreter can be sourced
People who have a physical disability	N
People who have a mental disability	Y – Special needs are addressed in policy
Women who are pregnant or on maternity leave	N
Single parent families	N
People with different sexual orientations	N
People with different work patterns (part time, full time, job share, short term contractors, employed, unemployed)	N
People in deprived areas and people from different socio-economic groups	N
Asylum seekers and refugees	Y – potentially interpreter could be sourced
Prisoners and people confined to closed institutions, community offenders	N
Carers	N
If you identified potential discrimination is it minimal and justifiable and therefore does not require a stage 2 assessment?	No stage 2 assessment not required
When will you monitor and review your EqIA?	Alongside this policy/procedure when it is reviewed.
Where do you plan to publish the results of your Equality Impact Assessment?	As Appendix 3 of this policy/procedure on the Trust approved document management database on the intranet, under 'Trust polices, procedures and leaflets'.

FURTHER APPENDICES

The following appendices are published as related links to the main policy /procedure on the Trust approved document management database on the intranet (Trust policies, procedures and leaflets):

No.	Title	Unique ID
4	The role and involvement of the NCAS	RWF-OWP-APP695
5	Flowchart of process for carrying out a professional capability/conduct hearing	RWF-OPPM-CORP146
6	Flowchart of process for carrying out an appeal following a professional capability/conduct hearing	RWF-OPPM-CORP147